
(2006) 10 DEL CK 0106

In the Delhi High Court

Case No : Writ Petition (C) No. 1808 of 2002

R.K. Fabrication

APPELLANT

Vs

Harish Kumar Sharma and Others

RESPONDENT

Date of Decision : 05-10-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Industrial Disputes Act, 1947 — Section 2, 25B

Citation : (2006) 10 DEL CK 0106

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : P.K. Sharma, for the Appellant; Mohd. Naijeemuddin, for the Respondent

Final Decision : Allowed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, petitioner has challenged the award dated 19.7.1999 passed by the Labour Court-I, Tis Hazari, Delhi directing the petitioner to reinstate the respondent with full back wages and continuity in service.

2. Petitioner pleaded that it was involved in manufacturing of Air Cooler bodies and its business closed down in March, 1996. One Hari Ram, r/o A-367 of Jahangirpuri was engaged on contract basis by the management for the manufacture of cooler bodies. Hari Ram had further employed three persons under him to carry out his contract. Hari Ram had given a copy of his ration card as proof of his name and residence. However, one person filed a complaint before the Labour Commissioner in the name of Harish Kumar Sharma and falsely alleged that he was an employee of the petitioner. Since, there was no person in the name of Harish Kumar Sharma known to the Management, it did not receive the summons sent by the Labour Commissioner or Labour Court. No notice was issued to the management in respect of Hari Ram. The management was proceeded ex-parte. The respondent misled the court and gave false evidence of

being an employee of the petitioner. The petitioner learnt about the award only when a person from Assistant Collector office visited for recovery in July, 2001. The petitioner, thereafter moved an application under Order 9 Rule 13 CPC which was dismissed by the Labour Court. Petitioner, thereafter, filed this writ petition challenging the award.

3. In the counter affidavit filed by the respondent respondent stated that petitioner received notice of the Labour Court on 9.9.1997 and 12.2.1998 but did not appear before the Labour Court. Petitioner has approached High Court just to frustrate the implementation of the award. It was denied that management closed down its business in March, 1996. It is alleged that the management was still existing at the same address. He denied that he was engaged on contract basis. The management had not produced any document which showed that he was engaged on contract basis. Regarding his name he stated that he was called by both the names viz. Harish Kumar Sharma and Hari Ram. His name Harish Kumar Sharma was more popular among his family members, so he raised the dispute in the name of Harish Kumar Sharma and not in the name of Hari Ram. He denied that the service of the summon was not effected on the management as alleged due to the wrong name.

4. A perusal of award would show that the respondent had not produced any document of his service with petitioner either in the name of Harish Kumar Sharma or Hari Ram. His plea was that no service record was maintained by the petitioner, no appointment letter was issued to him and he was serving with the management from 14.1.1989 and his services were terminated on 22.4.1996.

5. The respondent even failed to produce before the Labour Court the complaint allegedly lodged with the Labour Department and the demand notice allegedly served upon the management on the ground that they were misplaced. The Labour Court, placing reliance on the affidavit of the respondent without any supporting document held that respondent was an employee of the petitioner and termination of his service amounted to retrenchment u/s 2(oo) of the Industrial Disputes Act.

6. During arguments Counsel for petitioner submitted that Harish Kumar Sharma had no connection with the petitioner. The respondent was a fraud. Only Hari Ram had worked with the petitioner on contract basis. It was further argued that the award was perverse and nullity in the eyes of law because there was no evidence to prove that the respondent was an employee of petitioner or had worked with the petitioner for 240 days in preceding twelve months. A self serving affidavit of respondent was no proof of his working for 240 days in a year.

7. On the other hand the counsel for respondent argued that it was a mistake on the part of respondent that he raised industrial dispute in the name of Harish Kumar Sharma. He should have written his name as Harish Kumar Sharma alias Hari Ram, as he was known by both the names. Regarding 240 days, it was submitted that the respondent had filed an affidavit before the Labour Court

which had gone un rebutted. The Labour Court was bound to believe it. The respondent had no documents as no document was given to him by the petitioner concerning his employment.

8. During the pendency of proceedings on 2.5.2005 this Court in order to clear the confusion about the identity of the respondent and his name, asked respondent to place on record the material indicating his name and preferably school leaving certificate. He was given liberty to approach the school where from he had passed 10th class examination. Despite opportunity given to him to place on record the school leaving certificate, he did not place on record school leaving certificate. He initially made statement in the Court that he had passed class 10th Class from Birla Higher Secondary School Delhi. He then retracted his statement and stated that he studied up to 8th or 9th class from Birla Higher Secondary School. He still did not produce the school leaving certificate either of 8th or 9th standard. He did not remember whether he studied in the school as Hari Ram or Harish Kumar Sharma. It is clear that Harish Kumar Sharma was not the employee of petitioner. Hari Ram had worked with the petitioner but Hari Ram had not filed a claim against the petitioner. Respondent's contention of having two names has no basis.

9. In order to grant relief to a workman under Chapter 5 A on the ground of illegal retrenchment, it is necessary that he should be covered u/s 25B of the Industrial Disputes Act and should have completed 240 days of service in the last preceding twelve months. In order to prove that he had worked for 240 days there should be some evidence other than his self serving statement. If only his self serving evidence is believed by the Tribunal then anybody can claim being an employee of any organisation and having worked for 240 days under any management alleging that he was given no appointment letter or document. The respondent in this case has alleged that he was in service since 1989 continuously till 1996 and had been receiving salary of more than Rs. 3,000/- p.m. If he had been receiving salary of Rs. 3,000/- p.m. he must be signing some vouchers and if he had been working as an employee there would be some correspondence or some kind of document showing that he had worked there. He might have made some leave application or written some letter but none was produced. He did not produce even notice sent by him and the only evidence available before the Labour Court was his own affidavit. I consider that even where management is ex-parte, a self serving affidavit is not sufficient to come to a conclusion that he had worked for 240 days.

10. In The Range Forest Officer Vs. S.T. Hadimani, , the workman had claimed illegal termination of service. The Supreme Court held that the Tribunal was not right in placing onus on the management without first determining, on the basis of cogent evidence, that the respondent had worked for more than 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had in fact worked

for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. The award of the Tribunal was set aside by the Supreme Court on on this ground.

11. In Rajasthan State Ganganagar S. Mills Ltd. Vs. State of Rajasthan and Another, , Supreme Court observed that it was for the claimant/workman to lead evidence to show that he had in fact worked for 240 days in the year preceding. It was only his affidavit which was in his favor and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact claimant had worked for 240 days in an year.

12. The Supreme Court in Municipal Corporation, Faridabad Vs. Siri Niwas, , M.P. Electricity Board Vs. Hariram etc., had taken the same view that it was for the workman to prove by cogent evidence other than his self serving affidavit that he had worked for 240 days and no adverse inference can be drawn against the management for not producing documents. In Manager, R.B.I., Bangalore Vs. S. Mani and Others, , Supreme Court again held that the initial burden of proof was on the workman to show that he had completed 240 days of service. In a recent case in R.M. Yellatti Vs. The Assistant Executive Engineer, Supreme Court against observed that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box and adducing cogent evidence, both oral and documentary. Where a workman is not given a letter of appointment or termination, the workman can call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register attendance register etc. Drawing of any adverse inference ultimately would depend on facts of each case. However, mere affidavit or self-serving statement made by the claimant/workman will not suffice to discharge of burden placed by law on the workman, to prove that he had worked for 240 days in a given year.

13. In Surendranagar Distt. Panchayat and Another Vs. Gangaben Laljibhai and Others, Supreme Court observed that the respondent had not adduced any evidence except making oral statement that he had worked for more than 240 days. This was not sufficient to prove that the respondent had worked for 240 days and Supreme Court allowed the appeal and set aside the award.

14. I consider that Labour Court went wrong in arriving at a conclusion without being there any cogent evidence to show that he was an employee of petitioner or he had worked there for 240 days. I, Therefore, allow this writ petition, the award dated 19.7.1999, passed by the Labour Court is set aside. No orders as to costs. The amount deposited by the petitioner be refunded back.