
(2014) 02 RAJ CK 0161
In the Rajasthan High Court
Case No : C.W.P. No. 15589 of 2009

Ghisa Khan

APPELLANT

Vs

Labour Court and Industrial Tribunal

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 10, 10(4), 2(s)

Citation : (2014) 2 LLJ 405 : (2014) LLR 753

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Advocate : Anand Sharma, Advocate for the Appellant; Suresh Sahni and Sunil Vijay, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Veerendra Singh Siradhana, J.—The petitioner, in the instant writ application, has challenged the legality, validity and correctness of the award dated 1st May, 2009 passed by the Labour Court and Industrial Tribunal, Ajmer (for short, "learned Labour Court") in L.C.R. Case Number 15 of 2005. Briefly, the essential material facts necessary for adjudication of the controversy raised are: That the petitioner/workman raised an industrial dispute assailing his verbal order of termination with effect from 1st April, 2003. It is pleaded case of the petitioner/workman that he discharged his duties with the establishment of the respondent/employer (Godrej Agrovate Ltd., Makupura Extension, Industrial Area, Makupura, Ajmer), with effect from 13th August, 2002 till 31st of March, 2003. As a result of failure of the conciliation proceedings, the appropriate Government made a reference. In response to the notice of the statement of claim, the respondent/employer/Godrej Agrovate Ltd., Ajmer, filed its reply stating therein that the petitioner/workman was never engaged/appointed by it rather the work of the establishment was carried out on contract basis through the contractors. It was further pleaded by the respondent/employer that the petitioner/workman did not work for 240 days in a calendar year and therefore, the claim was liable to be

dismissed.

2. The learned Labour Court having recorded a finding that the petitioner/workman was not employed by the respondent/employer/Godrej Agrovate Ltd., Ajmer, rather was an employee of the contractor and therefore, concluded that there was no illegality in the action of the alleged verbal termination. The action was held to be legal and valid. However, the learned Labour Court allowed a sum of Rs. 3,110/- to be paid by Godrej Agrovate Ltd., Ajmer to the petitioner/workman as expenses incurred on account of medical expenses for injury suffered by the workman while working, in the month of December, 2002, within 3 months from the publication of the award, failing which the amount shall carry an interest @ 6% per annum.

3. The learned counsel for the petitioner/workman has assailed the impugned award dated 1st May, 2009 stating that since the direction for payment of wages was accorded in favour of the petitioner/workman for the months of October and November, 2002, though ex-parte, against Godrej Agrovate Ltd., Ajmer, which was not challenged, therefore, this fact by itself is sufficient to infer that the petitioner/workman was an employee of Godrej Agrovate Ltd., Ajmer. The learned counsel would further argue that the direction issued by the learned Labour Court for payment of an amount of Rs. 3,110/- on account of injury suffered by the petitioner/workman is yet another a fact to infer that the petitioner/workman was an employee of Godrej Agrovate Ltd., Ajmer. In support of his arguments, the learned counsel for the petitioner/workman placed reliance on the definition of "workman" as defined u/s 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act of 1947", for short). Further, an alternative argument has also been advanced to the effect that even if, the petitioner/workman did not complete 240 days, the respondent/employer terminated the services of the petitioner/workman while retaining junior persons though not named either in the statement of claim or in the memo of the writ application. The impugned award has also been assailed for the learned Labour Court failed to decide the issue of unfair labour practice.

4. To buttress his submissions, the learned counsel for the petitioner/workman has placed reliance on the opinion of this Court in the case of Manager Mittal Steel Manufacturing Company Vs. Chotha Ram and Another, and Rajasthan Cooperative Dairy Federation Ltd. v. Judge, Industrial Tribunal & Labour Court, Bikaner RLR 2001 (1) 715.

5. Per contra, the learned counsel for the respondent/employer, Mr. Suresh Sahni with Mr. Sunil Vijay, submitted that the impugned award dated 1st May, 2009 is perfectly legal, valid and in consonance with the settled principles of law and therefore, calls for no interference by this Court in exercise of supervisory jurisdiction. Reiterating the pleaded facts in the reply to the statement of claim and the findings arrived at by the learned Labour Court, the learned counsel would further urge that in absence of any evidence and material facts and particulars pleaded in the statement of claim and proved by leading evidence,

the findings arrived at by the learned Labour Court call for no interference by this Court. The learned counsel would further submit that the onus to prove the fact that the petitioner/workman in fact worked for 240 days in the year preceding his alleged termination and was in the employment of Godrej Agrovate Ltd., Ajmer, was on the petitioner/workman, and a mere statement, in the statement of claim or in the affidavit cannot be regarded as sufficient evidence.

6. I have heard the learned counsel for the parties and with their assistance, perused the materials available on record.

7. The learned counsel for the petitioner/workman admitted the fact that he did not implead the contractor through whom he was engaged in the employment of the respondent No. 2-employer. The learned Labour Court while appreciating the evidence of one Dharmchand, produced as witness on behalf of Godrej Agrovate Ltd., Ajmer observed that one Vijay Kumar son of Dharmchand, who died, use to work on contract basis for Godrej Agrovate Ltd., Ajmer. This witness was cross-examined on behalf of the petitioner/workman, but nothing helpful could be extracted, in order to support the case of the petitioner/workman. Dharmchand also deposed that the relevant record of the labourers employed on contract basis by him, was handed over to one Shri S.M. Khan of Godrej Agrovate Ltd., Ajmer.

8. At this juncture, it will be relevant to first deal with the contentions raised on behalf of the petitioner/workman as regard to the definition of "workman" as defined u/s 2(s) of the Act of 1947, which reads thus:

2. Definitions.

(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

9. From a bare perusal of the definition clause quoted above, it is evident that the petitioner/workman must have been employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. Inserting after the words "employed in any industry", the words "by an employer or by a contractor in relation to the execution of his contract with such employer". There is no evidence brought on record by the petitioner/workman that he was employed by a contractor in relation to execution of his contract with such employer. Neither the contractor was impleaded as a party to the proceedings before the learned Labour Court nor any application for summoning the relevant record to substantiate his engagement by the employer or by the contractor in relation to execution of contract of the contractor with such employer; was submitted before the learned Labour Court so as to draw any adverse inference on that count. The averments made by the learned counsel for the petitioner/workman placing reliance on the text of sub-section (4) of Section 10 of the Act of 1947, do not advance the case of the petitioner/workman any further. The text of Section 10(4) of the Act of 1947 reads thus:

10. Reference of disputes to Boards, Courts or Tribunals:.....

(4) Where in an order referring an industrial dispute to (a Labour Court, Tribunal or National Tribunal) under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, 5* (the Labour Court or the Tribunal or the National Tribunal, as the case may be) shall confine its adjudication to those points and matters incidental thereto.

10. Thus, the observations made by the learned Labour Court for entitlement of the petitioner/workman to a sum of Rs. 3,110/- for medical expenses incurred on treatment of an injury suffered by him in the month of December, 2002 is of no consequence and cannot be pleaded as a ground to draw an inference so as to treat the petitioner/workman as an employee engaged by respondent No. 2/ Godrej Agrovate Ltd., Ajmer.

11. In the case of *The Range Forest Officer Vs. S.T. Hadimani*, , the Hon"ble Supreme Court held that since it was the claim of the workman that he had worked for 240 days, which was denied by the management, it was for the respondent/workman to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. The Hon"ble Supreme Court also held that filing of the affidavit cannot be regarded as sufficient evidence. The award passed by the Tribunal in that case, therefore, was set aside.

12. The Hon"ble Supreme Court in the case of *Municipal Corporation, Faridabad Vs. Siri Niwas*, dealing with the issue of "burden of proof, held that the burden was on the workman to show that he had worked continuously for 240 days in the preceding year prior to his alleged retrenchment.

13. On the facts, in the instant case at hand, the petitioner/workman adduced no evidence whatsoever before the learned Labour Court so as to substantiate his engagement either by the employer i.e., Godrej Agrovate Ltd., Ajmer, or by the

contractor in relation to execution of his contract with Godrej Agrovate Ltd., Ajmer.

14. The findings arrived at by the learned Tribunal being findings of fact, cannot be said to be perverse in absence of any material evidence to the contrary and thus, there is no reason to interfere with the same in exercise of supervisory power under Article 227 of the Constitution of India. The Hon''ble Supreme Court in the case of Mohd. Yunus Vs. Mohd. Mustaqim and Others, held that the supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority" and not to correct an error apparent on the face of the record, much less an error of law for the reason that while exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an Appellate Court or Tribunal.

15. From the facts, evidence and materials available on record, it is evident that the petitioner/workman had admitted the fact that he did not move an application for summoning of the record with reference to his attendance either with the employer or with the contractor through whom he was engaged for execution of the contract entered into by the contractor. Dharmchand, who has appeared as witness on behalf of Godrej Agrovate Ltd., Ajmer, was cross-examined on behalf of the petitioner/workman, who did speak about the record of engagement of labour and handling over of the record to the Manager of Godrej Agrovate Ltd., Ajmer.

16. It appears that the petitioner/workman was not sure about his engagement either with the employer or through the contractor, be it Late Shri Vijay Kumar or Dharmchand. Since, no documentary evidence about the engagement of the petitioner/workman has been produced nor any application for production of such documentary evidence from the possession of the employer or the contractor was ever moved, in such a situation, the onus was on the petitioner/workman to prove the fact of his employment/engagement by leading documentary evidence or at least moving an application for summoning of the relevant documentary record.

17. For the reasons and discussions hereinabove, I do not find any illegality, infirmity, perversity or error apparent on the face of record in the findings recorded by the learned Labour Court in the impugned award dated 1st May, 2009 so as to call for any interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

18. In the result, the writ application is devoid of any substance and has no force, hence, deserves to be dismissed.

19. Ordered accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.