

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.2622/2008**

% **Date of decision : 31.03.2008**

Yogesh Kumar Sehgal  
Proprietor: Sumit Agencies ..... Petitioner  
Through: Mr.Ajay Paul, Advocate.

Versus

Lalit Kumar & Another ..... Respondents  
Through: Nemo.

**CORAM :-**

**HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not?                                | NO  |
| 3. Whether the judgment should be reported in the Digest?                | NO  |

**ANIL KUMAR, J.**

1. The petitioner, Proprietor of Sumit Agencies, management has impugned the award dated 6<sup>th</sup> July, 2007 directing the reinstatement with full back wages to the respondent workman.

2 On the dispute being raised by the respondent, following reference was made by the appropriate government:

“Whether the services of Sh.Lalit Kumar s/o Shri Yad Ram has been terminated illegally and/or unjustifiably by the management, and if so, to what relief is he entitled and what directions are necessary in this respect?”

3. The respondent in his claim petition pleaded that he was working as Bill Courier and his services were terminated with effect from 29<sup>th</sup> January, 2003 without observing the requirements of law as contained under Section 25 F of the Industrial Disputes Act, 1947.

4. The petitioner contested the claim contending that there is no relationship of master and servant and the respondent has suppressed the truth that he has received Rs.30,100/- in full and final settlement and nothing is due to the respondent from the petitioner.

5. The Labor Court relied on the statement of the witnesses of the management admitting that the respondent was working as a Courier Boy. It was also admitted that he had filed the proceedings for non-payment of wages before the competent authority under Delhi Shops and Establishments Act and an order dated 26<sup>th</sup> February, 2005 was passed against the petitioner directing the payment of the amounts due to the respondent.

6. Though the petitioner raised a plea that amount of Rs.30,100/- was paid in full and final settlement, however, the learned counsel for the petitioner admits that the amount of Rs.30,100/- was paid pursuant to order dated 26<sup>th</sup> May, 2005 which was passed as no one had contested the claim before the competent authority under Delhi

Shops and Establishments Act. Learned counsel for the petitioner also admits that the order dated 26<sup>th</sup> May, 2005 was not challenged. In the circumstances, the plea of the petitioner that the amount of Rs.30,100/- was paid in full and final settlement is not sustainable and in any case it is contrary to the plea raised by the petitioner that there is no relationship of employer and employee.

7. Learned counsel for the petitioner has contended that the Labor Court has not considered the documents filed and proved by the management which are the three vouchers, copies of which are also produced before this Court. Perusal of vouchers dated 23<sup>rd</sup> October, 2002, 26<sup>th</sup> December, 2002 and 24<sup>th</sup> January, 2003 reveals that the amount as detailed in the vouchers were allegedly paid to the respondent. In the statement on behalf of the management, it has not been deposed and proved as to who had signed those vouchers nor these vouchers were put to the respondent whether the same were signed by him or not. This cannot be disputed that mere exhibition of a document is not the proof of the document. From the testimonies of the petitioner and the respondent, copies of which were produced by the learned counsel for the petitioner during the hearing, it cannot be inferred that the Labor Court has committed any manifest error in not considering the same as they have not been proved and cannot be relied on in the facts and circumstances. In any case, the said vouchers did not dispel the contention of the respondent that there is relationship of

employer and employee between the petitioner and the respondent nor these documents prove that there is no relationship of employer and employee between the petitioner and the respondent. In the circumstances, the finding of the Labor Court that there is relationship of employer and employee between the parties does not suffer from any perversity or manifest error so as to correct them in exercise of jurisdiction of under Article 226 of the Constitution of India.

8. Learned counsel for the petitioner has admitted that the provisions of Section 25-F of the Industrial Disputes Act, 1947 were not complied with as no notice was given nor any amount was given in lieu of the notice and the services of the respondent were terminated with effect from 29<sup>th</sup> January, 2003. The petitioner is unable to establish that Rs.30,100/- was paid in full and final settlement and thereafter the respondent left the services of the employer. Rather the plea taken was that there is no relationship of employer and the employee which has been dis-believed.

9. In the circumstances, the finding of the Labor Court holding that the services of the respondent were terminated illegally cannot be faulted. While exercising its powers of judicial review under Article 226 of the Constitution of India this Court is not to re-appreciate the evidence. It is a settled position of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the Court does not

interfere with factual findings of the lower courts and restrain itself from re-appreciating evidence while exercising powers of judicial review. The objective of judicial review is to ascertain that a person received a fair treatment and objective is not to re-appreciate the entire pleas and evidence and draw inferences again. The findings and inferences of the Labor Court are based on evidence and documents on record and there does not appear to be any manifest errors in them. 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.

10. No other ground has been raised by the learned counsel for the petitioner. The award dated 6<sup>th</sup> July, 2007, in the circumstances, does not suffer from any manifest error and has not been passed in denial of principle of natural justice so as to entail exercise of jurisdiction by this Court under Article 226 of the Constitution of India.

11. The writ petition is, therefore, without any merit and it is dismissed.

March 31<sup>st</sup>, 2008.  
**‘Dev’**

**ANIL KUMAR, J.**