

(2007) 12 DEL CK 0028

In the Delhi High Court

Case No : Writ Petition (C) No. 8845 of 2007

Chadha Investments

APPELLANT

Vs

Sh. Achinder Singh Solanki

RESPONDENT

Date of Decision : 05-12-2007

Acts Referred:

Citation : (2007) 12 DEL CK 0028

Hon'ble Judges : J.M. Malik, J

Bench : Single Bench

Advocate : Abha Kulshreshtha, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Malik, J.—In this writ petition the petitioner, the management of M/s Chadha Investments has questioned the award wherein Sh. N.K. Kaushik, Presiding Officer granted compensation in the sum of Rs. 35,000/- to Achinder Singh Solanki, workman/respondent in lieu of reinstatement and back wages.

2. The case set up by workman/respondent is as follows. On 04.10.1989 he was engaged by the petitioner/management. M/s Y.P. Chadha Investment is owned by husband of Smt. Lakshmi Chadha, the owner of M/s Chadha Investments. Without any transfer letter the respondent/workman was illegally shifted to M/s Chadha Investments in September 1998. The workman was not being provided with legal facilities such as benefits of Provident Fund and ESI. When the workman/respondent insisted for the same, his services were illegally and unjustifiably terminated by the management/petitioner on 20.03.2001. Respondent/workman sent notice of demand dated 26.03.2001 but it did not produce the desired result. Respondent/workman claimed that he is without a job and that he was drawing last paid wages at Rs. 2,695/- per month. He sought reinstatement with back wages and continuity of previous service.

3. The petitioner/management defended the reference made to the Labour Court by Secretary(Labour), Govt. of NCT. The principal defense put forward by the

petitioner was that the respondent/workman had received his full and final settlement amount from the management and as such he is estopped now from raising any dispute in this regard. It was again averred by the petitioner/management that the respondent/workman was employed as Home Guard under Ministry of Home Affairs during the period 22.11.1985 to 25.03.2000. The respondent/workman was employed by the petitioner/employer on 06.10.1998. He worked with them until 20.03.2001 only and finally on 20.03.2001 itself he entered into a full and final settlement with the management. Again the last drawn wages of the workman were Rs. 2,350/-.

4. I have heard the counsel for the petitioner/management. The learned Counsel raised two contentions before me. She pointed out that the petitioner has produced enough evidence to show that the workman/respondent had received a sum of Rs. 4,050/- as retrenchment amount for one and a half months wages at the rate of Rs. 2,695/-. She submitted that, although, the author of document Mark "A" i.e. final settlement between the parties, could not be produced, yet, the petitioner has been able to produce, Sh. Kamal Kant Khandelwal, Hand Writing and Finger Print Expert, MW-2, who clearly, specifically and unequivocally proved that Mark "A" is signed by the respondent/workman himself. She further explained that Smt. Lakshmi Chadha, who appeared as MW-1 has well explained that there was one employee, whose name she could not recollect who was working at the post of Account Clerk and had prepared Mark "A". She further submitted that Account Clerk has since left the job. She opined that under these circumstances Mark "A" stands proved on the record.

5. The arguments advanced by the learned Counsel for the petitioner do not inject some coherence. In the absence of above said Account Clerk, the position does not begin to jell. The Account Clerk was to helm the petitioner's case. The entire case of the petitioner swirls around Mark "A", which is the most significant document. This is the back bone of petitioner's case. Except the ipse dixit of the petitioner, Smt. Lakshmi Chadha, there is no material brought on record to support her assertion. As a matter of fact, the non-production of Account Clerk eclipses the petitioner's case. His production before the Court would have gone a long way to animate life in the dead case.

6. In Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, , it was held that when a party in possession of best evidence which would throw light on the issue in controversy withholds it, the court ought to have draw an adverse inference against him notwithstanding that onus of proof does not lie on him. It was further held that party cannot rely on abstract doctrine of onus of proof or on the fact that he was not called upon to produce it.

7. The evidence adduced by the petitioner, at best, goes to reveal that Mark "A" was signed by the respondent/workman. Its contents do not stand proved. The petitioner should have named the person, who had prepared this most significant and crucial document. The petitioner has made a vain attempt to reckon without its host. Although, it stands proved that Mark "A" is signed by the respondent/

workman, yet, there is not even an iota of evidence, which may go to show that Rs. 4,050/- were paid to the workman/respondent in full and final settlement of the dispute or as a retrenchment compensation.

8. It is also interesting to note that the petitioner Smt. Lakshmi Chadha in her cross-examination admitted that she used to pay salary to the workman/respondent normally by cheque. Under these circumstances, it is difficult to fathom as to why the retrenchment amount, which is an important payment was made through the voucher. This fact itself gives a flavour of doubt and evanescence" the value of petitioner's case.

9. The next submission made by the counsel for the petitioner was that the respondent/workman has failed to prove that he was employed on 04.10.1989. Ex. MW1/W2, the reply sent by Smt. Lakshmi Chadha dated 16.04.2001 is a vital piece of evidence. Para No. 2 of the said reply addressed to Assistant Labour Commissioner, NCT Delhi Govt. is reproduced as follows:

2. Chadha Investments is a very small establishment dealing in sale/purchase of market shares. As a establishment consists of less than 10 employees. Sh. Achinder Singh Solanki worked as a messenger in Chadha Investments from 4.10.89 to 5.10.93. Subsequently he joined another company YP Chadha & Co. from 6.10.93 to Sep 1998 which is supported by record. Again from Oct 1998 till 20.3.2001 he worked as messenger in Chadha Investments.

10. It must be borne in mind that Sh. Y.P. Chadha is the husband of Smt. Lakshmi Chadha. Sh. Y.P. Chadha is the proprietor of YP Chadha & Co. In her cross-examination Smt. Lakshmi Chadha made the following statement. Chadha Investments is a proprietorship concern and she is the proprietress of the same. The accounts of the firm are maintained in the name of Chadha Investments and the authority to operate the accounts is with her husband and the witness herself. She explained that the authority was given to her husband only because he is her husband and a reliable person. She has given the authority to her husband for bank accounts i.e. to say that he can sign and operate on her behalf as well as act as her authorised signatory. She admitted that Chadha Investments and her husband's firm used to operate from same place. Mark "C" is a cheque of Chadha Investment and the same is signed by Mr. Y.P. Chadha as a proprietor. She also admitted that Ex. MW1/W1 is signed by her husband at point "Y". The same is on the letter head of Chadha Investments and the same is signed by Mr. Y.P. Chadha. Mark "D" is signed by her husband at point "Z" which is a cheque of Chadha Investment and the same is signed by Mr. Y.P. Chadha as a proprietor/Manager.

11. The learned Labour Court rightly came to the conclusion that all these circumstances indicate that M/s Chadha Investments and M/s Y.P. Chadha & Co. were so closely knit that it would not have been possible for workman/respondent to see as to whether there are different employers and different concerns.

12. No other argument was urged before this Court. The conclusion arrived at by the Labour Court deserves no interference. I see no force in the writ petition. The same is, Therefore, dismissed in limine.

CM No. 16706/2007

The application has rendered infructuous in view of the dismissal of the petition.