HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 4969/2002

Jitendra Kumar Nirvan S/o Shri Ghasilal, 144, Hathroi Baavri, Ajmer Road, Jaipur.

----Petitioner

Versus

1. Central Government Industrial Tribunal-Cum-Labour Court, Jaipur.
2. Regional Provident Fund Commissioner, Vidyut Marg, Jyoti Nagar, Nidhi Bhavan, Jaipur Raj.

----Respondents

For Petitioner(s) : Mr. Prem Krishna Sharma
For Respondent(s) : Dr. Saugath Roy

JUSTICE ANOOP KUMAR DHAND

Order

12/03/2025

Reportable

1. By way of filing of this writ petition, a challenge has been made by the petitioner to the impugned award dated 31.12.2001 passed by the Central Government Industrial Tribunal cum Labour Court, Jaipur in CGIT Case No.55/2000 by which the claim of the petitioner-workman against his termination order dated 13.08.1999 has been rejected.

2. Counsel for the petitioner submits that the petitioner was appointed as a daily wager in the office of the respondent on 10.05.1993 and he worked there continuously till 12.08.1999, but on 13.08.1999, he was orally denied to work on the said post. Counsel submits that prior to the aforesaid oral order neither any notice was given nor any compensation

was paid to him, hence, aforesaid action of the respondents amounts to violation of the provisions contained under Section 25-D, 25-F and 25-G of the Industrial Disputes Act, 1947 (for short 'the Act of 1947'). Counsel submits that the services of the petitioner were being taken continuously by the respondents prior to his oral termination and in order to avoid their responsibility to make payment on regular basis to the petitioner, his signatures were taken on various payment vouchers containing different names such as Jagga Kumar Nirman, Jankilal, Jaswant Singh, Jankiram, Bhanwarlal, Gopal Singh, Dan Singh, Ramchandra, Shyamlal, Arvind, Surendra, Nandram, Madho Singh, Jasod Singh, Chouthmal, Jagat Singh Hira Prasad Naval Kishore, Jamna Prasad etc. Counsel submits that this was the precise case of the petitioner before the Tribunal, and a request in this regard was made by the petitioner before the Tribunal for analyzing the handwriting as well as signatures of the petitioner and get an opinion from the handwriting expert in this regard or a comparison be made of his handwriting/signatures with the handwriting/signatures on the payment voucher, by the Tribunal itself. Counsel submits that the aforesaid request of the petitioner was not entertained and the impugned award has been passed by the Tribunal holding that the petitioner has failed to establish on record that he worked with the respondents continuously for a period of more than 240 days in the preceding year. Counsel submits that if the opinion of the expert could have been called before deciding the dispute by the Tribunal, the actual facts would have come on the

record, but in absence of opinion of the expert, the matter should not have been decided against the petitioner. Hence, under these circumstances, interference of this Court is warranted.

3. Per contra, learned counsel for the respondents opposed the arguments and submitted that the respondent-department is a Government organization and it will never dare or venture to do such act of taking services from the petitioner in different names with different signatures. Counsel submits that this fact was well appreciated by the Tribunal while rejecting the claim submitted by the petitioner. Counsel submits that the petitioner has failed to establish on the record that he worked with the respondent department continuously for a period of 240 days in the preceding year and that is why, the claim submitted by him was rejected by the Tribunal, while passing the impugned award, which requires no interference by this Court and the writ petition is liable to be rejected.

4. Heard and considered the submissions made at Bar and perused the material available on the record.

5. Perusal of the record indicates that the petitioner has filed a claim petition before the Tribunal that he worked with the respondents w.e.f. 10.05.1993 till 12.08.1999 and his services were terminated orally by the respondents on 13.08.1999. It was the case of the petitioner before the Tribunal that before orally terminating his services, the mandatory provisions contained under Section 25-D, 25-F and 25-G of the Act of 1947 were not followed. This was the

case of the petitioner before the Tribunal that his services were taken by the respondents under different names and different signatures were taken from him on the payment vouchers. A prayer was made by the petitioner before the Tribunal to verify this factual aspect of the matter, after getting the opinion of expert or making a comparison of the handwriting and signatures of the petitioner by the Tribunal. It appears that both the prayers made by the petitioner, were not looked into and the impugned award has been passed by the Tribunal holding that the petitioner has failed to establish on the record that he worked with the respondent organization continuously for a period of more than 240 days in the preceding year.

6. A serious and disputed fact has been brought into the notice of this Court that the work and services of the petitioner have been taken by respondents under different names and while making payment of wages, his signatures were taken under different names. This is a disputed question of fact which cannot be adjudicated by this Court under its inherent jurisdiction, contained under Article 226 of the Constitution of India. The same can be adjudicated by the Tribunal, after recording the evidence of both sides, in this regard.

7. While adjudicating the matters involving disputed handwriting and signatures, the Courts can consider expert opinions under Section 45 of the Indian Evidence Act, 1872 (for short 'the Act of 1872') but these opinions are not conclusive and should be evaluated alongside other evidence.

Though, under Section 45 of the Act of 1872, the Court can compare the disputed handwriting and signatures but relying on the Court's own comparison of signatures is not sufficient and the expert opinion is essential for fair adjudication of the matter, but at the same time, no opinion can be fomed only on such evidence, unless the same is corroborated by any other independent evidence.

8. It is relevant to extract Sections - 45 and 73 of the Act of 1872 and the same is as under:

> "45. **Opinions of experts**:- When the Court has to form an opinion upon a point of foreign law or of science, or art, or as to identity of handwriting 2 [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, 3 [or in questions as to identity of handwriting] 2 [or finger impressions] are relevant facts. Such persons are called experts.
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> Illustrations
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> (a) The question is, whether the death of A was caused by Poison.
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> The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.
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> (b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.
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> The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons

incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant."

"73. **Comparison of signature, writing or seal with others admitted or proved**.-In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

This section applies also, with any necessary modifications, to finger-impressions."

9. Section 45 of the Act, 1872, inter alia, provides that the Court can call for evidence of expert to form an opinion regarding the genuineness of signatures and handwriting which are relied on by one party and disputed by another party. It is also relevant to note that the power to seek expert opinion under Section 45 of the Act, 1872 is discretionary and

depends on facts of each case. The Court under Section 73 of the Act, 1872 can itself compare the signatures or handwriting. However, the Hon'ble Supreme Court has time and again cautioned that Court cannot act as an expert in all the cases. Unless it is glaringly clear that the signatures are same or are different, the Court should normally call for an opinion from the expert.

10. In **State (Delhi Admn.) v. Pali Ram** reported in **1979 (2) SCC 158**, the Hon'ble Supreme Court held that prudence requires that a Judge shall obtain expert opinion in the matters of comparison of handwriting. The relevant paragraph is extracted below:

> "30. The matter can be viewed from another angle, also. Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. **It is therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert.**"

11. In **Ajit Savant Majagvai v. State of Karnataka** reported in **1997 (7) SCC 110**, the Hon'ble Apex Court has

held that where there is even slightest of doubt in the mind of the Judge, while comparing the admitted and disputed signatures, such signatures shall be sent for expert opinion under Section 45 of the Act, 1872. The relevant paragraphs are extracted below:

> "37. This section consists of two parts. While the first part provides for comparison of signature, finger impression, writing etc. allegedly written or made by a person with signature or writing etc. admitted or proved to the satisfaction of the Court to have been written by the same person, the second part empowers the Court to direct any person including an accused, present in Court, to give his specimen writing or fingerprints for the purpose of enabling the Court to compare it with the writing or signature allegedly made by that person. The section does not specify by whom the comparison shall be made. However, looking to the other provisions of the Act, it is clear that such comparison may either be made by a handwriting expert under Section 45 or by anyone familiar with the handwriting of the person concerned as provided by Section 47 or by the Court itself.
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> 38. **As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of the slightest doubt, leave the matter to the wisdom of experts. But this does not mean that the Court has not the power to compare the disputed signature**

with the admitted signature as this power is clearly available under Section 73 of the Act.

12. In **Thiruvengadam pillai v. Navaneethammal,** reported in **2008 (4) SCC 530,** the Hon'ble Apex Court observed that it is risky to arrive at a conclusion regarding signatures and handwriting, without an expert opinion. The relevant paragraph is extracted below:

> "16. **<u>While there is no doubt that Court can compare the disputed handwriting/ signature/ finger impression with the admitted handwriting/signature/finger impression, such comparison by Court without the assistance of any expert, has always been considered to be hazardous and risky</u>**. When it is said that there is no bar to a Court to compare the disputed finger impression with the admitted finger impression, it goes without saying that it can record an opinion or finding on such comparison, only after an analysis of the characteristics of the admitted finger impression and after verifying whether the same characteristics are found in the disputed finger impression. The comparison of the two thumb impressions cannot be casual or by a mere glance. Further, a finding in the judgment that there appeared to be no marked differences between the admitted thumb impression and disputed thumb impression, without anything more, cannot be accepted as a valid finding that the disputed signature is of the person who has put the admitted thumb impression. Where the Court finds that the disputed finger impression and admitted thumb impression are clear and where the Court is in a position to identify the

characteristics of fingerprints, the Court may record a finding on comparison, even in the absence of an expert's opinion. But where the disputed thumb impression is smudgy, vague or very light, the Court should not hazard a guess by a casual perusal."

13. In **Ajay Kumar Parmar v. State of Rajasthan** reported in **2012 (12) SCC 406**, the Hon'ble Apex Court has held that, the Court while dealing with handwriting or signatures, cannot itself act as an Expert. The relevant paragraph is extracted below:

"28. The opinion of a handwriting expert is fallible/liable to error like that of any other witness, and yet, it cannot be brushed aside as useless. There is no legal bar to prevent the Court from comparing signatures or handwriting, by using its own eyes to compare the disputed writing with the admitted writing and then from applying its own observation to prove the said handwritings to be the same or different, as the case may be, but in doing so, the Court cannot itself become an expert in this regard and must refrain from playing the role of an expert, for the simple reason that the opinion of the Court may also not be conclusive. Therefore, when the Court takes such a task upon itself, and findings are recorded solely on the basis of comparison of signatures or handwritings. the Court must keep in mind the risk involved, as the opinion formed by the Court may not be conclusive and is susceptible to error, especially when the exercise is conducted by one, not conversant with the subject. The Court, therefore, as a matter of prudence and caution should hesitate or be slow to

base its findings solely upon the comparison made by it. However, where there is an opinion whether of an expert. or of any witness, the Court may then apply its own observation by comparing the signatures, or handwritings for providing a decisive weight or influence to its decision."

14. Therefore, by perusing the dicta in the above decisions, it can be said that the Court shall normally seek expert opinion when it is posed with a situation where it has to compare admitted and disputed signatures. The Court can refuse expert opinion only when no doubt exists regarding the genuineness of the signatures, after comparison of the admitted and disputed signatures. In cases where even a slightest doubt exists, the Court shall send the admitted and disputed signatures getting expert opinion under Section 45 of the Act, 1872.

15. Since, an opinion of the handwriting expert is required in the instant matter to verify the fact that whether the petitioner or the respondent is telling correct facts, in the considered opinion of this Court, the matter requires to be remitted to the Tribunal for its fresh adjudication, after getting opinion of the handwriting expert.

16. In view of the above, the impugned award dated 21.12.2001 stands quashed and set aside. The matter is remitted to the Tribunal with direction to get opinion of the handwriting expert with regard to the handwriting and signatures of the petitioner on the payment vouchers of wages and after getting opinion of the expert, it is expected from the Tribunal to decide and adjudicate the matter on the

merits, on the basis of the evidence led by both the sides, expeditiously, as early as possible, preferably within a period of one year from the date of appearance of the parties, before the Tribunal. The parties are directed to appear before the Tribunal on 09.04.2025.

17. In view of the above, the instant writ petition stands disposed of. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR DHAND),J

KuD/16