

(2024) 09 SHI CK 0038

In the High Court Of Himachal Pradesh

Case No : First Appeal from Order No. 96 Of 2013

Gurdev Singh

APPELLANT

Vs

Hemant Kumar Gupta And Others

RESPONDENT

Date of Decision : 04-09-2024

Acts Referred:

Workmen's Compensation Act, 1923 — Section 2(n)

Citation : (2024) 09 SHI CK 0038

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Rohit Thakur, Virender Singh Rathour, G.R. Palsra, Sunita Sharma, Dhananjay Sharma, Anirudh Sharma

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. By way of this FAO, the appellant has challenged the judgment dated 27.12.2011, passed by learned Commissioner under the Workmen's Compensation Act, in WCA No.12 of 2011, titled Sh. Gurdev Singh Vs. Sh. Hemant Kumar Gupta and others, in terms whereof the petition filed by the appellant was dismissed. This appeal was admitted on 18.06.2024 on the following substantial question of law:-

"Whether the findings returned by learned Commissioner that the claimant was not an employee of the respondents are perverse findings?"

2. Brief facts necessary for the adjudication of the present appeal are as under:-

The case of the claimant before the learned Commissioner was that he was engaged as a Beldar by the HPSEB for the purpose of plastering work of the first floor of the house of respondent No.1 with effect from 02.04.2003 (wrongly mentioned in the claim petition as 12.04.2003). On 05.04.2003 at around 1:00 pm, the claimant received injuries on his body due to electrical burn from HT

wire, passing above the roof of the house of respondent No.1. He was badly burned. At the time of incident, his daily wages were Rs. 100/- per day. He was moved to Zonal Hospital, Mandi, after the incident, where he remained admitted till 17.04.2003. He spent an amount of Rs.10,000/- on his treatment. His treatment was still under way when the case was filed. After the accident, the claimant was advised bed rest for one year and the injuries received had affected his eyesight and memory also. Accordingly, he prayed for compensation to the tune of Rs. 2,00,000/-

3. The respondents denied the case of the petitioner by taking the stand that he was never engaged by HPSEB in any capacity and there was no relationship of employer and workman between HPSEB and the claimant. Respondents No.2 to 4 categorically denied that the claimant was engaged by the said respondents to do any work in the house of respondent No. 1, as alleged in the claim petition.

4. Respondent No. 1, Hemant Kumar Gupta denied the case of the claimant in totality. He denied that the claimant was ever engaged as a Beldar or he was performing any plastering work at his house, as alleged or any incident as alleged took place, in the course of the performance of the work by the claimant at his house.

5. On the basis of the pleadings of the parties, learned Commissioner framed the following issues on 08.11.2004:-

"1. Whether the petitioner was the workman/employee of the respondent? OPP.

2. Whether the petitioner sustained injuries during the course of employment? OPP

3. Whether the petitioner is entitled for compensation from whom and what amount?OPP

4. Whether the petitioner was injured during the course of the employment with respondent?OPP

5. Relief."

6. On the strength of the evidence, which was led by the parties in support of their respective contentions, the issues were decided as under:-

"Issue No. 1 : No.

Issue No. 2 : No.

Issue No. 3 : No.

Issue No. 4 : No.

Relief : The petition is dismissed as per operative part of the judgment."

7. Learned Commissioner dismissed the claim petition by holding that the definition of 'workman' in terms of Section 2(n) of the Workmen's Compensation

Act did not include the petitioner, as at the most, he was engaged as a casual worker and further the claimant had not produced any evidence to demonstrate that he was employed for the purpose of employer's trade or business. While arriving at the said finding learned Commissioner relied upon the judgment of the Hon'ble Supreme of India in Central Mine Planning & Design Institute Ltd. Vs. Ramu Pasi and another, 2006 (1) SCC 377. Learned Commissioner also relied upon the judgment of Hon'ble Supreme Court of India referred to in paragraph 16 of her judgment and by relying thereupon held that casual employee appointed for limited period to carry out repairs job in a building was not a workman within the meaning of Section 2(n) of the Act.

8. Feeling aggrieved, the claimant has filed this appeal, which was admitted on the substantial question of law, already quoted hereinabove, on 18.06.2024.

9. Learned Counsel for the appellant has argued that the findings returned by the learned Commissioner to the effect that the claimant was not an employee of HPSEB, are perverse findings, as it is evident from the evidence on record that he was indeed engaged by the Board to perform work at the house of respondent No. 1. He further submitted that the learned Commissioner has completely misled the definition of the workman and, therefore, the appeal be allowed as prayed for, by setting aside the judgment passed by the learned Commissioner and the appellant be held entitled to the claim of Rs.2,00,000/- with interest.

10. On the other hand, learned Senior Counsel appearing for respondents No.2 to 4 and Mr. G.R. Palsra, learned Counsel appearing for respondent No.1, have supported the judgment passed by the learned Commissioner.

11. Learned Senior Counsel for respondents No.2 to 4 submitted that neither the appellant was ever engaged as a workman by the respondent-Board nor there is any iota of evidence on record from which it could be inferred that the appellant was engaged by HPSEB. She submitted that the judgment passed by the learned Commissioner is based on correct appreciation of the pleadings as well as evidence on record. She further submitted that it is evident that the claim petition was filed on the basis of concocted facts. While taking the Court to the contents of the claim petition, she submitted that there is nothing in the claim petition, specifically pleaded, as to when the claimant was engaged by the Board, on what terms and under whose order he was deployed to perform the duties at the house of respondent No. 1. Accordingly, she submitted that as there is no infirmity in the judgment passed by the learned Commissioner, the appeal be dismissed.

12. Mr. G.R. Palsra, learned Counsel, in addition has submitted that the appellant was never engaged by respondent No. 1 and the entire story has been concocted just to harass the parties and extort money from them.

13. I have heard learned Counsel for the parties and also carefully gone through the judgment under challenge as well as the record of the case.

14. This appeal was admitted on 18.06.2024 on the substantial question of law, as to whether the findings returned by the learned Commissioner that the claimant was not an employee of the respondents are perverse findings.

15. A perusal of the claim petition demonstrates that all that was mentioned therein was that the claimant was employed by the Board on 02.04.2003 for plastering work of "respondent No.1" and it was in the course of said employment that on 05.04.2003 at around 1:00 pm, he suffered from burn injuries on account of a High Tension wire, which was just above the roof of the house of respondent No. 1. It was further mentioned in the claim petition that the workman was employed on daily wages at the rate of Rs. 100/- per day. However, except this assertion in the claim petition and the bald reiteration of this fact in the witness box, no evidence whatsoever has been produced by the claimant to demonstrate that he indeed was engaged as a Beldar by the respondent No.1. There is neither any man-days chart on record nor any proof of emoluments etc. ever received by the appellant from the respondent-Board. There is no document from which it can be inferred that; (a) the appellant was engaged by the HPSEB; and (b) he was deputed to perform work at the house of respondent No.1. In the absence of any such evidence being produced on record, the findings returned by learned Commissioner that the claimant was not an employee of the respondents, cannot be termed to be perverse findings. In fact, the findings that have been returned by the learned Commissioner, are clearly borne out from the record of the case. Not only this, the cross-examination of the appellant in fact demonstrates that he was, if at all engaged, then it was by respondent No. 1 and, that too, in his private house, in the course of the construction of his private house and, therefore, also it cannot be held that the findings returned by the learned Commissioner that the claimant was not an employee of the respondents, are perverse findings. Substantial question of law is answered accordingly. Accordingly, as the Court does not find any merit in the appeal, the same is dismissed. Pending miscellaneous application(s), if any, also stands disposed of.