
(2009) 04 DEL CK 0317

In the Delhi High Court

Case No : Writ Petition (Civil) No. 7773 of 2009

Sh. Munish Kumar

APPELLANT

Vs

B.S.Traders

RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Citation : (2009) 04 DEL CK 0317

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Mahesh Srivastav, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—The Petitioner in the present writ petition has challenged the award dated 3rd August, 2007 passed by the learned Labor Court in ID No. 358/2005 in case titled Sh. Munish Kumar v. B.S. Traders. By virtue of the aforesaid award, a reference was answered by holding that the Petitioner has not been able to establish the existence of relationship of employee and employer between the parties.

2. I have heard the learned Counsel for the Petitioner and gone through the record including the record of the learned Labor Court. I have also carefully considered the submission made by the learned Counsel for the Petitioner.

3. The first point on which the writ petition deserves to be dismissed is the ground of delay and laches. A perusal of the award would show that the same was passed on 3rd August, 2007 holding that there exists no relationship between the Petitioner and the Respondent. The award has been published on 31.12.2007. The Petitioner in the entire writ petition has not given the reasons as to why he did not assail the award for a period of more than 11/2 years.

4. This is now settled in catena of judgments that although there is no period of limitation prescribed in invoking the writ jurisdiction of the High Court, however,

the High Court would be loath to exercise its jurisdiction in case there is inordinate delay and laches on the part of the Petitioner in coming to the Court .

5. In fact, there is not even an iota of averment made in the writ petition as to why the Petitioner slept over his right of assailing the award before the High Court for such a long time. Therefore, by virtue of the present challenge, the Petitioner is trying to rake a stale claim which he seems to have accepted along back.

6. The second ground on which the writ petition deserves not to be interfered with is that the award has been passed after an issue with regard to the existence of relationship of employer and employee was framed and the parties were given an opportunity to adduce their respective evidence with regard to the same. The learned Labor Court after analyzing the evidence has come to a finding that the Petitioner has not been able to establish the relationship of the employee and employer between the parties.

7. It has been contended by the learned Counsel for the Petitioner that the Petitioner had given in his statement names of different workers who were working with the Petitioner. However, the Petitioner was not cross examined by the Respondent on that score and therefore, this clearly established that the Petitioner was working there. In addition to this, the learned Counsel has drawn my attention to certain dak in the shape of money orders and other letters purported to have been received by the Petitioner on the address where the Respondent's business was operating and the Petitioner was purportedly functioning. On the basis of these documents, it was urged that this was sufficient to draw an inference that the Petitioner was able to discharge the initial onus of establishing the existence of relationship.

8. The Supreme Court in catena of cases has consistently taken the view that it is primarily the responsibility of the workman to establish that he is employed by the Respondent. This may be done by him not only by entering into the witness box but it should be supplied by adducing the documentary evidence in the shape of appointment letter, wage slip, deduction of EPE/PF contribution, insurance money etc. apart from examining as co-worker. None of these aspects are available in the present case. Therefore, the Petitioner has miserably failed to discharge that original onus of establishing being an employee under Respondent. Reliance in this regard is placed on the following two judgments of the Supreme Court in Ranip Nagar Palika Vs. Babuji Gabhaji Thakore and Others, and Surendranagar District Panchayat Vs. Dahyabhai Amarsinh, .

9. The contention of the learned Counsel for the Petitioner is that there was evidence in the shape of statement made by the Petitioner regarding the names of co-workers is of no consequence even otherwise these are all questions of appreciation of evidence and the writ Court does not sit as a Court of appeal and re-appreciate the evidence and come to its own finding and then substitute the same in place of the finding arrived at by the learned Labor Court.

10. For the reasons mentioned above, I am of the considered opinion that there is absolutely no merit in the present writ petition. The Petitioner has not been able to show violation of any principles of natural justice, illegality, perversity or violation of any rule or regulation which would warrant interference with the award passed by the learned Labor Court. Accordingly, the writ petition is dismissed. File is consigned to the Record Room.