

Pushpendra Mohan Dhingra Vs. Govt. Nct of Delhi & Ors

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Court : Delhi

Decided On : Nov-13-2014

Judge : Suresh Kait

Appellant : Pushpendra Mohan Dhingra

Respondent : Govt. Nct of Delhi & Ors

Judgement :

\$~3 * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment delivered on:

13. h November, 2014 + W.P. (C) 119/2011 PUSHPENDRA MOHAN DHINGRA Petitioner Represented by: Mr. Pradhuman Gautam and Mr. Saumitra Singhal, Advs. Versus GOVT. NCT OF DELHI & ORS Represented by: NEMO. CORAM: HONBLE MR. JUSTICE SURESH KAIT Respondents SURESH KAIT, J.

(Oral) 1. Vide the present petition, the petitioner / Management seeks setting aside of the order dated 12/13.11.2009 passed by the Authority under the Delhi Shops and Establishments Act, 1954.

2. Also seeks setting aside of order dated 24.04.2008 and order dated 04.08.2010 passed by respondent No.1, thereby dismissing the application filed by the petitioner for setting aside the ex-parte orders dated 24.04.2008 and 12/13.11.2009.

3. Ld. Counsel appearing on behalf of the petitioner submits that respondent Nos. 2 to 5 / workmen were not their employees. The alleged notice was served upon the petitioner by affixing at his residence at C-206, DDA Flats (MIG), Rajouri Garden, New Delhi - 110027, whereas the Establishment is at Faridabad.

4. It is alleged that the notice was affixed upon the residential address, whereas the petitioner never received the same though the petitioner is very much residing there. The respondents were supposed to serve the notice at the establishment at Faridabad (Haryana).

5. Ld. Counsel submits, respondent Nos. 2 to 5 also raised the industrial dispute and the petitioner / Management participated in those proceedings. However, the claims filed by the respondents have been dismissed by the Labour Court by the respective awards.

6. Ld. Counsel for the petitioner has produced the award dated 19.05.2012 passed in the case of Mukesh Kumar v. M/s. Intel Cable Industries, wherein vide order dated 16.12.2009, the Id. Labour Court framed the following issues:

7. (1) Whether there existed relationship of employer and employee between the workman and the Management?. (2) Whether the services of the workman were terminated illegally and / or unjustifiably and if so to what relief was he entitled?. (3) Relief.

In Para 14 and 15, of the said award, Id. Labour Court recorded as under:

14. The workman has placed on record six bills of hotel showing that two persons stayed there at the given hotel. But these bills were interpolated before filing on the judicial record. This interpolation is so clearly visible that this court deems it fit to reject these documents from being considered in this matter. This is one of the most cardinal principles of justice that the one who comes to the court for seeking equity must have done equity to his own part. This workman by placing these documents on record cannot be allowed to take benefits of his own wrongs. Secondly, he placed two documents, Mark A and Mark B on record. These are simply the photostat documents. There is nothing on record to discharge the onus

to the extent as it was directed in the aforesaid authorities of the Honble Superior Courts which this court has already discussed.

15. On the other hand the Management has produced its payments and wages register as Ex.MW1/1 (collectively) and Ex. MW1/2 (collectively). These pages of registers cover a period from the years 2004 to 2007 and none of these documents contain the name of the present claimant / workman. There is nothing on record to show that this workman ever had any relationship to the Management in the nature of an employer and employee. Therefore, it is hereby held that the workman has failed to show any kind of relationship with the Management in the nature of an employer and an employee. And on the other side the Management has been able to prove an absence of any such relationship which was contended by the claimant / workman.

8. Accordingly, the Claim Petition filed by Sh. Mukesh Kumar, respondent No.2 was rejected.

9. In the case of Manoj Kumar, respondent No.3, same issues were framed as in case of Mukesh Kumar. However, he stopped appearing before the Labour Court and led no evidence to his claim. Accordingly, Id. Labour Court rejected the same.

10. In the case of Ramesh Saini, respondent No.4, same issues were framed as noted above in para-6, and the Id. Labour Court while rejecting his claim recorded as under:

15. The workman has relied upon five documents. Document Ex.WW1/1 is the photocopy which is illegible also written by the union of this workman to the Assistant Labour Commissioner, Ex.WW1/2 is a demand notice. Ex.WW1/3 is a postal receipt. Ex.WW1/4 is an envelope addressed to the Management and Ex.WW1/5 is a copy of the claim filed before the Conciliation Officer. All these documents are unilateral documents which can be prepared by anyone at any point of time. These documents prove nothing in support of the workman.

16. Apart from these documents nothing was filed by the workman to show a prima facie case existing in his favour. Although the Management, on the other

hand, has filed a complete set of pages from its attendance and wages register related to the establishment from March, 2004 to March, 2008. The name of the workman does not appear anywhere. Moreover, the workman also did not cross-examine the MW1. He appears to have acquiesced to the defence taken by the Management and the evidence produced by it. He also had stopped appearing before the Court. Hence this court holds that the workman has Not Proved the existence of a relationship in the nature of an employer and an employee between the Management and him.

11. Accordingly, the claim of Ramesh Saini has also been rejected.

12. In the case of respondent No.5, Dharmender Singh also, same issues were framed. However, he also stopped appearing before the Labour Court and led no evidence to his claim. Accordingly, Id. Labour Court also rejected his claim petition.

13. Keeping in view the grounds raised in the instant petition and the awards passed against the respondent Nos. 2 to 5 as discussed above, I deem it appropriate to set aside the impugned order dated 12/13.11.2009 and orders dated 24.04.2008 and 04.08.2010.

14. It is ordered accordingly.

15. The respondent No.1/Authority is directed to pass a fresh order after giving opportunities to both the parties.

16. I note, pursuant to order dated 10.01.2011, petitioner has deposited the award amount. The Registry of this Court is directed to release the said amount with interest, if any, in favour of the petitioner.

17. The petition is allowed with no order as to costs. SURESH KAIT, J
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