

(2009) 03 DEL CK 0359

In the Delhi High Court

Case No : Writ Petition (C) No. 5865 of 2005

Mahipal Singh Tomar

APPELLANT

Vs

The Management of Kendriya Bhandar

RESPONDENT

Date of Decision : 16-03-2009

Acts Referred:

Citation : (2009) 03 DEL CK 0359

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Mohd. Nayeemuddin, for the Appellant; Madhuri Gupta, Proxy Counsel, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—The petitioner in the instant writ petition has challenged the award dated 6th June, 2003 by virtue of which a finding was rendered that the petitioner was unable to establish the relationship of workman and employer between the petitioner and the respondent. The petitioner has also challenged the order dated 16th October, 2004 passed by the learned Labour Court in ID No. 155/2004 titled as The Management of Kendriya Bhandar v. Workman Mahipal Singh Tomar rejecting his application purported to have been filed on 9th June, 2003 and 3rd September, 2003 seeking opportunity to adduce additional evidence after recalling the earlier order.

2. Briefly stated the facts of the case are that the petitioner has made terms of reference to the Labour Court from the office of Secretary (Labour) on 18th August, 1998 in the following terms:

Whether the services of Shri Mahipal Singh Tomar 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?

3. On the basis of the said reference, notices were issued to both the parties who filed their pleadings and on the basis of the same, the following issues were

framed:

- (i) Whether there does not exist relationship of employer and employee between the parties?
- (ii) Whether this Court has no jurisdiction to try the present petition in view of preliminary objection No. 3 raised by the Mgt. in its written statement?
- (iii) As per terms of reference.
- (iv) Relief.

4. The petitioner in support of his case examined himself as a lone witness while as the Management in support of its case examined one Sh. S.A. Alishah.

5. The learned Labour Court after hearing the arguments, arrived at a finding that the petitioner has miserably failed to establish the relationship of employer and employee between the parties. The reason for giving such a finding was that the petitioner had claimed himself to be employed by the respondent/Management on 14th October, 1992 and allegedly terminated from services on 14th October, 1997, but he had failed to place on record any letter of appointment or wage slip or even did not examine any co-worker which would establish that he was actually employed by the respondent/Management. The petitioner had also filed the documents which are wrongly exhibited as Ex.WW1/4, a statement of "Employees Provident Funds Scheme" issued in favour of the petitioner which is alleged to be showing that deductions by the respondent/Management was being made from the wages of the petitioner on account of his contribution to the Provident Fund. Another document is exhibited as Ex.WW1/3 which is purported to have been issued by the ESI Corporation. In this document, the learned Labour Court had observed that the date of appointment of the petitioner was shown to be as 1st April, 1996 while as in the statement of claim he was claiming to have been appointed in 1992. Since no person was examined from these two offices, the Labour Court came to a finding that these documents have not been proved in accordance with law and obviously they were not made the basis of arriving at a finding in favour of the petitioner. Thus the learned Labour Court passed an award against the petitioner holding that there was no relationship of the employer and the employee.

6. After passing of the award, the petitioner is purported to have filed an application on 9th June, 2003 followed by another application on 3rd September, 2003 wherein it was stated that the petitioner may be given an opportunity to adduce evidence from the two offices in order to prove the documents of provident fund and the Employees' State Insurance. In these applications, it was stated by the petitioner that though the award has been passed on 6th June, 2003, but he learnt about the factum of award having been passed only on 2nd July, 2003.

7. This application was also rejected by the Labour Court on the ground that since the arguments were heard on merits and the award was already passed,

therefore, there was no occasion for the Labour Court to recall the earlier award and give him opportunity to adduce evidence.

8. I have heard the learned Counsel for the petitioner. Learned Counsel for the respondent is not present. I have carefully gone through the record. The learned Labour Court has arrived at a finding of fact which cannot be set aside by the writ Court as if it is a Court of appeal. The contention of the learned Counsel for the petitioner is that he should be given an opportunity to adduce evidence after setting aside the award and remitting the matter back to the learned labour Court also does not convince me on account of the fact that it is not a case where there is violation of principles of natural justice or the petitioner having not been given a reasonable opportunity of adducing evidence. The petitioner was given reasonable opportunity to adduce evidence and if he has chosen to examine himself only in order to establish his case of being a workman, he has done so, on his own peril. After having suffered adverse order on account of non-proving of documents, which were in his possession, he cannot turn round and seek an opportunity to prove those documents and pray for setting aside the award. The case has been going on for last four years in the High Court itself. Therefore, I feel that this prayer of the petitioner for simply setting aside the award and giving him an opportunity to adduce evidence is not at all warranted, as it will only prolong the litigation especially in the light of the fact that when the petitioner has failed to show any violation of principles of natural justice, any rule, regulation or that the award or the order dated 16th October, 2004 suffers from illegality or perversity.

9. Accordingly, the writ petition is dismissed.

No order as to costs.