THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 16.07.2014

\+ **W.P.(C) 7700/2000**

J. S. WALIA ..... Petitioner

versus

JAI GOBIND AND ORS. ..... Respondents

Advocates who appeared in this case:
For the Petitioner : Mr Sanjay K. Shandilya.
For the Respondents : None.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. None appears for the respondents. It is noted that Mr P. N. Dwivedi, Advocate had appeared on behalf of respondent no.1 at the hearing held on 06.11.2001 and had sought time to file a reply to the petition. However, neither any reply has been filed on behalf of respondent no.1 nor has he been represented on any of the hearings held thereafter. It is noted that, as many as, ten hearings have been held thereafter but the respondent no. 1 has not been represented. In the given circumstances, the present petition was taken up and heard in absence of the respondents and in absence of any pleadings on their behalf.

2. The present writ petition has been filed under Article 226/227 of the Constitution of India, impugning the award dated 21.03.2000 passed by the Labour Court (hereinafter referred to as the 'impugned award'), whereby

the termination of the services of the respondent workman was held to be illegal and his reinstatement with 50% back wages was directed.

3. After failure of the conciliation proceedings, the appropriate Government referred the following question to the Labour Court for its decision:

> "Whether the service of Shri Jai Gobind have been terminated illegally and/or unjustifiably by the management? If so, to what relief is he entitled and what directions are necessary in this respect?"

4. In addition, the Labour Court also considered the issue:

> "Whether there existed industrial relationship of employer and employee between the parties?"

5. It was the petitioner's assertion before the Labour Court that there was no relationship of an employer and employee between the petitioner and respondent no.1. It was contended that the petitioner was a contractor and had availed the services of respondent no.1, who was a welder, from time to time for doing specific jobs on daily basis. It was stated that respondent no.1 had worked as a "free lancer" and not as an employee of the petitioner and consequently, there was no question of the services of the respondent no.1 being terminated. It was further stated that respondent no.1 did not work continuously for a period of 240 days with the petitioner.

6. On the other hand, the respondent no.1 had put up the case that he was an employee of the petitioner and had been in continuous employment of the petitioner from 1979 till the termination of his services on 23.02.1993. And, at the time of termination of his services he was drawing ₹2400/- per month as wages.

7. On termination of his services with the petitioner, respondent no.1 filed a complaint dated 03.03.1993 with the Labour Office, on the basis of which a Labour Inspector visited the factory of the petitioner alongwith respondent no. 1 but the petitioner refused to allow respondent no.1 to resume his duties. It is contended that thereafter, respondent no. 1 issued a notice of demand dated 03.03.1993 seeking reinstatement which was also not replied to by the petitioner. He also produced postal receipts which indicated that the said demand notice had been sent to the petitioner. Thereafter, conciliation proceedings were attempted by respondent no.1 but the same also failed.

8. In order to prove his stand, respondent no.1 had filed affidavits asserting the facts as pleaded by him in his statement of claim. On the question, whether the petitioner had acknowledged respondent no.1 as his worker, respondent no.1 produced a certificate dated 05.06.1991 issued by the petitioner on its letterhead, which was exhibited as Ex. WW-1/5. The said certificate bears the signature of the petitioner below which the date of 07.06.1991 and the time of 12:00 PM is mentioned. The said certificate reads as under:

> "This is to certify that Govind Ram..... works in my factory upto 12 midnight today as welder. Please allow him to go go to his home."

9. The Labour Court referred to the said certificate and recorded that the same mentions that the *'claimant used to work in the factory of the management'*. The learned counsel for the petitioner states that, this observation is patently erroneous and forms the basis of the Labour Court coming to the conclusion that respondent no.1 used to work as a welder in

the factory of the petitioner. It was contended that the certificate cannot be read in a manner as has been done in the impugned award and therefore, the claim of respondent no.1 stands unsubstantiated. The learned counsel further submitted that respondent no. 1 had failed to discharge its onus to prove that he was an employee of the petitioner.

10. The learned counsel for the petitioner has also relied upon the decision of the Supreme Court in ***C.N. Ramappa Gowda v. C.C. Chandregowda*: (2012) 5 SCC 265** in support of its contention that even in cases where the defendant is proceeded ex parte or in cases where a written statement is not filed, the Court must be circumspect in passing the decree and would require the facts as stated in the plaint to be proved. In the present case, the Labour Court had considered the circumstances and available material on record and arrived at the finding that the respondent no.1 was an employee of the petitioner.

11. This Court is conscious of the fact that in most cases workmen do not have adequate documentary evidence to show their employment and the same has to be discerned from the circumstances, oral evidence and other material that may be placed on record. In the present case, respondent no.1 had asserted that he was working as a welder with the petitioner and drawing a salary of ₹2,400/- per month. This claim had also been affirmed by respondent no.1 in his affidavit. Although exhibit Ex.WW-1/5 does not expressly mention that respondent no.1 is employed as a worker with the petitioner, it nonetheless indicates that respondent no.1 was working for the petitioner. The petitioner on the other hand has not produced any material to indicate that respondent no.1 was engaged only on a contractual basis

and, surely, evidence to this effect would be in the possession of the petitioner. There is also no evidence that the demand notice issued by respondent no.1 on 03.03.1993 had been refuted by the petitioner in any contemporaneous correspondence. The learned counsel for the petitioner states that the petitioner had not received this demand notice and there was no occasion to respond to the same as a week later the parties were before the Conciliation Officer. Respondent no.1 has produced the postal receipts and also proof of dispatch of the notice of demand and also affirmed the same in its affidavit. Considering the circumstances in totality, the Labour Court believed the evidence produced by respondent no.1, which remained uncontroverted as the petitioner failed and neglected to participate in the proceedings after filing its written statement.

12. Although, the evidence produced by respondent no.1 is scanty, nonetheless, there is a considerable amount of judicial discretion available to an authority to evaluate the circumstances and available material to arrive at its conclusion. The scope of judicial review under Article 226/227 of the Constitution of India is limited. This Court has only to examine, whether the finding arrived at by the Labour Court is perverse or there is a patent error in exercise of its jurisdiction. I am unable to accept that the impugned award fails on the anvil of any of these tests. More so, in the given facts where the petitioner wilfully excludes itself from the proceedings before the labour court.

13. Having stated the above, I do find that the relief of reinstatement with 50% back wages is unwarranted. Respondent no. 1 is a skilled welder and one cannot readily believe that he would have remained unemployed

after termination of his services with the petitioner. In my view the ends of justice would be met if respondent no. 1 is paid a sum of ₹1,50,000/- in lieu of reinstatement and back wages. Accordingly, respondent no.1 would be entitled to recover a sum of ₹1,50,000/- along with interest at the rate of 12% p.a. from date till the date of payment.

14. Respondent no.1 would be at liberty to approach the Registrar General of this Court for withdrawing the sum of deposited by the petitioner pursuant to the order dated 20.12.2000 along with accrued interest. The amount received by respondent no.1 from the Registrar General of this court would be adjusted towards the amount of compensation as quantified above. It is clarified that in the event, the respondent no.1 does not approach the Registrar General of this Court within a period of eight weeks from today, the petitioner would be at liberty to withdraw the sums deposited and the Registrar General is directed to return the sums deposited to the petitioner, as this Court does not consider it appropriate that unclaimed sums continue to remain in this Court for extended period of time. In the circumstances, respondent no. 1 would be at liberty to recover the compensation awarded in accordance with law.

15. The petition is disposed of with the aforesaid directions.

VIBHU BAKHRU, J

JULY 16, 2014
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