

(2018) 05 DEL CK 0267

In the Delhi High Court

Case No : W.P.(C) 3596 OF 2018 & CM APPL. 14234 OF 2018

MANOJ & ORS.

APPELLANT

Vs

M/S. R.C. SOOD AND CO. PVT. LTD/AJAY ENTERPRISES PVT.
LTD. AND ANR.

RESPONDENT

Date of Decision : 21-05-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2018) 05 DEL CK 0267

Hon'ble Judges : VINOD GOEL

Bench : Single Bench

Advocate : P.K. Maitra, Harvinder Singh, Rohit Agrawal

Final Decision : Dismissed

Judgement

VINOD GOEL, J.

1. Sh. Harvinder Singh, learned counsel for the respondent, has put in his appearance for the Management. He has handed over synopsis with list of

dates and copies of the documents, which are taken on the record.

2. In this writ petition the petitioners seek quashing of an interim order dated 04.08.2017 passed by the learned Presiding Officer, Industrial Tribunal,

Karkardooma Courts, Delhi (in short Industrial Adjudicator) in I.D. No. 383/2016.

3. The relevant facts giving rise to file the present writ petition are that on 15.02.2011, the Government of NCT of Delhi has sent a reference of

industrial dispute under Section 10 (1) (c) and 12 (5) of the Industrial Disputes Act, 1947 (in brief ID Act) to the Industrial Tribunal-II, for

adjudication. The terms of the reference are as under: - Whether demands of workmen employed by M/s. R.C. Sood & Company Pvt. Ltd./Ajay

Enterprises Pvt. Ltd. for (a) Children allowances @ Rs.2500 p.m. (b) Increase in Basic pay 25% per year (c) Two pairs of uniforms in a year. (d)

Bonus along with 3 years arrear year on the basis (e) washing allowance @ Rs.250/- p.m. (f) House Rent @ Rs.2000/- p.m. are justified and if so

what directions are necessary in this respect?â??

4. The statement of claim was filed before the Industrial Adjudicator on behalf of workmen through its union. The respondent/management filed its

written statement on 12.03.2012. After completion of the pleadings, issues were framed on 14.05.2012.

5. The petitioners preferred an application for admission and denial of certain documents on 02.09.2014. In its reply, the management/respondent,

inter-alia, pleaded that the admission and denial of the documents can be conducted of the documents which are obtained from a lawful source and not

of procured or fabricated documents. It also pleaded that the fabricated photocopies contained reference to Eros Garden Colony, Charmwood village,

Woodbury Tower etc., which all are situated in Faridabad, Haryana, and is outside the territorial jurisdiction of the court.

6. After hearing the parties on 30.10.2014, the Industrial Adjudicator allowed the application of the petitioner for admission and denial of the

documents. Pursuant to this order the admission and denial of the documents was carried out. Later on, the petitioner filed an application on

17.12.2014 praying for summoning of the record from the management, which is consisting of attendance registers, wage records and leave register of

Safaiwala/Workmen for the period from 1997 to 2011 apart from records of daily reports of Estate Department, appointments letters, and the details

of the Proprietors/Directors. This application was opposed by the respondent/management.

7. By impugned order dated 04.08.2017, the Industrial Adjudicator disposed of the application dated 17.12.2014 with the observation that the

consequences of the production/nonproduction of the requisite record on the part of the respondent/management shall be seen at the time of final

adjudication and disposal of the matter in issue.

8. Learned counsel for the petitioner submits that the respondents have denied the relationship of employer and workman between the parties and in

order to prove the same the workmen have filed certain photocopies of the

documents of the management. He submits that on their application of admission and denial, the respondent/management has denied the documents and for that reason they were constrained to file an application for direction to the management to file the said record. He relies upon the judgment of Single Judge of this court in Automobile Assoc.Upper India vs.

P.O. Labour Court-II & Anr., 130 (2006) DLT 160 to buttress his arguments.

9. It is noticed that the respondent/management, inter-alia, pleaded in its reply to the said application that they cannot be required by the petitioner to produce such record with respect to the claimants who were never employed by it in Delhi. It is further pleaded that the claimants have no concern with the separate establishment of the respondent in Delhi.

10. Sh. Harvinder Singh, learned counsel for the respondent, submits that the petitioner cannot challenge the interlocutory order in the writ jurisdiction.

He submits that the petitioners are not the employee of the management. He submits that in the absence of the relationship of employer and employee between the parties and for want of territorial jurisdiction of the Industrial Adjudicator, application was not maintainable. He submits that the claimants/workmen were not employed in any establishment of the respondent in Delhi and so there is no question of its having any appointment letter, attendance register, leave register, etc.

11. I have heard the learned counsel for the parties.

12. It is settled principle of law that though this court has jurisdiction to hear the writ jurisdiction against the interlocutory orders but it must be on rare occasions. It is trite that primary burden to prove a plea is on a person so claiming. The burden of proof initially lies on the workman to prove that there was a relationship of employer and workmen between the parties. In the present case, the relationship of employer and workmen has been denied by the respondent in its written statement. To discharge their initial burden, the petitioners have filed an application which was disposed of by the impugned order. In Automobile Association Upper India (supra), a single Bench of this court has held that the workman can make an appropriate application calling upon the management to produce record in respect of his employment and in case the management fails to produce the same, the adverse inference is liable to be drawn against the management.

13. The Industrial Adjudicator while disposing of the application of the petitioner/workmen by impugned order has already observed that the consequence of production/non-production of the requisite record on the part of the respondent/management shall be seen at the time of final adjudication. This court does not find any illegality or perversity in the impugned order dated 04.08.2017.
14. The writ petition along with CM APPL. 14234/2018 is accordingly dismissed.