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

Date of decision: 22.03.2024

\+ LPA 242/2024, CM APPL.18228/2024 (stay), CM APPL.18229/2024 (delay of 50 days) & CM APPL. 18230/2024 (exemption)

\+ LPA 243/2024, CM APPL.18232/2024 (stay), CM APPL.18233/2024 (delay of 50 days) & CM APPL. 18234/2024 (exemption).

\+ LPA 244/2024, CAV 150/2024, CM APPL.18238/2024 (stay), CM APPL.18239/2024 (delay of 50 days) & CM APPL. 18240/2024 -Ex.

\+ LPA 245/2024, CM APPL.18245/2024 (stay), CM APPL.18246/2024 (delay of 50 days) & CM APPL. 18247/2024 (exemption).

\+ LPA 246/2024, CM APPL.18251/2024 (stay), CM APPL.18252/2024 (delay of 50 days) & CM APPL. 18253/2024 (exemption).

THE DIRECTOR GENERAL, DELHI DOORDARSHAN KENDRA
..... Appellant

Through: Ms.Shruti Sharma & Mr.Aman Kumar Singh, Advs.

versus

MOHD SHAHBAZ KHAN
TEJ PAL
MANOHAR PASWAN
DANVIR
HANS RAJ
..... Respondents

Through: Mr.Sanjoy Ghose, Sr. Adv. with Mr.Prakhar Bhatnagar & Mr.Rohan Mondal, Advs.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

REKHA PALLI, J (ORAL)

1. The present batch of appeals under Clause X of the Letters Patent

seek to assail five similar orders, all dated 12.12.2023 passed by the learned Single Judge in a batch of writ petitions including W.P.(C) 2085/2008. Vide the impugned order, the learned Single Judge has rejected the appellant's challenge to the award dated 15.10.2007 passed by the learned Industrial Tribunal (Tribunal), wherein the learned tribunal after holding that the termination of the respondents' service by the appellant was illegal, has directed the appellant to reinstate them with 25% back wages.

2. In support of the appeals, learned counsel for the appellant submits that the impugned order is wholly perverse as both the learned Tribunal as also the learned Single Judge have failed to appreciate that the respondents were never employed with the appellant but had in fact, been engaged by one M/S Navnidh Carriers who was engaged by the appellant on 31.07.1998, to provide manpower services as and when required. She further submits that the learned Tribunal has not even examined as to whether the respondents had completed 240 days of continuous service in the year immediately preceding their termination, which aspect the learned Single Judge also over looked. Finally, she submits that instead of placing the onus to prove the existence of an employer-employee relationship on the respondents, the learned Single Judge has wrongly shifted the said onus on the appellant. She, therefore, prays that the impugned order as also the industrial award be set aside.

3. On the other hand, learned senior counsel for the respondents, who appears on advance notice, supports the impugned orders and submits that the learned Tribunal has, as a matter of fact, found that the respondents had been working with the appellant/organisation much prior to 31.07.1998, i.e,

the date when the appellant had, with *malafide* intention, engaged M/S Navnidh Carriers for providing manpower services and therefore, it was evident that the respondents had initially been engaged by the appellant itself. He also draws our attention to the experience certificate dated 13.07.1999 issued by the appellant to one of the respondents wherein it has been categorically stated that he had been working with the appellant as a casual labourer since July 1997 and was an honest and hard working worker. He finally contends that since the appellant admittedly does not have any licence to engage workmen through a contractor as is mandated under the Contract Labour (Regulation and Abolition) Act, 1970 (the CLRA Act), it is evident that the respondents were to be treated as employees of the appellant itself. He, therefore, prays that the appeals be dismissed.

4. Before dealing with the rival submissions of learned counsel for the parties, we may note that the appeals are barred by limitation and though applications seeking condonation of 50 days delay in filing the appeal have been filed along with the appeals. However, since we have heard the learned counsels for the parties on merits, we do not deem it necessary to delve into the merits of these applications.

5. Now coming to the merits of the appeal, we may begin by noting the relevant extracts of the impugned award dated 15.10.2007 wherein the learned Tribunal has given its findings regarding the existing factual position by appreciating the evidence lead by both sides. The relevant extracts thereof read as under:-

> "*It also transpires from perusal of the documents that the management has given work order to M/s. Surabhi Transport Agency & thereafter M/s. Fleet Owner &*

Transport Carriers. The work is discharged on the basis of work order given to M/s. Surabhi Transport Agency & thereafter M/s. Fleet Owner & Transport Carriers. These Transport Carriers have no licence for supply of workers. They are transport agencies. In the circumstances the management has introduced their names to conceal the engagement of the workmen as daily wagers.

In case contract becomes sham & ruse there is employer - employee relationship between the management and the workmen. The workmen have been issued gate passes by the management directly. The workman Sh. Manohar has worked from 27.03.1996 till 01.02.2001. The workmen Sh. Dhanvir has worked from 06.11.1996 to 2001, Sh. Tej Pal has worked from 02.08.1998 to 2001 & Sh. Shahbaz has worked from 01.12.1998 to 02.01.2001. All these workmen have discharged more than 240 days work during the tenure of their engagement. They are direct casual daily wagers of the management and they are entitled to retrenchment compensation in view of section 25 F of the ID Act, 1947 and the documents of the aforesaid three carriers have been created to conceal the real fact of their engagement as casual labours. The management has issued letters treating them as casual labours. Thus, it is established by cogent documentary evidence as well as oral evidence that Sh. Manohar worked from 27.03.1996 till the date of his retrenchment, Sh. Dhanvir worked from 06.11.1996 till his retrenchment, Sh. Hans Raj worked from 1997 & Sh. Shahbaz & Tej Pal worked from 1998. All these workmen have worked continuously and they have completed 240 days in every year.

It has been held in 2005 IX AD (S.C) 261 AS UNDER:-

Daily waged earners are not regular employees. They are not given letters of appointments. They are not given letters of termination. They are not given· any written documents which they could produce as proof of receipt of wages.

Their muster rolls are maintained in loose sheets. Even in cases, where registers are maintained by the government departments, the officers/clerks making entries do not put their signatures. Even where signatures of clerks appear, the entries are not countersigned or certified by the appointing authorities."

In case of daily wagers, the management takes every effort to conceal the documents regarding the engagement. The workmen are constrained to file photocopies which they have obtained somehow or the other.

In the instant case the workmen have filed photocopies gate passes which have not been denied by the management. These gate passes relate to 1996, 1997 & 1999. The workmen can at best file photocopies of gate passes as the management takes gate passes while issuing the other gate passes. There is no explanation as to how the gate passes have been issued to these workmen in 1996 & 1997 whereas M/s Navnidh Carriers was given work order from 31.07.1998. Ex. WW1/24, Paper No. B - 52 is a document of the management, it has been signed by Asstt. Station Director. The workmen have been shown as casual daily wagers. The workmen have been issued Identity Cards signed by Security Officer. These documents are no doubt photocopies but the originals cannot be said to be in the possession of the workmen & the management will always say that the originals are not available. The gate passes bear numbers & the photocopies have not been denied. These photocopies under the circumstances are admissible in evidence.

The workmen have been working as daily wagers prior to their engagement through M/s. Navnidh Carriers. The management has not been able to explain as to why gate passes have been issued to these workmen in 1996 - 1997 & prior to 31.07.1998. It appears that M/s. Navnidh Carriers was introduced to conceal the engagement of these daily

wagers. Engagement of the workmen through Carriers is also illegal, so in the facts and circumstances of the case there is employer-employee relationship between the management & the workmen.

The management has engaged the other carriers just as M/s. Surabhi Transport Agency & thereafter M/s. Fleet Owner & Transport Carriers for supply of workmen on work order basis after removal of these workmen. The work is still going on. The work is of continuous and regular nature. In the circumstances it was necessary for the management to maintain muster roll register of daily wages employees. The workmen are the daily wagers of the management and they have performed more than 240 days work during the years of their engagement.

This issue is decided accordingly."

6. Having noted the findings of fact recorded by the learned Tribunal on the basis of evidence lead before it by both sides, we may now refer to the relevant extracts of the impugned order, which read as under:-

"*51. As per the material on record, the employment of the respondent workers started at different times, but even before the petitioner entered into a contract with M/s Navnidh Carriers i.e. the year 1998, hence, this Court is satisfied that there existed a relationship between the parties even before M/s Navnidh Carriers entered into the scenario.*

52. Furthermore, the issuance of gate passes might not always result in establishment of employee-employer relationship, however, the other material evidence such as the appreciation letter issued directly by the petitioner is a compelling piece of evidence regarding existence of such a relationship

* * * *

> *57. The abovesaid provision of the ID Act clarifies that the disputes referred to the Industrial Tribunal would be considered as Industrial Dispute. Consequently, for a dispute to be referred to the Tribunal, the presence of an employer-employee relationship is assumed and the onus is on the employer to demonstrate the absence of such a relationship. Unless the employer provides substantial evidence refuting the fulfilment of the same, the presumption of an employee-employer relationship remains in place.*
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> *58. In the present case, the engagement of the respondent workmen prior to the year of engagement of the contractor, issuance of gate passes to the workmen by the petitioner and issuance of the appreciation letter are relevant for determining the existence of an employee-employer relationship between the parties. Therefore, this Court does not find any infirmity with the findings of the lean1ed Tribunal as the circumstantial evidence is sufficient to establish the direct relationship of an employee employer between the parties.*
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> *59. In light of the foregoing discussions, this Court is of the view that the petitioner has failed to highlight any infirmity and illegality with the findings of the learned Tribunal. The factual matrix and the circumstantial evidence, as relied upon by the learned Tribunal do establish a relationship of such a nature where the petitioner was solely in control of the functioning of the respondent workmen and thereby directly terminated their employment.*"

7. From a perusal of the aforesaid, we find that the learned Tribunal as also the learned Single Judge, after taking into account the gate passes issued to the respondents by the appellant in the years 1996, 1997 & 1999 as also experience letter dated 13.07.1999 issued by the appellant to one of the respondents, which categorically states that he was engaged with the

appellant since 1997, have come to a conclusion that the respondents were employed with the appellant/organisation and had been illegally terminated. Further both the learned Single Judge as also the learned Tribunal found upon appreciation of evidence that the purported contract by the appellant in favour of M/s Navnidh Carriers was sham and an attempt to conceal the engagement of the respondents with the appellant.

8. In fact, at the insistence of the learned senior counsel for the respondent we have also perused the experience letter dated 13.07.1999 and find that the same clearly shows that the respondents were directly employed with the appellant much before the date when the contract with M/s Navnidh was entered into, i.e, 31.07.1998. Despite her best efforts, learned counsel for the appellant has not been able to give any explanation whatsoever for the issuance of the said experience certificate if the respondent namely Mohd. Shahbaz Khan was not their employee. We also find merit in the respondents' plea that since the appellant did not have any licence, as mandated under the CLRA Act, 1970, to engage workmen through a contractor, it is evident that they were directly engaged by the appellant.

9. In the light of these categoric factual findings by the learned Tribunal, which cannot, in any manner, said to be perverse or contrary to the evidence lead before the learned Tribunal, we are of the view that it was neither open for the learned Single Judge to interfere with these findings in exercise of its writ jurisdiction nor is it open for this Court to examine these questions of fact. In this regard it may be apposite to refer to a recent decision of a co-ordinate Bench in ***Dinesh Kumar v. Central Public Works Department, 2023 SCC OnLine Del 6518*****,** wherein the co-ordinate Bench after

examining various decisions of the Apex Court held that writ Court can interfere with the factual findings of fact recorded in the industrial award only if the same are perverse or are entirely unsupported by evidence. The relevant extracts thereof read as under:-

> *"11. The Hon'ble Supreme Court in paragraph 17 of the judgment in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union, (2000) 4 SCC 245, has held as under:*
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> *"17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken… ... The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one's own, altogether giving a complete go-by even to the facts specifically found by the Tribunal below."*
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> *12. The Hon'ble Supreme Court in the aforesaid case has held that the findings of fact recorded by a fact finding authority (Tribunal) duly constituted for the purpose becomes final unless the findings are perverse or based*

upon no evidence. The jurisdiction of the High Court in such matters is quite limited.

13. The Hon'ble Supreme Court has taken a similar view in Hari Vishnu Kamath v. Ahmed Ishaque, AIR 1955 SC 233, inter alia held as under:

> *"21. ... On these authorities, the following propositions may be taken as established : (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Certiorari will also be issued when the court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard or violates the principles of natural justice. (3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous. This is on the principle that a court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy if a superior court were to rehear the case on the evidence and substitute its own findings in certiorari. These propositions are well-settled and are not in dispute.*
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> *23. It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. ... The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there*

being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case."

14. In Dharangadhara Chemical Works Ltd. v. State of Saurashtra, 1957 SCR 152, the Supreme Court, once again observed that where the Tribunal having jurisdiction to decide a question comes to a finding of fact, such a finding is not open to question under Article 226, unless it could be shown to be wholly unsupported by evidence.

15. In Management of Madurantakam Coop. Sugar Mills Limited v. S. Viswanathan, (2005) 3 SCC 193, the Apex Court, held that the Labour Courts/Industrial Tribunals as the case be is the final court of facts, unless the same is perverse or not based on legal evidence, which is when the High Courts can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is imperative that the High Court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect, the writ court will not enter the realm of factual disputes and finding given thereon.

17. The Hon'ble Supreme Court has in the aforesaid case again dealt with scope of interference by High Court in respect of finding of fact arrived at by Tribunals and in light of the aforesaid judgment, the question of interference by this Court does not arise.

18. The Hon'ble Supreme Court in State of Haryana v. Devi Dutt, (2006) 13 SCC 32, has held that the writ Court can interfere with the factual findings of fact only if in case the Award is perverse; the Labour Court has applied wrong legal principles; the Labour Court has posed wrong questions; the Labour Court has not taken into consideration all the relevant facts; or the Labour Court has arrived at findings based upon irrelevant facts or on extraneous considerations.

> *19. In the present case, the Labour Court has arrived at a conclusion based upon the evidence adduced by the parties and the learned Single Judge has affirmed the findings of fact again after minutely scanning the entire evidence, and therefore, the question of interference by this Court does not arise."*

10. In the light of the aforesaid, we find absolutely no reason to interfere with the concurrent findings of fact arrived at by the learned Tribunal and the learned Single Judge to hold that the respondents were engaged by the appellant and were illegally terminated.

11. The appeals being meritless are, along with all pending applications, dismissed.

(REKHA PALLI)
JUDGE

(DR. SUDHIR KUMAR JAIN)
JUDGE

MARCH 22, 2024
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