

(2009) 01 DEL CK 0189

In the Delhi High Court

Case No : Writ Petition No. 469 of 2009

India Handloom Emporium

APPELLANT

Vs

Ranjeet Singh

RESPONDENT

Date of Decision : 27-01-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 2

Citation : (2009) 01 DEL CK 0189

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Manish Verma, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By way of the present petition filed under Article 226 & 227 of the Constitution of India the petitioner seeks to challenge the award dated 5.7.2008.

2. Counsel for the petitioner states that the tribunal has not given any finding on the Issue No. 1 which deals with the crucial question as to whether or not the respondent is covered under the definition of Section 2(s) of I.D. Act.

3. Counsel for the petitioner submits that the said issue is a legal issue and no finding has been returned by the Tribunal. Giving explanation for the non-appearance of the petitioner management before the tribunal, the Counsel submits that the petitioner is a partnership firm and the main partner Mr. Banarasi Lal was not keeping well and therefore, he could not ensure appearance on behalf of the petitioner management. Counsel for the petitioner has also placed reliance on the various medical certificates showing the medical condition of the said partner of the petitioner. Counsel for the petitioner thus states that considering all these circumstances the matter may be remanded back to the tribunal for fresh consideration so as to decide the said issue which goes to the

root of very jurisdiction of industrial tribunal/labour court. Counsel for the petitioner also submits that only four employees were employed by the petitioner and therefore, the provisions of I.D. Act could not have been attracted in the facts of the present case.

4. I have heard learned Counsel for the petitioner and perused the record.

5. There is no doubt that the petitioner had filed its written statement and based on the stand taken by the petitioner in its written statement, issue No. 1 was framed by the Labour court so as to determine the question as to whether the respondent is a workman or not as envisaged u/s 2(s) of the I.D. Act. The onus of the said issue was laid upon the petitioner management but the petitioner management after filing the written statement absented itself to appear in the matter. The petitioner management also failed to cross-examine the respondent workman and even no evidence in support of the averments made by the petitioner in its written statement was led by the petitioner. Ultimately, the evidence of the petitioner management was closed by the labour court vide order dated 9.1.2007. Even thereafter nobody had chosen to appear on behalf of the petitioner management and it is only when at the stage of recovery the petitioner management got awakened and then preferred the present writ petition. Admittedly, the petitioner, a partnership firm was being represented through an authorized representative to contest the said case of the workman, and if one partner could not prosecute the matter due to medical condition then the other partner could have prosecuted the matter. No explanation has been given by the petitioner as to under what circumstances the authorized representative of the petitioner management had stopped prosecuting the matter.

6. It is a settled legal position that labour courts/tribunals are the final courts of findings of facts. In this regard in *Sadhu Ram Vs. Delhi Transport Corporation*, the Hon''ble Apex court observed as under:

We are afraid the High Court misdirected itself. The jurisdiction under Article 226 of the Constitution is truly wide but, for that very reason, it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate court over tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to readjudicate upon questions of fact decided by those tribunals. That the questions decided pertain to jurisdictional facts does not entitle the High Court to interfere with the findings on jurisdictional facts which the Tribunal is well competent to decide. Where the circumstances indicate that the Tribunal has snatched at jurisdiction, the High Court may be justified in interfering. But where the tribunal gets jurisdiction only if a reference is made and it is therefore impossible ever to say that the Tribunal has clutched at jurisdiction, we do not think that it was proper for the High Court to substitute its judgment for that of the Labour Court and hold that the workman had raised no demand with the management. There was a conciliation proceeding, the conciliation had failed and the Conciliation Officer had so reported to the Government. The Government was

justified in thinking that there was an industrial dispute and referring it to the Labour Court.

7. Therefore, once the petitioner management failed to prove the said Issue No. 1, onus of which was laid upon it, now no grievance can be made to the finding returned by the tribunal with regard to the said issue which was decided against the petitioner. Indisputably, the workman had fully proved his case which remained uncontroverted as there being no cross-examination from the side of the management petitioner and therefore in the absence of any plausible reasons disclosing exercise of due diligence on the part of the petitioner the matter cannot be remitted back for fresh adjudication to the detriment of the respondent workman. The parties have to plead and prove their case before the tribunals and not before the Writ Court.

8. I do not find any illegality or perversity in the impugned award.

9. Dismissed.