

(2008) 01 DEL CK 0096
In the Delhi High Court
Case No : WP (C) No. 9271 of 2007

Shri Lalji

APPELLANT

Vs

The New India Assurance Co. Ltd.

RESPONDENT

Date of Decision : 16-01-2008

Acts Referred:

Citation : (2008) 01 DEL CK 0096

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Sanjay Ghose, for the Appellant; Kanwal Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has impugned the award dated 18th April, 2007 holding that the petitioner has not been able to establish that he worked for 240 days in any of the year on the basis of vouchers which related to the year 2001 in different names and consequently held that his termination from services with effect from 27th December, 2001 is just, fair and legal.

2. The Industrial Tribunal has considered the pleas and the evidence of the parties and has drawn plausible inferences on the basis of the evidence. The petitioner has not filed any documents to show that he worked regularly for 240 days in all the years of alleged employment. The vouchers which were filed by the petitioner were for 2001. The petitioner had been paid different amounts on different days for different work alleged to have been performed by him. The vouchers also bear the names of different persons. The Industrial Tribunal has noticed that the workman has not filed any other document except the vouchers and on the basis of the same it cannot be inferred that the petitioner is a workman and he worked for more than 240 days in any of the year.

3. The learned counsel for the petitioner has referred to the statement of claims categorically pleading that the management has been giving salary to the

workman by different names in different months by way of issuance of vouchers in different names. The attention is also drawn to the cross examination of the workman where a suggestion was given that he had been collecting money in names of different persons. On the basis of this the learned counsel for the petitioner contends that it is to be inferred that the petitioner is a workman and he worked for more than 240 days in a year. The vouchers which have been filed by the petitioner are of 2001. The vouchers are for different amounts as is apparent from the award of the Industrial Tribunal and for different work. If the petitioner himself is claiming money for some of the works carried out by him in different names and collecting different amounts, the inferences drawn by the Tribunal cannot be held to be perverse so as to be interfered by this Court in exercise of jurisdiction under Article 226 of Constitution of India.

4. The learned counsel for the petitioner is unable to point out any other perversity or manifest error in the award of the Industrial Tribunal nor there is any violation of principles of natural justice so as to entail interference in a writ petition under Article 226 of the Constitution of India.

5. The learned counsel for the petitioner has also relied on *Sriram Industrial Enterprises Ltd. Vs. Mahak Singh and Others*, . In the said case relied on by the petitioner it was held by the Supreme Court that Section 2(g) of the Industrial Disputes Act, 1947 does not require workman to prove that he had worked for 240 days continuously, during the preceding period of 12 months prior to termination of his services and that the workmen discharge their initial onus on their producing whatever documents are in their custody to show that they have continuously worked for 240 days and non production of its registers and muster rolls by employer, an adverse inference should be taken against the management for withholding the material and relevant evidence.

6. The learned counsel for the petitioner, however, has admitted that the plea of the respondents is that petitioner was not a workman and no record was maintained by the respondent in respect of petitioner as he was not working with the respondent except supplying tea to some of the officials or perhaps doing some odd jobs. From the vouchers which have been produced, the finding of the Industrial Tribunal is not that the petitioner did not work for 240 days continuously prior to his termination but that the workman has failed to establish that he worked for 240 days in any of the year. In *Sriram Industries (Supra)* the documents relating to attendance for the year 1991 onwards were not considered as being irrelevant and the Tribunal had also accepted the said plea which was held to be suffering from manifest error and orders were interfered with. In contradistinction in the present case where the vouchers of 2001 were produced by the workman, had been considered and on the basis of those vouchers it had been held that it has not been proved that the petitioner/workman worked for 240 days not only before his alleged termination but in any of the years. It is apparent that the case relied on by the learned counsel for the petitioner is distinguishable.

7. The Supreme Court rather, in 2000 Lab. I.C. 1495, *Indian Overseas Bank v. I.O.B. Staff Canteen Workers" Union and Anr.* had held that inference drawn by the Tribunal and the finding of facts given are not to be interfered by the High Court under Article 226 of the Constitution of India. It is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the Court should not interfere with factual findings of the lower courts and should restrain itself from re-appreciating evidence while exercising powers of judicial review. Reliance for this proposition can be placed on the judgment of the Supreme Court, *Govt. of A.P. and Others Vs. Mohd. Narsullah Khan*, . Writ court should refrain from interfering with the orders of an inferior tribunal or subordinate court unless it suffers from an error of jurisdiction or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. The objective of judicial review is that a person receives a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.

8. For the foregoing reasons there is no perversity or manifest error in the award of the Tribunal nor there is denial of principles of natural justice so as to entail interference by this Court. There are no grounds to interfere with the industrial award and the writ petition under Article 226 of the Constitution of India is without any merit and is, Therefore, dismissed.