

* IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No. 1059/2008

Date of decision :26.3.2010

Kanhaiya Lal ... Petitioner

Through : Mr. R.K.Saini and
Mr. Tarun Sharma, Advs.

versus

Union of India & Ors. Respondent
Through : Mr. Mukti Bodh for respondent no.3
with Secretary, RSC in person.
Mr. Sharad Chaturvedi for counsel
for respondent no.2.

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*** 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 226/227 of the

Constitution of India, the petitioner seeks quashing of the award dated 30.11.2007 whereby the reference was answered against the petitioner and in favour of the respondent committee.

2. Brief facts as set out by the petitioner relevant for deciding the present petition are that the petitioner was working as a Chowkidar with respondent no.3 Committee from January 1990 and his services were terminated on 3.7.1999 without following the due process of law. Consequently, an industrial dispute was raised by the petitioner where vide order dated 30.10.2006, the labour Court held the reference bad in law as not having made by the appropriate government u/s 2(a) of the I.D Act and therefore the petitioner approached this court by filing a writ petition bearing no. W.P. (C) No. 18357/06. Entertaining the writ petition, this court set aside the impugned award and remanded the matter back to the labour court for an expeditious trial on merit. Thereafter vide order dated 30.11.2007, the labour court held the reference against the petitioner on the ground that the respondent committee is not an "industry" u/s 2(j) of the I.D Act and the petitioner is not a "workman". Feeling aggrieved by the said order the petitioner has preferred the present petition.

3 . Vide order dated 3.3.2010 both the parties were put to the notice that serious view will be taken by this court if any of them is found telling falsehood to the court and directions were also given for the production of the relevant records of the respondent inclusive of employees wage register, attendance register and salary register w.e.f. 1990 till 1999. The petitioner throughout has been maintaining the stand, in the statement of claim filed before the labour court, in affidavit filed before the labour court and before this court as well, claiming his appointment with respondent Rajghat Samadhi Committee w.e.f. January 1990 and his illegal termination from the post of Chowkidar w.e.f. July 1999 without due observance of any process of law by the respondent. The respondent management on the other hand has taken a consistent position that the petitioner workman had joined the respondent w.e.f.18th May 1997 as a daily wager and has not actually worked with the respondent management for a period of 240 days preceding the date of his termination. In para 1 of the counter affidavit filed by the respondent, it has taken the stand that the petitioner worked on the post of the Chowkidar since September 1997 till July 1999. The respondent also seriously disputed the applicability of the provisions of the Industrial Disputes

Act on the premise that the respondent management cannot be treated as an industry as envisaged under Section 2(j) of the I.D. Act as the respondent Rajghat Samadhi Committee is not engaged in any commercial or industrial activities with any profit making objectives. As per the respondent, it is an institution discharging governmental and sovereign functions as enjoined upon the State under Article 49 of the Constitution of India.

4. Today when this matter was taken up by this court, the petitioner conceded that he was never in the employment of the respondent before September, 1997. He also tenders his unconditional apology for falsely claiming his employment with the respondent w.e.f. January 1990. He further pleads for taking a lenient view over his false claim. The respondent on the other hand, based on the records, reiterates its stand that the petitioner was appointed as a daily wager w.e.f. September 1997 and worked intermittently till July 1999.

5. I have heard learned counsel for the parties at considerable length and gone through the records produced by the respondent in the court pursuant to the directions given by this court vide order dated 3.3.2010. So far the finding of the learned Labour

Court is concerned, I find myself in agreement with the same that the monument constructed in the fond remembrance of the Father of the Nation, Mahatama Gandhi, cannot be termed as an “Industry” for any profitable purposes but the same is like a shrine and the Committee constituted under the Rajghat Samadhi Act 1951 to administer and maintain the said Samadhi is not discharging any kind of commercial or industrial activities. Hence, I do not find any infirmity or perversity in the said finding of the labour Court. The Statement of Objects and Reasons of the Samadhi Act 1951 clearly state that the object of the Bill was to ensure proper maintenance, preservation and administration of the Rajghat Samadhi, the Shrine built in the memory of the Father of the Nation. It also states that the Committee should do all things reasonable and necessary to ensure that the Rajghat Samadhi is properly maintained, controlled and administered and proper arrangements are made for the watch and ward of the Samadhi and to organize and regulate periodical functions at the Samadhi such as Friday Prayers and Gandhi Jayanti and to control access to the Samadhi. Section 4 of the said Act describes the composition of the Committee whereas, Section 5 defines powers and duties of the Committee. These sections of the said Act are reproduced as under:

"4. Composition of the Committee.-

(1) The Chairman shall consist of the following members, namely:--

(a) The president of the municipal committee within the local limits of whose jurisdiction the Samadhi is situated, ex-officio;

(b) Three officials nominated by the Central Government;

(c) Three non-officials nominated by the Central Government;

(d) Two members of Parliament nominated by the Speaker.

(2) The Central Government may appoint any person referred to in sub-section (1) or any other person to be the Chairman of the Committee, and if any other person is so appointed, he shall be deemed to be a member of the Committee within the meaning of sub-section (1).

(3) All persons nominated by the Central Government to be members of the Committee shall hold office during the pleasure of the Central Government.

5. Powers and duties of the Committee.

Subject to such rules as may be made under this Act, the powers and duties of the committee shall be--

(a) To administer the affairs of the Samadhi and to keep the Samadhi in proper order and in a state of good repair; (b) To organise and regulate periodical functions at the Samadhi;

(c) To do such other things as may be incidental or conducive to the efficient administration of the affairs of the Samadhi."

As would be evident from the object and reasons of the said Act coupled with the aforesaid provisions that the prime functions of the said Committee are to organize and regulate periodical functions at the Samadhi and to administer and conduct the affairs of Samadhi so

that the same is kept in proper order. There is no such activity which can be called either “commercial” or “industrial” activity carried out by the Members of the Committee in due discharge of their duties. Hence, profit making is entirely out of question as the visits to the Samadhi by each and every one are without any payment and open to all.

6 . Looking into the nature of the activities being carried on by the Members of the respondent Committee who ought to have been entrusted with the job of carrying on the religious and spiritual duties of prayers and periodical functions to spread the ideals of Mahatama Gandhi cannot be construed as an activity of such a nature to attract the ‘Triple Test’ as laid down in ***Banglore Water Supply & Sewerage Board Vs. A. Rajappa AIR 1978 SC 548*** to bring the respondent management within the ambit of the definition of ‘Industry’ under Section 2(j) of the I.D. Act. Counsel for the petitioner has also not laid much stress to impinge the said findings of the learned Labour Court, but in the alternative sought to impress upon this court to invoke the extra ordinary powers of writ jurisdiction to direct the respondent management to take the petitioner workman back into the service from the date of his alleged termination.

7 . It is quite agonizing and antagonizing at the same time to

find that the petitioner who worked as a chowkidar for a period of about two years to act as a sentinel of the Samadhi of the Father of the Nation, who led us to achieve "Swaraj" sacrificing his life for the cause of a free India without compromising his cherished ideals of truthfulness, non-violence and peace could not emulate and imbibe the said principles himself. The petitioner by taking a false stand of claiming his employment with the respondent from the year 1990 till 1999 has not only committed an act of perjury with the court but in fact has committed a greater sin with his own soul.

8 . The paradox which this court is now confronted with is that the petitioner who was a chowkidar and was rendered unemployed should be proceeded with for committing perjury or should be pardoned following the much revered principles of Mahatama Gandhi, as the petitioner was mercilessly turned out of the employment by the respondent without following the due process of law. Perusal of the records produced by the respondent clearly shows that the petitioner had worked on the post of chowkidar as a daily wager w.e.f. September, 1997 till 1999 and then suddenly he was thrown out from the employment without any rhyme or reason. Certainly the petitioner had worked for more than 240 days in continuous service preceding the date of his termination and had

the establishment of the respondent committee been treated as an industry, this court would have certainly granted either the relief of reinstatement with back wages or some amount of compensation in lieu thereof to the petitioner. But, now as this court has taken a view that the provisions of I.D. Act would not be applicable to the instant case, therefore, the relief of reinstatement with grant of back wages would not be available to the petitioner. However, entertaining the alternative prayer of the petitioner this court while exercising extraordinary jurisdiction directs the respondent to pay a sum of Rs.35,000/- to compensate the petitioner for his illegal termination of service without following the due process of law.

9 . Mahatma Gandhi, a man worshipped not only by this country but by the world stood for his cannons of truth and non violence even in the dark times of freedom struggle. He said:-

“Morality is the basis of things and truth is the substance of all morality”

But it is this morality, which today, when the winds of materialism and capitalism are blowing in our society, seems cast in a shadow of despair. It is no doubt true that falsehood is easy and truth difficult, but that does not entail that the virtue of truthfulness be worn like a

garment, worn and removed at our own will. It would not be wrong to say that in the time of universal deceit today, speaking the truth seems like a revolutionary act. The soil of this nation is soaked with the blood, toil and principles of the Father of the Nation, and the Samadhi is the repository of his great soul reminding us never to forget the path of ideals he so painstakingly carved for us. The petitioner by falsely deposing has not only failed this court but also all that that great soul stood for.

10. Hence, taking a compassionate view, so far the conduct of the petitioner of his audacity as he lied through his teeth, as an exceptional case, this court would not recommend any action of initiating perjury proceedings against him and would rather direct the petitioner to offer his daily prayers for at least two hours for a period of one month to seek atonement for committing the sin of being untruthful to the Court of Law. The petitioner shall also render assistance in cleaning the area of the said Samadhi and its surroundings during the said period.

11. So far the payment of compensation amount of Rs.35,000/- is concerned, the same would be released only after the petitioner reports to the Secretary of the respondent committee everyday for a period of one month w.e.f 29.3.2010 to comply with the above

direction and after the Secretary feels satisfied that the petitioner is repentant for his actions.

In view of the above the petition stands disposed of.

March 26, 2010
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KAILASH GAMBHIR,J