

Creative Garments Vs. Kunwar Prasad and anr.

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Court : Mumbai

Decided On : Mar-20-2002

Reported in : (2003)ILLJ809Bom; 2003(1)BomLC235

Judge : A.P. Shah and ;V.K. Tahilramani, JJ.

Acts : Industrial Disputes Act - Sections 25; Contract Labour (Regulation and Abolition) Act

Appeal No. : O.O.C.J.A. No. 335/2001 in W.P. No. 1523/1999

Appellant : Creative Garments

Respondent : Kunwar Prasad and anr.

Advocate for Def. : A.D. Shetty, Adv.

Advocate for Pet/Ap. : K.S. Bapat, Adv.

Disposition : Appeal dismissed

Judgement :

1. This appeal is directed against the order of learned single Judge directing reinstatement of the respondent-workman with full back wages.

2. The case of the respondent is that he was in the employment of the appellant-company as Pressman from 1989 and from June 15, 1992, he was not allowed to

join his duties and he was orally told that his services were no longer required. No orders in writing were passed. Therefore, the termination from employment without giving any reason and in contravention of Section 25 of the Industrial Disputes Act, was illegal and void. The defence of the appellant-company was that respondent was never in its employment and therefore, there was no employer-employee relationship between them and therefore, there was no dispute or industrial dispute existed to be referred or to be adjudicated by the Labour Court. The employer has stated in its written statement that it had reliably learnt that the petitioner was in employment of one Kamlesh Ironing and Shri Dudhnath Kanojia was proprietor of the said firm. During the trial, the respondent- company completely changed its story. It was claimed that Mr. Dudhnath Kanojia was the contractor working in the appellant company from 1986-1987 and the respondent was the employee on contract basis. In support of this case, Mr. Dudhnath Kanojia was examined who claimed that he himself had worked at a pressman with the respondent-company from 1976 and he was getting weekly wages and he had worked in the company for 8 to 9 years and that he had resigned and had gone to his native place. He came in the year 1986 and accepted the work on contract basis to press the new ready-made garments manufactured by the company.

3. The learned single Judge held, and in our opinion, rightly that evidence of Dudhnath Kanojia as not at all reliable. He has admitted that there was no written contract between company and himself as a contractor. He has admitted that he had no licence under the Contract Labour (Regulation and Abolition) Act. He has admitted that so-called register produced by him to show that respondent was in his employment did not bear the name or stamp of Kamlesh Ironing. Before the Labour Court, the respondent company did not even whisper in its written statement that it had given work of ironing to Kamlesh Ironing. It did not say that there was any relationship as principal and contractor between the respondent company and Kamlesh Ironing. It did not even claim that Kamlesh Ironing was its contractor. The proprietor of the company had not entered into witness box. Instead a time-keeper was examined. The learned Judge has also taken note of the fact that the workman addressed letters to the company claiming reinstatement with full back wages on the basis that he was illegally terminated from the employment of the respondent- company. There was no reply to the said letters

addressed by the workman.

4. In the above circumstances, the learned Judge was right in coming to the conclusion that the relationship of employer and employee is proved and granted reinstatement with full back wages.

5. Appeal is dismissed. The appellant is directed to comply with this order as well as order of learned Judge, within a period of four weeks. Parties to act on the copy of this order duly authenticated by Associate of this Court.

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