

(2009) 08 DEL CK 0342

In the Delhi High Court

Case No : Writ Petition (C) No. 17649 of 2004

Shri Ram Kumar

APPELLANT

Vs

Municipal Corporation of Delhi

RESPONDENT

Date of Decision : 06-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) ILR Delhi 195 Supp

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

Bench : Single Bench

Advocate : Anuj Aggarwal, for the Appellant; Amita Gupta, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Aggarwal, J.—This writ petition filed by the workman (petitioner herein) is directed against an award dated 02.05.2003 in I.D. No. 892/1998 passed by the Industrial Adjudicator denying relief of reinstatement and back wages to him.

2. Heard.

3. Briefly stated the facts of the case relevant for the disposal of this writ petition are that the petitioner was allegedly appointed as a Bullock Cart Driver with Municipal Corporation of Delhi on daily wages w.e.f. 20.04.1991 and was allegedly terminated w.e.f. 20.05.1994. The petitioner had raised an industrial dispute with regard to his alleged termination which was referred by the appropriate Government for adjudication to the Labour Court.

4. In response to the claim of the petitioner, the MCD (respondent herein) in its written statement filed before the Labour Court, took a plea that the petitioner was not entitled for reinstatement or regularisation or back wages because he has worked in the MCD as daily wager hardly for a period of 35 days between 19.08.1991 and 22.09.1991.

5. In support of his claim, the petitioner had examined only himself as WW-1

whereas no evidence was produced by the respondent. The Labour Court after considering the evidence of the petitioner did not agree with him that he was appointed with the respondent from 20.04.1991 to 20.05.1994. It was also held by the Court below in the impugned award that the petitioner has failed to prove that his services had been terminated by the respondent w.e.f. 20.05.1994 and, therefore, it was said by the Labour Court that the question of termination of the petitioner from the service of respondent does not arise. It is aggrieved by the finding of the Court below contained in the impugned award that the workman has filed the present writ petition seeking to set aside the said award.

6. Mr. Anuj Agarwal, learned Counsel appearing on behalf of the petitioner has placed reliance on an experience certificate Exhibit WW-1/2 (Annexure P-3 at page 21 of the Paper Book) to contend that as per own showing of the respondent the petitioner had worked as Bullock Cart Driver from April 1991 till May 1994. This document relied upon by the petitioner's learned Counsel has been considered by the Court below but it was not believed to be a genuine document.

7. I have gone through the affidavit filed by the petitioner in his evidence before the Court below as well as his cross-examination done by the authorised representative of the management (page 37-41 of the Paper Book). The petitioner except tendering alleged experience certificate Exhibit WW-1/2 in his affidavit has not stated anything as to who had issued the said certificate to him and under what circumstances the certificate came to be issued to him. The author of the document Exhibit WW-1/2 was not examined by the workman. The initial burden of proof to prove that the petitioner had worked with the respondent from April 1991 to May 1994 was on him. It is evident from the record that he had failed to discharge the said onus. Filing of an affidavit in evidence by the petitioner was only his own statement in his favour and it cannot be regarded as sufficient evidence to come to a conclusion that he had in fact worked from April 1991 to May 1994 as alleged by him in the statement of claim. Reliance is placed on two judgments of the Supreme Court in *The Range Forest Officer Vs. S.T. Hadimani*, and *Manager, R.B.I., Bangalore Vs. S. Mani and Others*, .

8. It shall be significant to mention that the petitioner himself had made an application on 20.05.1994 to the respondent for issuing him an experience certificate and in the said application which is Annexure P-2 as page 19 of the Paper Book, he himself had stated that he had worked with the respondent in 1991-1992. If he himself says that he had worked with the respondent in the years 1991 and 1992 then how could he claim that he had worked with MCD from 20.04.1991 to 20.05.1994. Furthermore in the demand notice Ex. WW-1/3 dated 02.01.1997, he has described himself to be a daily wager whereas in his cross-examination recorded before the Labour Court he stated that he was appointed on regular basis. It is quite evident from the material that was available before the Labour Court that the petitioner had failed to prove that his

services were illegally terminated by the respondent w.e.f. 20.05.1994 or that he had worked with the respondent during the period from 20.04.1991 to 20.05.1994. The impugned award of the Court below is based upon cogent evidence.

9. For the foregoing reasons, I do not find any infirmity, illegality or perversity in the impugned award that may call for an interference by this Court in exercise of its extraordinary discretionary writ jurisdiction under Article 226 of the Constitution. This writ petition, therefore, fails and is hereby dismissed in limine.