

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

+ **W.P.(C) No. 3314.2008**

% Judgment delivered on: 26.02.2010

Management of M/s PRAKASH SPARES Petitioner
Through: Mr. Pankaj Gupta, Advocate
versus

Govt. of NCT of Delhi & others
Respondent
Through: Ms. Saroj Bidawat, Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

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1 . By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the impugned award dated 29.01.2008 passed by the Ld. Labour Court in I.D. No. 143/06/2001 whereby directions were given to the petitioner to reinstate the respondent with back wages.

2 . Brief facts of the case relevant for deciding the present petition are that the petitioner concern is a partnership firm which owns and runs IBP Petrol pump. It is alleged by the petitioner that the respondent workman claims to be its employee but the fact is otherwise. The respondent workman raised an industrial dispute bearing ID No.143/06/01 and as per his claim he was working regularly with the management since the year 1986 on a monthly salary of Rs.1800/-. The respondent further claimed that he was denied appointment letter, minimum wages and other statutory benefits and even the ESI card was provided to him after substantial period of time and his services were terminated by the petitioner on 16.4.2000.

3 . Vide an award dated 29.1.2008 , the learned Labour court ordered reinstatement of the respondent workman with 50% of backwages. Feeling aggrieved by the said award, the present petition has been filed.

4 . Counsel appearing for the petitioner submits that the petitioner has denied the relationship of employer and

employee and therefore there could not have been any occasion for termination of the services of the respondent. Counsel further submits that the respondent workman failed to establish the said relationship which is a pre-requisite to invoke the jurisdiction of the Labour Court under the Industrial Disputes Act and therefore, the award of the Labour Court is not sustainable in the eyes of law. Counsel further submits that the Ld. Labour Court wrongly placed reliance on the ESI Card to come to the conclusion that there was a relationship of employee and employer between the parties. Counsel for the petitioner further submits that the declaration form was a creation of the respondent and being a forged document, reliance could not have been placed by the Labour Court on the same. Counsel further submits that a careful perusal of the said declaration form shows that it bears the different parentage of the workman to what has been stated in his affidavit. The said form further reveals that even the name of the petitioner management is not correctly stated. The name of the petitioner management as per the counsel for the

petitioner is "PRAKASH SPARES" while in the declaration form the name of the management bears "PARKASH SPARES". Even the name of the applicant in the declaration form was changed from "Madan Mohan" to "Inder Mohan Singh" and even the place of employment is shown as workshop while as per own case of the respondent workman he was a salesman in the petrol pump. Even the declaration form placed on record by the respondent was scored off with a perpendicular line, and that by itself would show that the said document was not a genuine document. Counsel thus submits that Ld. Labour Court had failed to consider these discrepancies in the said document, proved on record as Ex. WW 2/1, and based on the said solitary document it can be inferred that the relationship of employer and employee does not exist.

5 . Refuting the said submissions of counsel for the petitioner, the counsel for the respondent submits that the petitioner in the present writ petition is trying to build up a new case although no such stand was taken by the petitioner before the Labour Court. Drawing attention of this court to the

cross-examination of WW 2, Mr. Sunil Prasad, the witness from the office of the ESI Local Office, Okhla counsel submits that no such suggestion was given by the petitioner to this witness so as to point out the above discrepancies. Counsel further submits that in any case the said witness has produced the original declaration form register and he clearly deposed that the same relates to workman Inder Mohan. Counsel thus submits that no fault can be found in the findings given by the Ld. Labour Court.

6 . I have heard counsel for the parties and gone through the records.

7 . No doubt the petitioner management in the written statement has taken a stand that the respondent was never employed by them and therefore there was no question of termination of his service. The management also deposed that it was not providing any kind of statutory benefits to the employees and since the respondent workman was never their employee, therefore, there was no question of any kind of legal facilities being provided to him. It is a settled legal position

that the burden to prove the relationship of employee and employer rests on the workman. It would be pertinent to refer to the judgment of the Apex Court in ***Workmen of Nilgiri Coop.Mkt Society Ltd vs. State of Tamil Nadu & Ors. (2004)3SCC 514*** where it very clearly reiterated the said principle as:

"47. It is a well-settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him.

48. In N.C. John v. [Secretary Thodupuzha Taluk Shop and Commercial Establishment Workers' Union and Ors.](#) : (1973)ILLJ366Ker , the Kerala High Court held:

"The burden of proof being on the workmen to establish the employer-employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer-employee relationship "

49. In [Swapan das Gupta and Ors. v. The First Labour Court of West Bengal and Ors.](#) 1975 Lab. I.C. 202 it has been held:

"Where a person asserts that he was a workmen of the Company, and it is denied by the Company, it is for him to prove the fact. It is not for the Company to prove that he was not an employee of the Company but of some other person."

50. The question whether the relationship between the parties is one of the employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse."

Applying the aforesaid principle to the present case let me examine as to whether the respondent workman succeeded in discharging the initial onus of proving the relationship with the petitioner management of employer and employee. The respondent workman has placed on record ESI Declaration form as well as the ESI Card. The same were proved by the respondent workman as WW 2/1 & WW 1/5. The respondent workman had summoned the witness from the office of the ESI who in his evidence duly proved the said declaration form by producing the original declaration register. The testimony of the said witness remained unimpeached and unrebutted as no suggestion was given by the petitioner management so as to challenge the genuineness or correctness of the said declaration form. So far the name of the petitioner firm is concerned, the said declaration form bears the stamp in the name of PARKASH SPARES with the correct address. Merely because the stamp affixed on the declaration form does not spell out the correct spellings of the name of the petitioner firm, the same would not discredit the genuineness of

declaration form. So far the particulars of the employment disclosed in the said form are concerned, the name in the relevant column of department is mentioned as 'workshop' while in the column of nature of work 'Petrol Pump' has been mentioned. It is not in dispute that the petitioner has been carrying on the business of the petrol pump. The declaration form has been filled up in English while the respondent workman had signed in Hindi which clearly shows that the said declaration form was not filled by the respondent himself.

8 . It is a settled legal principle that this court while exercising its jurisdiction under Article 226 of the Constitution of India, would not reappreciate the findings of facts. It would be pertinent here to refer to the judgment of the Apex Court in ***Management of Madurantakam, Co-operative Sugar Mills Ltd. Vs. S.Vishwanathan (2005)3 SCC 193*** where it was held that:

"12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these type of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article [226](#) or under Article [227](#) of the Constitution of India can go into the question of fact decided by the Labour Court or the

Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere he has come to the conclusion that the finding of the Labour Court is either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court."

Hence this court would not reappreciate the findings of fact in the case at hand, more particularly when the petitioner never cross-examined either the respondent workman or the witness from the ESI Department with regard to the discrepancies now being canvassed by the counsel for the petitioner. It is not only the declaration form alone but the respondent had also proved on record the ESI Card. Hence, once the witness had come from the office and has proved the said declaration form it is difficult to believe that any kind of forgery or fabrication was carried out by the respondent before the Labour Court, that too in collusion with the officials of ESI Department.

8. Hence, there is no merit in the present petition and the same is hereby dismissed.

February 26, 2010
pkv

KAILASH GAMBHIR,J