2011 (3) G.L.H. 157
RAVI R. TRIPATHI, J.

Imtiaz Abbasbhai Shaikh and Ors.....Petitioners

Versus

Weather Craft Ltd. and Ors.....Respondents

Special Civil Application No. 5774 of 2011.

D/- 17.08.2011.

LABOUR LAWS - Employer-employee relation - Adjudication by the Labour Court - It is established position of law that normally in the matters of Employer-employee relationship, documentary evidence remains in exclusive control of the employer and many a times employer, acting more smart than normal, do not allow any documentary evidence to come into existence - On the facts of the case the workmen where not given any document which could be produced before the Labour Court to establish employer-employee relationship, the Labour Court was required to go deep into the matter and could have decided that question in true earnest.

Learned Advocate for the petitioner rightly submitted that it was the case of the respondent-workmen right from the beginning that as they were utterly exploited by respondent No.1, they joined the Union and Union raised a dispute with regard to the same. It is the case of the respondent - workmen that they were not given any document which could have been produced before the Labour Court to convince the Labour Court that they have employer-employees relationship with respondent No.1. It is the case of the respondent-workmen that no document like identity card, attendance card, wage-slip, PF deduction, ESI deduction were ever issued by the establishment-respondent No.1 herein to the respondent-workmen. All alone, they had a slip which was again computer generated, there was no question of the slip containing any signature, name or title of respondent No.1 herein-establishment. In such case, what was expected from the learned Judge of the Labour Court was to go deep into the matter and find out from the parties whose names are mentioned in those slips by asking the detailed address of such persons from the concerned workman as to whether this particular workman had visited their place for repairing/servicing of air conditioner, then the things would have been on record and the learned Judge could have decided the question of employer-employees relationship in true earnest. (Para 5.1)

It appears that the learned Judge had already made up his mind and was examining the question of employer-employees relationship only in a

mechanical manner. The learned Judge of the Labour Court recorded that, the workmen are not able to produce any documentary evidence . It is established position of law that normally in the matters of employer and employee relationship, documentary evidence remains in exclusive control of the employer and many a times employer, acting more smart than normal, do not allow any documentary evidence to come into existence. This is one such case and therefore, it was necessary that the learned Judge ought to have taken sufficient care and should have asked the respondent first party establishment to produce the relevant material and after appreciating the same, should have recorded findings. Instead of taking that pragmatic approach to the matter and putting little more sincere attempts and efforts to find out the real relationship between the first party establishment and the second party respondent-workmen, the learned Judge has taken too technical a view. (Para 5.2)

In view of the aforesaid discussion, this Court is of the considered opinion, that the judgment and award of the learned Judge of the Labour Court suffers from non-application of mind and to an extent insensitivity to a delicate question of relationship of employer-employees between the parties, more particularly when these parties are not at the same level play-field. It is a fact of which judicial notice can be taken that the workmen are always at the receiving end and more particularly when the employer plays smart. This is one such case wherein the employer has played smart to see that no documentary evidence comes in the hands of the respondent-workmen to establish their employer-employees relationship. (Para 10)

Appearance :

Mr. D. S. Vasavada for petitioners : 1-3,
Nanavati Associates for Respondent : 1,
Notice Unserved for Respondent : 2,
Mr. Paritosh Calla for Respondent :3,

PER :MR. RAVI R.TRIPATHI, J. :-

1. Heard learned Advocate Mr.D.S.Vasavada for the petitioner.

2.

Learned Advocate for the petitioner submitted that the learned Judge of the Labour Court has committed an error in holding that the second party workmen were not the workmen of respondent No.1. Learned Advocate for the petitioner invited attention of the Court to the relevant documents, depositions and also deposition of the witness examined by the respondent-establishment.

3.

The matter requires consideration.

4.

RULE. Learned Advocate Mr.Joshi for Nanavati Associates waives service of Rule on behalf of the respondent establishment.

At the request of the learned Advocate for the petitioner, the matter is taken up for final disposal today, to which learned Advocate for the respondent establishment has no objection.

5.

Taking into consideration the relevant discussion made by the learned Judge in relation to Issue Nos.1, 2 and 3 at page Nos.27, 31, 36, 37 and 39, this Court is of the opinion that the learned Judge has mis-directed himself in the matter of deciding the question of 'employer-employees relationship' between the workmen and the establishment.

5.1

Learned Advocate for the petitioner rightly submitted that it was the case of the respondent-workmen right from the beginning that as they were utterly exploited by respondent No.1, they joined the Union and Union raised a dispute with regard to the same. It is the case of the respondent workmen that they were not given any document which could have been produced before the Labour Court to convince the Labour Court that they have employer-employees relationship with respondent No.1. It is the case of the respondent-workmen that no document like identity card, attendance card, wage slip, PF deduction, ESI deduction were ever issued by the establishment respondent No.1 herein to the respondent-workmen. All alone, they had a slip which was again computer generated and it being computer generated, there was no question of the slip containing any signature, name or title of respondent No.1 herein establishment. In such case, what was expected from the learned Judge of the Labour Court was to go deep into the matter and find out from the parties whose names are mentioned in those slips by asking the detailed address of such persons from the concerned workman as to whether this particular workman had visited their place for repairing/servicing of air conditioner, then the things would have been on record and the learned Judge could have decided the question of employer-employees relationship in true earnest.

5.2

It appears that the learned Judge had already made up his mind and was examining the question of employer-employees relationship only in a mechanical manner. The learned Judge of the Labour Court recorded that, 'the

workmen are not able to produce any documentary evidence'. It is established position of law that normally in the matters of employer and employee relationship, documentary evidence remains in exclusive control of the employer and many a times employer, acting more smart than normal, do not allow any documentary evidence to come into existence. This is one such case and therefore, it was necessary that the learned Judge ought to have taken sufficient care and should have asked the respondent first party establishment to produce the relevant material and after appreciating the same, should have recorded findings. Instead of taking that pragmatic approach to the matter and putting little more sincere attempts and efforts to find out the real relationship between the first party establishment and the second party respondent workmen, the learned Judge has taken too technical a view. In discussion at page No.31, the ld. Judge stated that, 'it is clear from the deposition and the statements of the second party respondents that they did not have any written evidence about their working with the first party establishment. They stated that after their services were terminated, they became members of Union whereas at one place, they have stated in statement of claim that as they became members of the Union, and the Union made demand for their rights under the provisions of labour laws, that the first party establishment terminated their services'. Only on this contradiction as to whether they became members of the Union after termination or on their becoming members and Union raising demand, services were terminated, the learned Judge discards total evidence of the respondent-workmen. This is too technical approach which is required to be deprecated and it is accordingly deprecated.

6.

Learned Advocate Mr.Joshi for Nanavati Associates submitted that the evidence of the witness of the first party establishment, produced at Annexure-G, page No.72, is rightly appreciated by the learned Judge of the Labour Court and that there is no material coming on record from the evidence of that witness which will help the respondent-workmen.

7.

This evidence is Exh.51. It is an affidavit of deposition of Shri Rajesh Ashabhai Shah, who states that, 'he is serving as Manager in the first party establishment'. In his cross-examination, he states that, 'the respondent-workmen have not worked under my supervision or control at any time; that as the respondent-workmen have never worked in the first party establishment, there is no question of their services being terminated'.

7.1

This is what was expected from the witness of first party establishment. In his cross-examination, he states that, 'as a Manager, I did not have power

(Authority) either to engage a workman, or terminate or to hold a Departmental inquiry against the workman; that when the services of second party respondent-workmen were terminated, he was on the post of Manager; that in the year 2002, he was a Manager'.

8.

Learned Advocate for the respondent establishment emphatically submitted that this cannot be interpreted as an admission on the part of the witness of the establishment that the respondent-workmen were the employees of first party establishment and that their services were terminated when he was a Manager. He submitted that what is referred to by the witness is that the time, i.e. in the year 2001, when the services of the respondent-workmen are alleged to have been terminated, he was with the first party establishment as a Manager. This is too technical an interpretation put forth by the learned Advocate for the respondent establishment.

9.

Learned Advocate for the respondent establishment was asked to produce the relevant documents about working of the respondent establishment. Learned Advocate for the respondent establishment wanted time for that. The Court declined to grant any time for the reason that such documents are required to be produced before the learned Judge of the Labour Court, who can appreciate them with right to both the parties to examine and cross-examine each other for meaningful appreciation of such documents.

10.

In view of the aforesaid discussion, this Court is of the considered opinion that the judgment and award of the learned Judge of the Labour Court suffers from non-application of mind and to an extent insensitivity to a delicate question of relationship of employer-employees between the parties, more particularly when these parties are not at the same level play-field. It is a fact of which judicial notice can be taken that the workmen are always at the receiving end and more particularly when the employer plays smart. This is one such case wherein the employer has played smart to see that no documentary evidence comes in the hands of the respondent-workmen to establish their employer-employees relationship.

11.

In view of the aforesaid discussion, the petition is allowed. The award and order dated 17.08.2010 passed by the learned Judge of the Labour Court, Ahmedabad in Reference (LCA) No.1186 of 2001 is quashed and set aside. The matter is remitted back to the Labour Court, Ahmedabad for deciding the same

afresh in accordance with the observations made by this Court and after complying with the directions issued by this Court, in accordance with law, giving full opportunity to both the sides.

The respondent first party establishment is directed to produce all relevant material about the so called computer generated slips, particularly with the addresses of the persons whose names are mentioned therein at whose places these workmen have carried out work of repairing/servicing of air conditioner. It is also directed that in case of necessity, learned Judge of the Labour Court shall summon some of them so as to bring on record as to from whom they purchased air conditioner, of which service/repairing was carried out by the respondent-workmen. Once this material comes on record, question of employer-employees relationship can be answered by the learned Judge of the Labour Court with required precession.

Rule is made absolute. No costs.
(UPV) (Rule is made absolute)