

(2007) 07 DEL CK 0252

In the Delhi High Court

Case No : Writ Petition (C) 2697 of 2007

Hira Lal and Another

APPELLANT

Vs

Sunrise Coop. G/H Society P. Ltd.

RESPONDENT

Date of Decision : 19-07-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2007) 07 DEL CK 0252

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Mahesh Srivastava, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The present petition has been filed by the petitioners praying inter alias for issuing a writ of certiorari to set aside/quash the impugned award dated 1st May, 2006, passed by the learned Labour Court whereunder it was held that the petitioners, claimants therein, had failed to establish the relationship of workman and management between them and the respondent and accordingly it was held that they were not entitled to any relief as claimed by them in the claim petition.

2. At this juncture, it is pertinent to narrate the facts of the case in brief. The respondent is a Cooperative Group Housing Society, and the petitioner workmen No. 1 and 2 were appointed by it in the capacity of pump operator and security guard respectively. Their services were terminated by the respondent on 24th April, 1998 along with that of two other workmen. The petitioners filed a complaint with the Labour Department against the said termination; conciliation proceedings were held and on failure of the said conciliation proceedings, the dispute was referred to the Labour Court for adjudication. The workmen claimed that since their services were terminated illegally, they were entitled to be reinstated with continuity of services and full back wages. The respondent management contested the claim on the ground that the claimants were not

"workmen" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as the ACT) and that the respondent was not an "industry" u/s 2(j) of the Act.

3. After recording evidence and on perusing the records of the case, the learned Presiding Officer came to the conclusion that since the respondent was a Cooperative Group Housing Society and the petitioners were only rendering personal services to the members of the Society, Therefore, the relationship of workman and employer was not established between them and the respondent. It was further noted that in view of the judgment rendered by the Supreme Court in the case of MGT. of Som Vihar Apt. Owners Housing Maintenance Society Ltd. Vs. Workmen, Indian Engg. and General Mazdoor, neither the respondent could be termed as an "industry" within the meaning of Section 2(j) of the Act, nor could the petitioners be termed as "workmen" u/s 2(s) of the Act. Accordingly, the claim of the petitioners was rejected.

4. Aggrieved by the aforesaid award of the Labour Court, the petitioners have filed the present writ petition.

5. Learned Counsel for petitioners submits that the reliance placed by the learned Labour Court on the case of Som Vihar Apartment owners Housing and Maintenance Society Ltd. (Supra) is misplaced in view of the fact that the Labour Court had failed to appreciate that the said judgment is clearly distinguishable from the present case on facts.? Instead, he places reliance on the judgment rendered by the Supreme Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, in which the term "industry" was given in a very wide interpretation and contends that the same still holds the field as it has not yet been overruled. It is further stated that the ideology of the Act being industrial peace, and the same being a piece of beneficial legislation, the definition of the term "industry" should be given an interpretation in favor of the workman.

6. I have heard the learned Counsel for the petitioners and have gone through the material placed on record including the impugned award.? It has rightly been held in the award that the present case is squarely covered by the judgment of the Supreme Court in the case of Som Vihar Apartment owners Housing and Maintenance Society Ltd. (supra), where the court in clear and categorical terms has held that an association or society of apartment owners employing persons who were rendering personal services to its members, is not an "industry" for the purposes of Section 2(j) of the Act; neither are such employees "workmen" within the meaning of Section 2(s) of the Act. Taking note of its own judgment in the A. Rajappa case (Supra), the Apex Court held as under:

Para 7. Indeed this Court in Rajappa case noticed the distinction between such classes of workmen as domestic servants who rendered personal service to their masters and from those covered by the definition in Section 2(j) of the Industrial Disputes Act.? It is made clear that if literally interpreted these words are of a

very wide amplitude and it cannot be suggested that in their sweep it is intended to include service however rendered in whatsoever capacity and for whatsoever reason.? In that context it was said that it should not be understood that all services and callings would come within the purview of the definition; services rendered by a domestic servant purely the personal or domestic matter or even in a casual way would fall outside the definition.? That is how this Court dealt with this aspect of the matter.? The whole purpose of the Industrial Disputes Act is to focus on resolution of industrial disputes and the regulation will not meddle with every little carpenter or a blacksmith, a cobbler or a cycle repairer and who comes outside the idea of industry and industrial dispute.? This rationale, which applies only along the line to small professions like that of domestic servants would apply to those who are engaged by a group of flat-owners for rendering personal services even if that group is amorphous but crystallised into an association or a society. The decision in Rajappa case if correctly understood is not an authority for the proposition that domestic servants are also to be treated to be workmen even when they carry on work in respect of one or many masters.? It is clear when personal services are rendered to the members of a society and that society is constituted only for the purposes of those members to engage the services of such employees, we do not think its activities should be treated as an industry nor are they workman.? In this view of the matter so far as the appellant is concerned it must be held not to be an industry Therefore, the award made by the Tribunal cannot be sustained.? The same shall stand set aside.

7. The ratio laid down by the Supreme Court in the aforesaid case is squarely applicable to the facts of the present case. It is rightly noted by the Labour Court that in light of the said judgment, the case of the workmen does not fall within the scope of Section 2(s) and 2(j) of the Act. There is no dispute about the fact that the respondent is a Cooperative Group Housing Society which has a fixed number of persons as its members and monthly fund is collected from each of its members, depending upon the maintenance expenses. It is also a fact that the respondent is not engaged in any business, trade or undertaking, neither does it appoint any person permanently or regularly and the Society has an executive body which is changed from time to time. In light of the said facts, the Labour Court rightly arrived at the conclusion that when personal services are rendered to the members of the Society and that Society is constituted only for the purpose of those members, to engage the services of such employees, such a Society ought not to be treated as an industry and such employees can also not be treated as workmen for the purposes of the Act.

8. In view of the position of law as discussed above and in the facts and circumstances of the present case, there is no such infirmity or illegality found in the impugned award dated 1st May, 2006 passed by the Labour Court, which merits any interference by this Court in exercise of its extraordinary jurisdiction.

9. This writ petition is accordingly dismissed. No order as to costs.