

(2002) 12 DEL CK 0065

In the Delhi High Court

Case No : CW 7320 of 2002 and CM 12349 of 2002

Bellish India Ltd. (Formerly known as APE Bellish India Ltd.) APPELLANT

Vs

Presiding Officer, Labour Court-V, Jagmohan Gupta and RESPONDENT
Labour Commissioner, Govt. of NCT of Delhi

Date of Decision : 02-12-2002

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2002) 101 DLT 493 : (2003) 66 DRJ 215 : (2003) 96 FLR 1008

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : R.P. Bedi, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Jain, J.—Petitioner, aggrieved by the award of the Labour Court has filed the present petition. Learned counsel for the petitioner has contended that pursuant to the Industrial Disputes Act the appropriate government referred the following terms of reference for adjudication:-

"Whether the services of Shri Jagmohan Gupta have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect?"

2. The Labour Court framed the following issues on the basis of pleadings of the parties:

(1) Whether the claimant is not a workman within the meaning of Industrial Disputes Act?

(2) Relief, in terms of reference.

3. Learned counsel for the petitioner has assailed the finding of the Labour Court on the ground that labour Court has wrongly relied upon on ex. WW 1/2 as the nature of the work of the assistant accountant has been taken into account while

returning the finding that the respondent was not a workman. Learned counsel for the petitioner has also contended that the respondent used to sign on behalf of the management for settlement and he was not merely performing clerical work. It has also been contended before me that the respondent was negotiating on behalf of the management. My attention has also been invited by counsel for the petitioner to a letter addressed to ESI Corporation. On the basis of these documents it was argued that the respondent was not a workman.

4. I have perused through the entire award. It is not possible to lay down any straight jacket formula which can determine the nature, duties and functions being performed by an employee. It has been held in catena of cases by this Court as well as by Supreme Court that the mere fact that the workman was doing some supervisory or other work incidentally or a small fraction of that work, that will not take the workman out of the purview of the definition of workman u/s 2(s) of the Industrial Disputes Act. There is nothing on record to show that the management at any stage filed an application or informed the Labour Court that the duties assigned to the respondent (ex. WW 1/2) was not the duties performed by the respondent and there were other duties which respondent was performing as that was the best evidence available with the management.

5. The second limb of the argument of the learned counsel for the petitioner is that the respondent has not applied for back wages and, Therefore, he was not entitled to back wages. No doubt re-instatement and full back wages have not to be granted as a matter of right in case of illegal termination by the management. But award of back wages has to be considered in the light of material and the pleadings. The stand of the claimant/workman before the Labour Court was that the transfer of workman was mala fide as the respondent was transferred from Delhi to Calcutta in order to harass him. The Labour Court has taken into consideration that the wife of the workman was ill, the documents relating to the illness of the wife was placed before Labour Court (ex.WW 1/7 and 1/8). She was operated in Escorts Hospital. On the basis of the material on record, the labour Court rightly came to the conclusion that the management has illegally terminated the services of the workman. The transfer of the workman from Delhi to Calcutta was to get rid of the workman. As a matter of fact, the stand of the management before the Labour Court was that the workman was gainfully employed but the management miserably failed to prove that the workman was gainfully employed. In para 15 of the award, the labour court has returned the finding that the case of the workman was that he was unemployed since the date of the termination of his services.

6. I do not find any infirmity with the impugned award.

7. Dismissed.