

(2020) 02 DEL CK 0406

In the Delhi High Court

Case No : Civil Writ Petition No. 2095 Of 2020, Civil Miscellaneous Application
No. 7387 Of 2020

Jorawar Singh

APPELLANT

Vs

Navneet Goel

RESPONDENT

Date of Decision : 25-02-2020

Acts Referred:

Citation : (2020) 02 DEL CK 0406

Hon'ble Judges : Najmi Waziri, J

Bench : Single Bench

Advocate : Pankaj Kumar Agrawal, Subrata Das, C.S. Panda, Arup Ratan Dutta Choudhury

Final Decision : Dismissed

Judgement

Najmi Waziri, J

1. There is a delay of almost 2 years in filing the petition. Be that as it may, it is the petitioner's case that he had worked diligently for the respondent for a period of 13 years as a security guard. There was no complaint about the services rendered by the workman. He sought payment of his dues/wages and other entitlements in terms of applicable labour laws including payment of overtime as he rendered services for 12 hours a day, but was effectively paid only for 8 hours.

2. The claim petition was dismissed by the impugned order dated 27.02.2018 in LIR No. 7579/2016 on the ground that the respondent being a society of apartment owners, had engaged the services of the petitioner and the same cannot be treated as an industry. Therefore, its employee cannot be treated as workman and the latter would have no locus to prefer the claim petition before the learned Labour Court. It relied upon the judgment of the Hon'ble Supreme Court in Management of Som Vihar Apartment Owners Housing Society vs. Workmen C/o Engineering and General Mazdoors, (2002) 9 SCC 652. The reasoning of the impugned order for dismissal of the petitioner's claim petition is

as under :

"....6. It is no doubt true that the decision in T.K. Ramesen's case (supra) was rendered by the Kerala High Court in the context of interpretation of the provisions of the Kerala Shops and Commercial Establishments Act. However, the nature of the activities carried on by a group of persons such as owners of flats in a building complex was considered setting out true tests in a case of this nature. We need not examine these facts either.

7. Indeed this Court in Rajappa case [(1978) 2 SCC 213 : 1978 SCC (L&S) 215 : (1978) 3 SCR 2017] noticed the distinction between such classes of workmen as domestic servants who render personal service to their masters 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 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 in a 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 who comes outside the idea of industry and industrial dispute. This rationale, which applies all 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 not amorphous but crystallised into an association or a society. The decision in Rajappa case [(1978) 2 SCC 213 : 1978 SCC (L&S) 215 : (1978) 3 SCR 207] 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 activity should be treated as an industry nor are they workmen. 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."

3. The petitioner contends that his services were not personal to any apartment holder but for the members of the Society and for the entire complex.

4. What is to be discerned is whether the services rendered by the workman were personal to members of the housing society. In the present case, the work was for the members of housing society. The Supreme Court has already held that a housing society cannot be considered as an industry. That being the position, the impugned order does not call for any interference.

5. The petition is without merit and the same is dismissed.