
(2008) 05 RAJ CK 0136
In the Rajasthan High Court

Panchu Lal

APPELLANT

Vs

Ajmer Mineral and Grinding Corp. and Another

RESPONDENT

Date of Decision : 03-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Payment of Gratuity Act, 1972 — Section 7

Citation : (2008) 4 RLW 3397

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Chandra Sharma, J.—By way of this writ petition the petitioner has prayed that the impugned order dated 7.7.1999 passed by the respondent No. 2 is quashed and set aside. It is also prayed that the order dated 31.12.1998 of the Controlling Authority may kindly be ordered to be restored and further an interest @ 18% per annum may also kindly be awarded to him and prayer for any other order or direction which may be deemed fit in favour of the petitioner.

2. The case as set up by the petitioner in short is that he was employed by the management of respondent No. 1 (Ajmer Mineral and Grinding Corporation) in the year 1954. He continuously working till 11.6.1997.

3. On 12.6.1997 when he was going to attend his job he got in- disposed hence an intimation to this effect was sent to the employer on 12.11.1997. At that time, he was drawing a sum of Rs. 1150/- per month. On 15.12.1997 he was informed by Shri Manoj Kumar Doshi, that his resignation has been accepted. Thereafter, he submitted an application for making the payment of his gratuity but he did not receive any response on the said of the respondent.

4. The petitioner filed an application claiming the gratuity amount of Rs. 27,865.38 before the Controlling Authority under the payment of Gratuity Act, 1972 Ajmer on 4.1.1998.

5. The respondent No. 1 filed the reply to the application preferred by the petitioner and pleaded that the petitioner is not entitled to claim any gratuity amount as the provisions of Gratuity Act do not apply on the respondent concern, as at no point of time 10 or more than 10 persons have been employed.

6. The petitioner filed his affidavit and he was cross-examined at length by the respondent-employer. He has also filed the affidavit of one Bhanwar Lal.

7. The learned Controlling Authority under the payment of Gratuity Act, after perusing the material on record held that the respondent concern was established in the year 1953 whereby the provident fund deductions were made and after considering the other evidence which is available on record it has been ordered that within 30 days the payment be made under intimation to this his Office.

8. Thereafter the respondent No. 1 filed an appeal u/s 7(7) of the Payment of Gratuity Act, 1972 before the appellate authority (Labour Commissioner-cum-Special Secretary) against the order dated 31.12.1998.

9. The learned appellate authority accepted the appeal mainly on the ground that the respondent workman has not been able to produce any document showing his appointment in the year 1954 and the non-production of the record does not give rise to the presumption adverse to the employer. Ultimately, on 7.7.1999 the appellate authority accepted the appeal of the respondent No. 1 and set aside the order dated 31.12.1998 passed by the learned Controlling Authority. Against this order the present writ petition has been preferred by the petitioner.

10. Heard learned Counsel for the parties and also scanned the material on record.

11. The Division Bench of this Court in D.B. Civil Special Appeal (Writ) No. 423/1997 Management Bharatpur Nutritional Products Ltd. v. Ishwar Chand and in D.B. Civil Special Appeal (Writ) No. 422/1999 The Management Bharatpur Nutritional Products Ltd. v. State of Rajasthan has considered the case decided by the Hon"ble Supreme Court. The relevant portion of the aforesaid case runs as under:

Having carefully scanned the impugned order, I notice that all the contentions raised before me were analyzed and considered in great details by the Labour Court. The scope of supervisory jurisdiction was explained by the Supreme Court in Sadhana Lodh Vs. National Insurance Company Ltd. and Another, which runs in (para 7):

The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate Court or the tribunal. It is also not permissible to a High Court on a petition filed

under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior Court or tribunal purports to have passed the order or to correct errors of law in the decision.

12. The wide jurisdiction conferred under Article 226 has to be exercised with great circumspection. The High Court cannot constitute itself into an appellate Court over Tribunals. Article 226/227 is a device to secure and advance justice and not otherwise. In a case of this nature, it is true, the High Court exercising the power of judicial review, would not interfere with the discretion of a Tribunal unless the same is found to be illegal or irrational. In an application for a writ of certiorari under Article 226 of the Constitution for quashing an award of an Industrial Tribunal, the jurisdiction of the High Court is very limited. It can quash the award, inter alia, when the Tribunal has committed an error of law apparent on the face of record or when the finding of facts of the Tribunal is wholly perverse. It is also a settled law that in the exercise of its certiorari jurisdiction under Article 226 of the Constitution, the High Court acts only in a supervisory capacity and not as an appellate tribunal. It does not review the evidence upon which the inferior tribunal proposed to base its conclusion, it simply demolished the order which it considers to be without jurisdiction or manifestly erroneous, but does not, as a rule, substitute its own view for those of the inferior tribunal.

13. In the present matter, I do not find any jurisdictional error, perversity and illegality in the award passed by the respondent No. 2 (Labour Commissioner-cum-Special Secretary). The finding of the labour Court is based on the basis of material placed before him. There is no error apparent on the face of record. I, therefore, do not find any justification to interfere with the award passed by the labour Court dated 7.7.1999. In my view the writ petition does not call for any interference. The same is, therefore, dismissed with no order as to costs.