HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Spl. Appl. Writ No. 171/2020

Pushkarlal S/o Bhanwar Lal Shrimali, Aged About 46 Years, Badganv, Post Dhol, Tehsil Gogunda, District Udaipur.

----Appellant

Versus

Administrative Officer, Maharana Pratap Smarak, Udaipur, Moti Magri, Udaipur

----Respondent

For Appellant(s) : Mr. Sumit Singhal

HON'BLE MR. JUSTICE SANGEET LODHA
HON'BLE MR. JUSTICE RAMESHWAR VYAS

Order

15th September, 2020

Per Hon'ble Mr. Sangeet Lodha,J.

Reportable

1. This intra court appeal is directed against order dated 17.12.19 passed by the learned Single Judge of this Court, whereby the writ petition preferred by the appellant aggrieved by the award dated 17.10.19 passed by the Labour Court, Udaipur, has been dismissed.

2. The facts relevant are that vide notification dated 27.12.07 issued by the Department of Labour, Government of Rajasthan, the dispute raised by the appellant was referred for adjudication to the Labour Court, Udaipur in the following terms:

> "क्या प्रार्थी श्रमिक की परिभाषा में आता है ? यदि हां, तो क्या श्रमिक श्री पुष्कर श्रीमाली पुत्र श्री भंवरलाल श्रीमाली निवासी बडगांव, तहसील गोगुन्दा, हाल मुकाम 42 कर्मशील मार्ग, चांदपोल बाहर, सिरोही वाडा, उदयपुर द्वारा श्री सुभाष श्रीमाली, महासचिव, लघु उद्योग कामगार यूनियन, उदयपुर को नियोजक प्रशासनिक अधिकारी, महाराणा प्रताप स्मारक समिति, मोती मगरी,

उदयपुर द्वारा दिनांक 31.07.2005 से सेवा पृथक कर दिया जाना उचित एवं वैध है ? यदि नहीं, तो श्रमिक किस राहत को पाने का अधिकारी है ?"

3. The appellant filed his statement of claim before the Labour Court, stating that he entered the employment of the respondent herein on 1.4.02 as Chowkidar/Pujari on fixed salary Rs.2500/- per month. However, his services were brought to an end w.e.f. 31.7.05 without assigning any reason. Precisely, the case set out by the appellant was that he had completed 240 days of service in a calendar year and therefore, termination of his services without complying with the provisions of Section 25F of Industrial Disputes Act, 1947 (for short "Act of 1947") is invalid and void.

4. The claim was contested by the respondent by filing a counter thereto, taking the stand that appellant's services for the work of Pujari was made available to the respondent by the contractor M/s. R.S.D. Enterprises, Udaipur. The appellant was working under the control of the contractor and the salary was also being paid to him by the contractor. A preliminary objection was raised that the contractor who employed the appellant is a necessary party. That apart, it was contended that the appellant was employed as Pujari in the temple and since the Pujari does not fall within the definition of 'workman' and the temple does not fall within the definition of 'industry', the provisions of the Act of 1947 are not applicable.

5. After due consideration of the evidence on record, the Labour Court arrived at the conclusion that the temple does not fall within the definition of 'industry' and the appellant being employed as Pujari does not fall within the definition of 'workman' and consequently, rejected his claim by the impugned award.

6. Before the learned Single Judge, it was contended on behalf of the appellant that he was appointed as Watchman-cum-Pujari and therefore, the decision of the Labour Court which proceeds on the premise that the appellant was employed only as Pujari is erroneous.

7. The learned Single Judge after due consideration of the rival submissions, arrived at the conclusion that in absence of any evidence brought on record indicating that the appellant has performed any work other than that of Pujari, the plea sought to be raised that the appellant had worked as Watchman-cum-Pujari cannot be countenanced.

8. Learned counsel appearing for the appellant contended that the appellant was employed as Watchman-cum-Pujari and he was mainly carrying out tasks of Watchman. Drawing the attention of the Court to letter dated 6.12.03 issued by the Administrative Officer of the respondent, learned counsel submitted that apparently, the appellant was directed to guard the temple in night hours and thus, guarding the temple in the night hours being part of the appellant's duty, the conclusion arrived at by the Labour Court, affirmed by the learned Single Judge that the appellant was employed only as Pujari, is ex facie erroneous and perverse. Learned counsel submitted that the appellant was employed by the respondent Samiti and therefore, the conclusion arrived at that the appellant was employed temple in particular which does not fall within the definition of 'industry' is also erroneous. Learned counsel submitted that even the decision of Delhi High Court in Sai Bhakta Samaj vs. Durga Prasad : WP (C) No. 3731/04, decided on 11.9.06, has not been appreciated by the

Labour Court and the learned Single Judge in correct perspective, which has resulted in erroneous finding being arrived at.

9. We have considered the submissions of the learned counsel and perused the material on record.

10. Indisputably, the appellant entered the employment of the respondent on being appointed vide order dated 1.4.02 (Annex.4), a bare perusal whereof makes it abundantly clear that the appointment was accorded to the appellant on temporary basis for a period of three months on the fixed salary Rs.2500/- per month on the post of 'Pujari' and not on the post of 'Watchman-cum-Pujari' as claimed by the appellant. Moreover, it was specifically mentioned that the appellant will perform '*sewa puja*' in Girdhar Gopal Temple and shall stay in the temple premises. As per Annexure-5 (exhibited as Ex.2 before the Labour Court), the duties to be performed by the Pujari have been specified, which also does not include the duties of Watchman as claimed. Merely because, the appellant and other pujaris were directed to stay in the temple premises in the night, no inference can be drawn that the appellant was made to discharge the duties of Watchman. The learned Single Judge has rightly held that the directions to the appellant to stay in the temple premises by way of accommodation cannot make the status of the appellant different from that of Pujari.

11. In Sai Bhakta Samaj's case (supra) relied upon by the Labour Court, the Delhi High Court, categorically held that in order to be covered under Section 2(s) of the Act of 1947, a workman is supposed to be one who does any manual, unskilled, skilled, technical, operational, clerical or supervisory work, whereas, puja by Pujari is an application of his knowledge of religious hymens

and bhajans and aarties which he has to recite in the temple, which cannot be considered to be work by any stretch of imagination a work specified in Section 2(s) of the Act of 1947 and accordingly, held that Pujari is not a workman.

12. The decision in Sai Bhakta Samaj's case (supra) has been further followed by the Delhi High Court in Laxmi Narayan Shastri vs. Shri Santan Dharm Sabha Laxmi Narayan Temple Trust: WP(C) No. 3426/11, decided on 20.5.11.

13. It is true that the designation of an employee is not conclusive to bring him within the definition of 'workman' set out in Section 2(s) of the Act of 1947 but then, for determination as to whether an employee falls within the definition of 'workman' or not, the test is what is the main work assigned to him. If he does some manual work as ancillary or incidental to the main work assigned to him, cannot have an effect of such employee being covered by definition of 'workman' within the meaning of Section 2(s) of the Act of 1947.

14. Adverting to the facts of the present case, as discussed above, the appellant was appointed as Pujari and not Watchman-cum-Pujari as claimed and he was assigned duties of performing *sewa puja* in Girdhar Gopal Temple. As discussed above, the appellant being provided accommodation within the temple premises and permitted to stay in the premises in the night, in no manner, leads to conclusion that he was appointed as Chowkidar and was assigned the duties of the said post. In this view of the matter, in our considered opinion, the finding arrived at by the Labour Court that the appellant being employed as Pujari was not covered by definition of 'workman' within the meaning of Section 2(s) of the Act of 1947 cannot be said to be capricious or perverse

so as to warrant interference by this Court in exercise of writ jurisdiction. Further, even if it is assumed that the respondent, employer of the appellant, being not solely engaged in the maintaining the temple falls within the definition of 'industry' given in Section 2(j) of the Act of 1947, the appellant being not a workman, the provisions of Act of 1947 are not attracted in the matter and the Labour Court had no jurisdiction to adjudicate the dispute referred by the appropriate government.

15. For the aforementioned reasons, we are in agreement with the view taken by the learned Single Judge.

16. No case for interference by us in intra court appeal jurisdiction is made out.

17. The appeal is therefore, dismissed in limine.

(RAMESHWAR VYAS),J **(SANGEET LODHA),J**

Aditya/-