

(2011) 04 DEL CK 0144

In the Delhi High Court

Case No : Writ Petition (C) 2263 of 2010

Harish Chandra Gururani

APPELLANT

Vs

Management of Kasturi and Sons Ltd.

RESPONDENT

Date of Decision : 25-04-2011

Acts Referred:

Citation : (2011) 04 DEL CK 0144

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Rajat Sharma, for the Appellant; Gagan Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the award dated 21st July, 2009 of the Labour Court on the reference dated 20th June, 2001 as under:

Whether the services of Sh. Harish Chandra Gururani 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?

The Labour Court decided the reference against the petitioner workman and held that the petitioner workman had failed to establish that he was an employee of the respondent and thus the question of the respondent terminating his services did not arise.

2. It was the case of the Petitioner workman that he was employed with the Respondent Company as a Driver with effect from 6th February, 1997 and till 30th September, 2000 when his services were illegally terminated. Though the record of the Labour Court has not been requisitioned and no copies thereof have been filed by the Petitioner workman along with the petition but the copy of the claim petition on the file of the counsel for the Respondent has been perused. It was the case of the Petitioner workman therein that he was employed at a salary of Rs. 3,500/- per month but the Respondent was not giving him the annual

leave, bonus, overtime etc.

3. The Respondent contested the claim of the Petitioner by pleading that the Respondent had never employed the Petitioner and there was no employer-employee relationship between the parties; that the Respondent had provided a car to its Regional Manager and the Regional Manager of the Respondent under the terms of his employment was entitled to either drive the car himself or engage a driver in his personal capacity; that Sh. Pawan Bhatnagar, Regional Manager of the Respondent had employed the Petitioner as his personal driver and was personally paying the wages to the Petitioner on his own and the Respondent only reimbursed to the Regional Manager the payment made by him to any of his personal driver, as part of the terms of his employment.

4. The Labour Court on the basis of the evidence led has held that it was for the Petitioner workman to prove the existence of employer-employee relationship with the Respondent; admittedly no appointment letter was issued by the Respondent to the Petitioner; that the Petitioner had even otherwise failed to prove that he was employed by the Respondent; that from the evidence led it stood established that the Petitioner was the personal driver of the Regional Manager of the Respondent; that from the demand letter dated 4th October, 2000 issued by the Petitioner, it is evident that he was aware that his name did not exist on the pay roll of the Respondent; that it was inexplicable as to why, if the Petitioner knew that, he during the time of his three years of employment, did not raise any objection or dispute in this regard. Reliance was placed by the Labour Court inter alia on Punjab National Bank Vs. Ghulam Dastagir, to hold that personal drivers employed by the officers of the Company even if driving cars belonging to the Company did not become the employees of the Company.

5. The challenge by the counsel for the Petitioner to the award aforesaid is on the basis of the Job Cards issued by the Service Stations with respect to works done on the car belonging to the Respondent and bearing the signatures of the Petitioner. With reference to the admission in cross examination of Mr. Pawan Bhatnagar aforesaid who appeared as a witness on behalf of the Respondent to the effect that he joined the Respondent at Delhi in September, 1998 and the dates of prior thereto on the three Job Cards photocopies of which have been annexed to the petition, it is contended that the same belie the contention of the Respondent of the Petitioner being the personal driver of the said Mr. Pawan Bhatnagar. It is contended that the said Job Cards prove that the Petitioner was taking the car of the Respondent for service/works on the dates mentioned therein and the question of the Petitioner taking the car of the Respondent on dates prior to Mr. Pawan Bhatnagar joining the Respondent at Delhi would not have arisen if the Petitioner had been the personal driver of the said Mr. Pawan Bhatnagar. It is contended that the said vital evidence has not been discussed by the Labour Court.

6. The counsel for the Respondent in response thereto has handed over in the Court the copies of the evidence led before the Labour Court and which copies

are not controverted. It is shown that the Authorized Representative of the Petitioner workman in cross examination of the said Mr. Pawan Bhatnagar had suggested that prior to the said Mr. Pawan Bhatnagar joining as the Regional Manager in September, 1998, one Mr. K.C. Rangaswamy was the Regional Manager of the Respondent and that the Petitioner workman was driving the car of the said Mr. K.C. Rangaswamy. The counsel for the Respondent contends that the aforesaid suggestion by the Petitioner workman in cross examination shows that the Petitioner workman prior to employment by the said Mr. Pawan Bhatnagar was employed by the said Mr. K.C. Rangaswamy also as his personal driver. He contends that the same explains the signatures, if any, of the Petitioner on the Job Cards of the date prior to Mr. Pawan Bhatnagar joining the Respondent at Delhi.

7. The counsel for the Respondent has further contended that the matter in controversy is fully covered by the judgment of this Court in *Mudra Communications Ltd. v. Ganesh Kumar* 169 (2010) DLT 481. With reference to *Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of Tamil Nadu and Others*, (also considered in *Mudra Communications Ltd. (supra)*), it is contended that the onus was on the Petitioner workman to establish/prove employment and which he has failed to do, as also held by the Labour Court. Reliance in this regard is also placed upon *Automobile Assoc. Upper India Vs. The P.O. Labour Court II and Another*,

8. The counsel for the Petitioner in rejoinder has contended that the occasion for the continuity in service of the Petitioner with successive Regional Managers of the Respondent would have arisen only if the Petitioner was attached to the Respondent and not to its officers. Heavy reliance is placed on the ex parte award earlier published by the Labour Court and which was subsequently set aside.

9. The entire case law on the subject was considered in *Mudra Communications Ltd.* and need is not felt to reiterate the same. In the said judgment two other judgments of this Court in *Subash Chand Vs. Mitsui and Company*, and *Nar Bahadur Vs. Management of Shree Electricals* following *Ghulam Dastagir (supra)* also laying down that relationship of employer/employee was not established in such facts, were also noticed.

10. Though in the first instance, from the factum of the Petitioner being shown to have taken the car of the Respondent for service/works even prior to the officer, whose personal driver the Petitioner was alleged to be, joining the Respondent appears to suggest that there was relationship of employer employee between the Respondent and the Petitioner, however, the Petitioner himself has provided the explanation thereof by making the suggestions aforesaid in the cross examination of Mr. Pawan Bhatnagar before the Labour Court. It is not unbelievable in the normal course of events that the personal driver employed by one officer may be engaged by his successor in office.

11. Moreover, once the finding of fact returned by the Labour court is found to be based on cogent reasoning and evidence on record, the same cannot be interfered with in exercise of judicial review and the powers of judicial review cannot be equated with the appellate jurisdiction.

12. No ground for interference with the award is made out.

The petition is dismissed. No order as to costs.