(2009) 05 DEL CK 0524

In the Delhi High Court

Case No : Regular First Appeal No. 553 of 2004

P.E.C. Ltd. APPELLANT

Vs

Mr. Jai Bhagwan RESPONDENT

Date of Decision : 27-05-2009

Acts Referred:

Citation : (2009) 05 DEL CK 0524

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : Sanjeev Narula, for the Appellant; D.C. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

V.B. Gupta, J.—Appellant has filed the present appeal against the judgment dated 6th September, 2004 passed by Addl. District Judge, vide which the suit of the appellant was dismissed.

2. Brief facts of this case are that appellant is a Govt. of India enterprises; that it is incorporated and registered as a Company under the provisions of the Companies Act, 1956; that Sh. R.K. Arora Dy. Marketing Manager, is the Principal Officer and the Constituted Attorney of the appellant-company; that he is well conversant with the facts of the present case; that he is duly authorized to sign, verify, file and institute the present suit by virtue of the power of attorney dated 24.4.2002. Respondent is the former employee of the appellant company, who illegally, falsely and fraudulently received money from the appellant-company on the basis of false documents and statements. He joined the services of the appellant as junior assistant on 9.1.1981. On 4.10.2000 respondent, while in service of appellant company, committed breach of rules as he joined another Government Office under the name of J.B. Parashar. The Government office joined by respondent was Excise and Taxation Department in Government of Haryana; where he joined as Taxation Inspector. Respondent is widely known as Jai Bhagwan in appellant-company. He (respondent) started claiming the benefits

available on the post of Taxation Inspector w.e.f. 4.10.2000 and concealed and withheld this vital information from appellant-company. Even after 4.10.2000, on 11.1.2001 respondent was promoted as Dy. Manager-II and he joined the said post on 11.1.2001. Appellant company announced voluntary retirement scheme 1989/2001. On 15.1.2001, respondent applied under the said scheme for voluntary retirement. At the time of submitting his application, respondent failed to disclose and concealed the facts of his second employment with government of Haryana. Appellant-company relieved him from the services vide office order No. 47A/2001 dated 17.1.2001. During the period from 4.10.2000 to 17.1.2001, respondent continued to attend the office of appellant company, except only on three days, i.e. 30.10.2000, 01.11.2000 & 12.1.2001. Respondent received ex-gratia amount on account of VRS, three months notice period pay, Leave Encashment, Provident Fund, Gratuity, Service award, Leave Travel Assignment and also medical benefits under PEC Retired Employees-Medical Benefit scheme for his treatment and also for treatment of his wife.

3. Appellant-company claimed recovery of Rs. 8,08,347/- from respondent. This amount includes Rs. 6,51,211/- as the amount alleged to have been illegally and fraudulently received by respondent and the balance as interest @ 17% per annum on the said amount w.e.f. 17.1.2001 till the filing of the suit. Pendentalite interest at 17% per annum w.e.f. 19.6.2002 till the realization of amount has also been claimed.

4. Appellant-company also prayed for a decree of perpetual injunction restraining respondent from selling his property bearing No. B-104, Vijay Nagar, Bawana, Delhi, and for a decree of perpetual injunction restraining the respondent from operating his bank account No. 4304 maintained with Indian Overseas Bank, Prakash Deep Building, Tolstoy Marg, New Delhi and also another bank account No. 6126 with Union Bank of India, Sector 6, Urban Estate, Karnal, Haryana. Appellant-company also prayed for perpetual injunction restraining the respondent from removing money from his bank accounts or lockers maintained with Indian Overseas Bank and Union Bank of India. Appellant-company prayed for a decree of declaration that respondent has committed breach of PEC Employees (Conduct, Discipline & Appeal) Rules, 1975 and has thereby misconducted himself and has illegally, fraudulently received the money from the appellant.

5. In his written statement, respondent stated that he has already proceeded on voluntary retirement w.e.f. 17.1.2001. No action was taken during the service and at this stage no action can be initiated without the receipt of sanction of competent authority. The present suit filed by appellant- company is without any cause of action. The suit is not signed and verified by duly authorized person. Sh. R.K. Arora is not empowered to take decision to bring suit against respondent, as huge amount is involved in litigation expenses. Only Board of Directors can take decision about the person against whom the suit is to be filed. No resolution has been passed by Board of Directors of the appellant authorizing Shr. R.K. Arora to

bring suit against the respondent.

6. It is admitted that Sh. R.K. Arora is Dy. Marketing Manager of the appellant-company. It is also admitted that he (respondent) joined PEC on 9.1.81 and served till 17.1.2001. Respondent submitted his application for the post of Taxation Inspector in 1992 through appellant-company and in the application form he has added his surname as per the requirement of format of the application form. Respondent joined Haryana Government as Taxation Inspector after submitting the resignation on 7.7.2000. He joined Haryana Government on 4.10.2000, i.e., three months after submitting of his resignation. He had to join the service under compelling circumstances. Had he not joined Haryana Government on 4.10.2000, his appointment would have been cancelled. He was offered the post of Taxation Inspector after continuous struggle of eight years. In 1992, his application for Taxation Inspector in Excise and Taxation Department of Haryana Government was routed through appellant-company. There were 14 posts reserved for Ex-servicemen category but unfortunately no Ex-servicemen candidate was brought on panel. After judgment of Supreme Court, it was decided by Haryana Government to allow the present respondent to join the department within 15 days. He (respondent) immediately on receipt of letter of appointment from Haryana Government applied for extension of 90 days time. After submitting his resignation to the appellant, Haryana Government, granted him extension, under the condition that he would have to join Haryana government within 90 days. If he had failed to join the post with the stipulated period, his appointment would have been cancelled. Accordingly, he had no option but to join Haryana Government on 4.10.2000. He had already sent his resignation to Haryana Government and for 4.10.2000 and 5.10.2000, he had not claimed any benefit whatsoever. He applied to appellant-company for grant of "No Objection Certificate" on 28.9.2000 to enable him to join Haryana Government within stipulated period by 4.10.2000. Appellant-company issued "No Objection Certificate" which entitled to him to join Haryana Government. He has hardly remained with Haryana Government for two days, i.e. 4.10.2000 and 5.10.2000 for which he has not availed of any benefit and tendered his resignation.

7. It has been argued by learned Counsel for the appellant that respondent is not entitled to the benefits under Voluntary Retirement Scheme, as the respondent was in the employment of Haryana Government and this fact has been concealed and withheld from the appellant.

8. It is also contended that respondent had also availed benefits by making fraudulent affidavit and false declaration to the same effect. If the appellant had been aware of the respondent''s double employment as on the date of application for VRS, respondent would not have been granted VRS and moreover respondent''s services would have been terminated on the ground of breach of rules.

9. It is further contended that irrespective of the fact, whether respondent has

received double benefit or not from two different departments, appellant is entitled to a decree for recovery of the amount on the ground that the payment received by the respondent under the VRS, is due to respondent''s playing a fraud upon the appellant and also due to breach of rules applicable to its employment, as admittedly respondent was in the employment of Haryana Government, while at the same time he was also in the employment of the appellant. No objection given by the appellant, if any, is a forged one.

10. On the other hand, it has been contended by learned Counsel for the respondent, that respondent has applied for job of taxation inspector in Haryana through proper channel and for that purpose, he also applied for a "No Objection Certificate", vide his letter Ex.DW-3/F1 dated 28th September, 2000, which was duly received by the appellant. In terms thereof, ''No Objection Certificate'' was issued by the personal officer of the appellant, vide Ex.DW-3/F2 dated 28th September, 2000. Since respondent was granted ''No Objection Certificate'' by the appellant, now appellant is estopped from challenging the same. Moreover, there is nothing on record to show that respondent received salary under double employment, which he could not have got otherwise.

11. It is an admitted case of the parties that respondent joined Haryana Government on 4th October, 2000 as Taxation Inspector. However, he did not draw any salary from Haryana Government from October 2000 to January 2001. Respondent got his salary in the month of February 2001, which fact has been corroborated by DW-2 Jai Bhagwan, Cashier, Office of Deputy Excise and Taxation Department, Karnal, Haryana, who in his statement stated that appellant joined the department of Excise Taxation on 4th October, 2000 and has signed the attendance on 5th October, 2000. Thereafter he marked his attendance on 19th January, 2001, for the period 6th October, 2000 to 18th January, 2001. This witness further deposed that the respondent has not drawn any salary from October, 2000 to January, 2001.

12. So, from the statement of DW-2, who is an official witness, it stands clearly established that respondent has not drawn any salary from Haryana Government for month of October to January, 2001. Thus, there is nothing on record to show that respondent received double benefit in respect of any item, from two different departments, for the same period.

13. The case of respondent is that he obtained ''No Objection Certificate'' from appellant to enable him to join Haryana Government.

14. Appellant in its replication, did not specifically controvert the issuance of ''No Objection Certificate''. It is simply stated that "narrative of circumstances stated by the respondent having accepted the position of Taxation Inspector with the Government of Haryana and/or that relating to repayment of loan or to the "No Objection Certificate" are false, baseless, misconceived allegations and are denied."

15. There is no specific denial to the effect that respondent did not apply for any

''No Objection Certificate'' or no such ''No Objection Certificate'' was issued. In replication, it is also stated that No Objection Certificate'' did not entitle the respondent to create false documents.

16. So, from the pleadings of the parties, it stand clearly established, that the appellant has not specifically denied the issuance of ''No Objection Certificate'' nor it took the plea that ''No Objection Certificate'' issued by it, is a forged document.

17. Respondent has placed and proved on record his application, seeking ''No Objection Certificate'' which is Ex.DW-3/F1 dated 28th September, 2000. In pursuance of this application, he was issued ''No Objection Certificate'' vide letter dated 28th September, 2000, which is Ex.DW-3/F2, duly signed by A.S.Rajouria, Personal Manager of appellant''s company, who has also been examined by the respondent, as his witness as, DW-4.

18. DW-4 A.S. Rajouria, in his examination-in-chief has stated that he has not issued any certificate/NOC to Sh. Jai Bhagwan certifying his date of joining dated 11th April, 2001 and Ex.DW3/F2 does not bear his signatures. However, in the same breath, he admitted, it as correct that this is a pad of PEC, which is Ex.DW3/F2 and on 28th September, 2000, he was working as personal manager, PEC.

19. When respondent appeared in the witness box, he proved this ''No Objection Certificate'' Ex.DW-3/F2. It was no where put to the respondent that this ''No Objection Certificate'', Ex.DW3/F2 does not bear signatures of Mr. A.S. Rajouria or the same has been forged by him (respondent).

20. Assuming for arguments sake, that signatures of DW-1 Mr. A.S. Rajouria on Ex.DW3/F2 are forged one, but he admits that, Ex.DW3/F2, is a pad of appellant company. There is no allegation that respondent has forged this pad.

21. I have compared the disputed signatures of DW-4 Mr. A.S. Rajouria on Ex.DW3/F2, with his admitted signatures on his deposition recorded by the trial court.

22. I find that both these signatures are similar and appears to be of one person alone.

23. Under these circumstances, from the entire evidence on record, I come to the conclusion that there is nothing on record to show that respondent has received double benefits in respect of any item from two different departments for the same period. Moreover, appellant has admitted in para 10 of the plaint, that during the period from 4th October, 2000 to 17th January, 2001, respondent continued to attend the office of appellant company, except only on three days. Thus, it is not the case of the appellant company that respondent attended another employment during period he remained in service of appellant company. It is also admitted case of the appellant that respondent applied for VRS and he was granted VRS and as already stated above as appellant itself has issued ''No

Objection Certificate'' to the respondent, now appellant cannot change its stand.

24. Under the circumstances, I do not find any infirmity or ambiguity in the impugned judgment of trial court and the present appeal is not maintainable. The appeal is accordingly dismissed.

25. No order as to costs.

26. Trial court record be sent back.