

(2014) 09 DEL CK 0186

In the Delhi High Court

Case No : W.P.(C) 6335/2010 and CM No. 12589/2010

Municipal Corporation of Delhi

APPELLANT

Vs

Hari Kishan

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2014) 09 DEL CK 0186

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Shobha Gupta, Advocate for the Appellant; Varun Prasad, Advocate for the Respondent

Judgement

Vibhu Bakhru, J.—The petitioner impugns an award dated 17.02.2010 passed by the Labour Court in Industrial Dispute No. 73/2008 (hereinafter referred to as the "impugned award") . By the impugned award, the Labour Court concluded that the respondent worked as a "Garden Chaudhary" w.e.f. 1992, however, the Labour Court rejected the claim of the respondent for regularization as Garden Chaudhary.

2. Brief facts of the case are that the respondent joined the petitioner's establishment as a "Mali" in 1981. According to the respondent (workman) , he was assigned the work of a "Garden Chaudhary" w.e.f. 01.12.1987. The principal grievance of the petitioner was that although he had been working as a "Garden Chaudhary", he was denied the emoluments payable to an incumbent of that post. It was the respondent's case that whereas the duties of a Mali were akin to that of an unskilled workman, the work of a Garden Chaudhary was of a skilled nature. The respondent also sought to be regularised at the post of "Garden Chaudhary".

3. Since the claim made by the respondent was disputed and the conciliation proceedings were not successful, the appropriate Government referred the following dispute to the Labour Court:-

"Whether Sh. Hari Kishan S/o Sh. Dalel Singh, was allotted duty of Garden Chaudhary by the Management and if answer is affirmative; whether said Sh. Hari Kishan is entitled to be regularized in service as Garden Chaudhary and if so from what date ?"

4. The respondent filed his statement of claims and the Labour Court framed the following issues:-

"1. Whether the cause of the workman has been duly espoused?

2. Whether the claim is liable to be rejected as claimed in preliminary objection No 2 in the written statement?

3. As per terms of reference."

5. In proceedings before the Labour Court, the petitioner disputed the respondent's claim that he was promoted to the post of Garden Chaudhary and performed the duties of a Garden Chaudhary. The petitioner alleged that the post of Garden Chaudhary was a promotional post and qualifying the trade test was mandatory for promotion to the said post.

6. By the impugned award dated 17.02.2010, the Labour Court considered the evidence including a list issued by the Deputy Director (Horticulture) , Shahdara, North Zone, which indicated that the petitioner had been working as a Chaudhary w.e.f. "1992" (Ex WW1/1) . The Labour Court also took note of a copy of I-card and the Attendance Register (collectively marked as Ex.WW1/2) where the designation of the respondent had been mentioned as "Chaudhary" and concluded that the respondent had been assigned the work of "Garden Chaudhary" w.e.f. 1992. However, since it was not disputed that the respondent was illiterate and had not passed the trade test, the Labour Court rejected the claim of respondent for regularisation at the said post on the ground that he did not have the requisite qualifications for the post of Garden Chaudhary.

7. Insofar as the respondent's claim for remuneration equal to that of a Garden Chaudhary is concerned, the Labour Court referred to the decision of the Supreme Court in Selvaraj Vs. Lt. Governor of Island, Port Blair and Others, and concluded that since the respondent had worked as a Garden Chaudhary, he would be entitled to remuneration payable for the said post, for the period he performed the duties of a Garden Chaudhary. The Labour Court also relied on the decision of this Court in Municipal Corporation of Delhi v. Jagpal Singh: W.P.(C) No. 12646/2009, decided on 27.10.2009 in arriving at its conclusion that the respondent's claim for remuneration as a Garden Chaudhary was justified for the period he had worked as such.

8. The learned counsel appearing for the petitioner has not challenged the decision of the Labour Court that the respondent would be entitled to remunerations paid to a Garden Chaudhary for the period he had worked as such. She has focussed her arguments to impugn the findings of the Labour Court that the respondent had worked as a Garden Chaudhary. It was contended

by the learned counsel for the petitioner that the respondent had worked as a Mali and had not worked as a Garden Chaudhary. She submitted that the Labour Court had failed to appreciate that no record had been produced for the period during which the respondent claimed to have had worked as a Garden Chaudhary.

9. The question whether the petitioner worked as a Garden Chaudhary or not is a question of fact and the Labour Court had appreciated the documentary evidence as well as the testimony of the workman in arriving at its conclusion. The conclusion, thus, arrived at by the Labour Court cannot be stated to be perverse or without any material.

10. It is well settled that this Court in exercising powers under Article 226/227 of the Constitution of India would not re-appreciate evidence and supplant its opinion for that of the concerned authority. The Supreme Court in *Amrit Vanaspati Co. Ltd. Vs. Khem Chand and Another*, stated the aforesaid principle as under:

"..the High Court while exercising powers under writ jurisdiction cannot deal with aspects like whether the quantum of punishment meted out by the management to a workman for a particular misconduct is sufficient or not. This apart, the High Court while exercising powers under the writ jurisdiction cannot interfere with the factual findings of the Labour Court which are based on appreciation of facts adduced before it by leading evidence."

11. In *Apparel Export Promotion Council Vs. A.K. Chopra*, , the Supreme Court set aside an order of the High Court and held as under:

"16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities"

12. Since the finding arrived at by the Labour Court that the respondent had worked as a Garden Chaudhary is a finding of fact based on appreciation of evidence, which cannot be stated to be perverse, no interference with the said finding is warranted in these proceedings.

13. Accordingly, the petition and the application are dismissed. No order as to costs.