
(2016) 09 DEL CK 0028

In the Delhi High Court

Case No : Writ Petition (Civil) No. 8170 of 2016 and CM Nos. 33793-94 of 2016

Vishwanath Pandey

APPELLANT

Vs

M/s. Madan Gopal Keshav Chandra

RESPONDENT

Date of Decision : 20-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 151 FLR 1022 : (2016) LabLR 1161

Hon'ble Judges : Mr. Najmi Waziri, J.

Bench : Single Bench

Advocate : Mr. Nagmani Roy, Advocate, for the Petitioner; None, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Najmi Waziri, J.—The petitioner impugns the order dated 07.12.2015 passed by the Presiding Officer, Labour Court No. XVI, Karkardooma Courts, Delhi in ID No. 87/12, which has not found any relationship of employer and employee between the petitioner and the respondent. The petitioner led evidence as under:-

"6. Workman appeared as WW1 and filed his affidavit Ex. WW1/A bearing his Signature at point A and B. stating therein all the facts which were stated by him in his statement of claim. He also relied upon the documents EX.WW1/1 to EX.WW1/1P. Ex. WW1/1 is the demand notice dated 06.09.2011, Ex. WW1/2 is the postal receipt, Ex. WW1/3 is the complaint dated 06.09.2011 written to PS Lahori Gate, Ex. WW1/4 is the postal receipt. Ex. WW1/5 and Ex. WW1/6 are the complaints dated 21.04.2011 and 15.07.2011 made before Labour Office, Ex. WW1/7 is the report of Labour Inspector, Ex. WW1/8 is the statement of claim filed before Conciliation Officer, Ex. WW1/9 is an undertaking dated 21.02.2011 given by the management for payment of bonus and Ex. WW1/10 (collectively) are the personal letters of workman which were received by him at the Management address."

2. The evidence was considered as under:

"7. Sh. Anand Singh, Ex. Labour Inspector appeared as WW2 and deposed that on 09.07.2011 he had inspected the premises of the management and met with Sh. Ankur, Proprietor of management. He also found one Sh. Ravi who was working with the management. He further deposed that he served a notice upon the management directing the proprietor of the management to appear in the office of Labour Commissioner for 14.07.2011, copy of which was proved by him as Ex.WW2/1 bearing his signatures at point A. He further deposed that he also served another notice dated 08.08.2011, copy of which was proved as Ex. WW2/2 bearing his signature at point A but none appeared on behalf of management..He stated that thereafter, he prepared report dated 24.09.2011 which was already proved as Ex.WW1/7 bearing his signature at point A."

3. During the course of the hearing, the learned counsel for the petitioner was asked to show if there is any document to prove that the petitioner was ever paid any monies by the respondent or any other document to prove that there was an employer?employee relationship between the petitioner and the respondent during 1998 till 2011, but no affirmative answer has come forth. There is nothing on record to presume that such relationship ever existed.

4. The learned counsel for the petitioner relies upon the statement of Mr. Anand Singh, Ex-Labour Inspector, who had been examined as WW2, which reads as under:-

"WW2-Sh. Anand Singh, Ex-Labour Inspector, presented posted as Head Clerk, PAO-25, Inside Peeragarhi Bus Depot, New Delhi.

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On 09.07.2011 I inspected the premises of the management and on reaching there, one Sh. Ankur, Proprietor met me. I also found one Sh. Ravi who was working with the management. I served a notice upon the management directing the proprietor of the management to appear in the office of Labour Commissioner for 14.07.11. Copy of the notice is Ex.WW2/1 bears my signature at point A. I also served another notice on 08.08.11, copy of the same is Ex.WW2/2 bears my signatures at point A. But none appeared on behalf of management and I also prepared the report dated 24.08.11. The same are already exhibited as Ex. WW1/7 bearing my signatures at point A(OS&R)."

5. The learned counsel for the petitioner submits that the aforesaid statement shows that there was a preponderance of probability to conclude that the said relationship existed. However, this Court is unable to draw any such conclusion from the aforesaid deposition of the Ex-Labour Inspector. It does not show even prima facie, let alone conclusively, that any such relationship existed between the petitioner and the respondent. The statement only refers to a process which was initiated on behalf of the Labour Commissioner. The onus of proving the relationship of employee and employer between the petitioner and the

respondent lies upon the petitioner workman, this onus has not been discharged by him.

6. Having considered the above and the reasoning in the impugned order, this Court does not find any flaw in the impugned order and sees no need to interfere with it.

7. Accordingly, the petition along with the pending applications is dismissed.