

(2008) 01 DEL CK 0080
In the Delhi High Court
Case No : WP (C) No. 9670 of 2007

Shyam Sunder	Vs	APPELLANT
Sumit Engg. Corporation and Another		RESPONDENT

Date of Decision : 15-01-2008

Acts Referred:

Citation : (2008) 01 DEL CK 0080

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Dharmendra Kumar, for the Appellant; J.K. Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.

CM No. 18238/2007

1. Allowed subject to all just exceptions.

CM No. 18237/2007

2. For the reasons stated in the application and as no specific limitation is provided for filing petition under Article 226 of the Constitution of India, the application for condensation of delay is allowed.

WP(C) No. 9670/2007

3. The petitioner has impugned the award dated 13th December, 2006 holding that the petitioner has not been able to prove that he worked continuously for 240 days in the preceding 12 months from the date of termination as contemplated u/s 25B of Industrial Disputes Act and, Therefore, his services has not been terminated illegally.

4. The Court relied on the facts that the claimant for the first time alleged in his

cross examination that the signatures were obtained from the petitioner on blank papers though no such plea was taken in the claim petition and no complaint was made to any of the authorities. The complaint which was filed against the management was only regarding grade of wages and that apart from that he had demanded his earned wages.

5. The Court also relied on the facts that three ESIC identity cards were issued to the petitioner bearing three different numbers on which he admitted his signatures. It was inferred that the petitioner had been employed at different times and there had been full and final settlement with him. The petitioner also admitted that had he joined duties with the respondent once only, then only one ESIC card would have been issued to him. He was unable to explain as to how three ESIC cards were issued to him, if he worked continuously.

6. The Court also drew an inference that the petitioner was not employed for 240 days in preceding 12 months from the date of termination, on the ground that he never made any complaint before the minimum wage authority. The complaints which were filed by him were only in respect of grade of wages and his demand for earned wages. The testimony of WW2 Sh. Kamalbas Chaudhary was disbelieved. Reliance was also placed on MW1/A which is in the following terms:

We have not terminated service of Sh. Shyam Sunder. Rather he is absenting from duty without any information or approval since 10.06.95. He may be directed to join his duties immediately as our work is suffering.

7. The management also proved that the petitioner joined management first on 24th July, 1988 and worked up to December, 1988 and left his job by resignation letter dated 3rd January, 1989. The management proved the letter of appointment and letter of resignation. On the verbal request of the workman he was allowed to join again with effect from 11th November, 1989 and he worked up to 31st May, 1990. The workman again left and came to Delhi third time and joined the management from 17th July, 1990 and worked up to 3rd May, 1992 and left after collecting his dues. Lastly he joined management with effect from 12th May, 1995 and abandoned his services with effect from 10th June, 1995. The muster rolls and other relevant documents have been produced and proved by the management which has been believed.

8. Considering all these factors and relying on (2004) SCC 161, Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Delhi, Municipal Corporation, Faridabad v. Shriniwas it has been held that the petitioner has failed to prove that he worked continuously for 240 days in the preceding 12 months from the date of his alleged termination.

9. In G. T. Lad and Others Vs. Chemical and Fibres of India Ltd., Supreme Court had held that whether there has been a voluntary abandonment of services or not is a question of fact which is to be determined in the light of surrounding circumstances. While exercising powers of judicial review under Article 226 of the Constitution of India, this Court is not to re-appreciate the evidence and reach a

different inference and substitute the inferences drawn by the Labor Court with its own inferences. 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*, . Reliance may also be placed on the following judgments rendered by the Supreme Court and this Court concerning the scope of judicial review by a writ court: *Harbans Lal Vs. Jagmohan Saran*, ; *B.C. Chaturvedi Vs. Union of India and others*, ; *Indian Overseas Bank v. I.O.B. staff Canteen Workers*" Union AIR 2000 SC 1508 ; *Municipal Corporation of Delhi Vs. Asha Ram and Another*, and *Filmistan Exhibitors Ltd. v. N.C.T. Secy. Labour and Ors.* 131 (2006) DLT. In all the above judgments, it has been held that a 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.

10. 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. The Apex Court in *B.C. Chaturvedi Vs. Union of India and others*, at page 759 in para 12 had held as under:

12. 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. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support there from, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each

case.

11. The learned counsel for the petitioner is unable to point out any perversity or manifest error in the order of the Labor Court. There is no denial of principle of natural justice nor any such plea has been taken or argued by the learned counsel for the petitioner. There are no grounds to interfere with the order dated 13th December, 2006 in the facts and circumstances and the writ petition is dismissed.