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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 4080/2011 & C.M. No. 8444/2011 (for stay)**

EVERGREEN PACKAGING INDUSTRIES Petitioner
 Through: Mr. A.P. Dhamija & Mr. J.P. Singh, Adv
 versus
 BIJENDER KUMAR Respondent
 Through: Mr. Arun K. Yadav, Advocate.

+ **W.P.(C) 4081/2011 & C.M. No. 8447/2011 (for stay)**

EVERGREEN PACKAGING INDUSTRIES Petitioner
 Through: Mr. A.P. Dhamija & Mr. J.P. Singh, Adv
 versus
 RAJU Respondent
 Through: Mr. Arun K. Yadav, Advocate.

+ **W.P.(C) 4082/2011 & C.M. No. 8450/2011 (for stay)**

EVERGREEN PACKAGING INDUSTRIES Petitioner
 Through: Mr. A.P. Dhamija & Mr. J.P. Singh, Adv
 versus
 DINESH KUMAR Respondent
 Through: Mr. Arun K. Yadav, Advocate.

+ **W.P.(C) 4189/2011 & C.M. No. 8623/2011 (for stay)**

EVERGREEN PACKAGING INDUSTRIES Petitioner
 Through: Mr. A.P. Dhamija & Mr. J.P. Singh, Adv
 versus
 VIKAL SINGH Respondent
 Through: Mr. Arun K. Yadav, Advocate.

CORAM:**HON'BLE MR. JUSTICE VIPIN SANGHI****ORDER****07.01.2013**

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For detailed orders in these cases, see connected writ petition being W.P.(C)
 No.4079/2011 decided on 07.01.2013.


VIPIN SANGHI, J.

JANUARY 07, 2013

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 4079/2011 & C.M. No. 8441/2011 (for stay)
(arising out of Award in ID No. 02/08)

EVERGREEN PACKAGING INDUSTRIES Petitioner
Through: Mr. A.P. Dhamija & Mr. J.P. Singh,
Advocates.

versus

SONE LAL Respondent
Through: Mr. Arun K. Yadav, Advocate.

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W.P.(C) 4080/2011 & C.M. No. 8444/2011 (for stay)
(arising out of Award in ID No. 04/08)

EVERGREEN PACKAGING INDUSTRIES Petitioner
Through: Mr. A.P. Dhamija & Mr. J.P. Singh,
Advocates.

versus

BIJENDER KUMAR Respondent
Through: Mr. Arun K. Yadav, Advocate.

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W.P.(C) 4081/2011 & C.M. No. 8447/2011 (for stay)
(arising out of Award in ID No. 03/08)

EVERGREEN PACKAGING INDUSTRIES Petitioner
Through: Mr. A.P. Dhamija & Mr. J.P. Singh,
Advocates.

versus

RAJU Respondent
Through: Mr. Arun K. Yadav, Advocate.

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+ W.P.(C) 4082/2011 & C.M. No. 8450/2011 (for stay)
(arising out of Award in ID No. 01/08)

EVERGREEN PACKAGING INDUSTRIES Petitioner
Through: Mr. A.P. Dhamija & Mr. J.P. Singh,
Advocates.
versus

DINESH KUMAR Respondent
Through: Mr. Arun K. Yadav, Advocate.

+ W.P.(C) 4189/2011 & C.M. No. 8623/2011 (for stay)
(arising out of Award in ID No. 05/08)

EVERGREEN PACKAGING INDUSTRIES Petitioner
Through: Mr. A.P. Dhamija & Mr. J.P. Singh,
Advocates.
versus

VIKAL SINGH Respondent
Through: Mr. Arun K. Yadav, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
07.01.2013

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1. The aforesaid writ petitions have been preferred to assail the similar awards passed on the same day, i.e., 16.12.2010 in industrial disputes raised by the respondents in these petitions, the details whereof have been indicated hereinabove. The petitioner-management in all these petitions is the same. The claim raised by the respondents-workmen is similar, and the issues raised by them also being similar, they have been disposed of by the

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similar orders by Sh. Daya Prakash, Presiding Officer of the Labour Court. Common arguments have been advanced by both counsel and, consequently, these petitions are being disposed of by this common judgment.

2. The claim of each of the respondents was that they have been working with the petitioner-management continuously for a number of years. The petitioner is engaged in the manufacture of corrugated boxes. The case of each of the respondents was that they were not being paid wages prescribed by law, and were not being given the benefits to which they were entitled as per law. They claimed that when they raised their demand for compliance of the various laws relating to workmen, the petitioner-management removed them without complying with the provisions of Section 25 F of the Industrial Disputes Act, 1947 (I.D. Act for short). The respondents preferred direction petitions before the Labour Court by resort to Section 10(4A) of the I.D. Act as applicable to Delhi.

3. In respect of each of the respondents the petitioner disputed that they were ever employed by them. Consequently, on 25.11.2008, the Labour Court framed the issue whether there is any relationship of employee and employer between the claimants/workmen and the petitioner herein. In each of these cases, the respondents-workmen filed their affidavits along with documentary evidence that they sought to produce. Two of the workmen, viz. Sonelal (Respondent in W.P.(C.) No. 4079/2011) and Vikal Singh (respondent in W.P.(C.) No. 4189/2011) filed their respective Electoral Photo Identity Cards (EPIC), which showed their address as A-782, Shastri Nagar, Delhi – 52. This was the address of the petitioner-management as given by the respondents in their claim petition. The petitioner led the

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evidence of Sh. Hanuman Prasad Singh, Manager as MW-1.

4. The case of the petitioner was that the respondents were known to Sh. Hanuman Prasad Singh, as they hailed from the same native village as Sh. Hanuman Prasad Singh. Out of sympathy, Sh. Hanuman Prasad Singh had allowed the respondents to use the address of A-782, Shastri Nagar, Delhi – 52, where he was residing (in accommodation provided by the management), as the respondents' postal address and the address in their EPIC. The case of the petitioner was that the EPICs by themselves will not establish the employer-employee relationship between the petitioner and the respondents. During the cross-examination of Sh. Hanuman Prasad Singh, MW-1, he stated that the management maintains record of all the workers employed in the management and that he could produce the same in Court.

5. The Labour Court by the impugned awards has held that the respondents had been able to establish the employer-employee relationship. While coming to this conclusion, the Labour Court held that: not one, but five different persons were showing the same residential address in their EPICs and there was no reason for Sh. Hanuman Prasad Singh to give the address of the petitioner to the said five persons/claimants before the Labour Court. Consequently, the case of the petitioner-management on this account was doubted. The Labour Court also was influenced by the fact that, despite the statement of the management that they were maintaining the records, they had not produced the Attendance Register and the Wage Register. The Labour Court held that if the respondents were not working with the management, then the management could have produced the said registers to clear the doubt, if any. Adverse inference was drawn for not producing the

said registers against the petitioner. Consequently, the Labour Court held that the employer-employee relationship stood established and awarded lump-sum compensation of Rs.70,000/- to each of the respondents.

6. The submission of learned counsel for the petitioner before this Court is that the onus to prove the existence of relationship between the employer and the employee is on the employee/workman. In this respect he relies on *Prem Nath Yadav Vs. Chandra Bose & Ors.*, 174 (2010) DLT 352. It is, therefore, argued that the Labour Court was in error in drawing the adverse inference against the petitioner merely on account of non-production of the records. It is also argued that the respondents took no steps either to produce any cogent evidence or to summon the records of the petitioner before the Labour Court.

7. On the other hand, learned counsel for the respondents has drawn the attention of this Court to the order dated 03.06.2011 passed in one of these petitions, namely W.P.(C.) No.4189/2011. I consider it appropriate to reproduce the order in its entirety:

"1. The petition impugns the award dated 16th December, 2010 of the Industrial Adjudicator finding a relationship of employer and employee between the petitioner and the respondent and directing the petitioner employer to pay lump sum compensation of Rs.70,000/- to the respondent workman for illegal termination of employment.

2. The petitioner employer contested the claim by denying the relationship of employer and employee. The Industrial Adjudicator has recorded that the respondent workman except for his own affidavit could not produce any proof of employment. However, the Industrial Adjudicator has, on page

26 of the paper book, drawn adverse inference against the petitioner employer for not producing the attendance register and wage register and accordingly returned a finding of fact of existence of relationship of employer and employee.

3. Attention of the counsel for the petitioner has been invited to the recent dicta of the Supreme Court in **Krishna Bhagya Jala Nigam Vs. Mohammed Rafi** (2009) 11 SCC 522 laying down that a casual worker is not expected to have a appointment letter or any receipt of having worked for any particular day and though the initial onus is upon him but the same stands discharged by stating so on affidavit and the onus then shifts on the employer to establish that the name of the workman does not exists on the rolls maintained by it. In this view of the matter, the present controversy would be fully covered by the judgment aforesaid. A perusal of the cross examination of the witness of the petitioner employer (at page 41 of the paper book) also shows that the respondent workman expressly cross examined the witness of the petitioner employer on the said aspect.

4. The counsel for the petitioner has however contended that no direction for such production was made.

5. Once the witness of the petitioner employer had been cross examined to draw adverse inference, it was the duty of the petitioner employer to produce the said records either by examining other witness or otherwise by making an application to the Court. Reference in this regard can also be made to Section 106 of the Evidence Act, 1872 laying down that where the facts / record are in the exclusive knowledge of a particular person, the onus is upon that person to prove the same.

6. The counsel for the petitioner has referred to **Prem Nath Yadav Vs. Chandra Bose** 174 (2010) DLT 352 but in view of the dicta aforesaid of the Apex Court, need is not felt to discuss the said judgment.

7. Though no case for interference is made out but the counsel for the petitioner has lastly stated that in other four writ petitions against identical awards being W.P.(C) Nos.4079/2011 to 4082/2011 listed before Hon'ble Ms. Justice Rekha Sharma today, notice has been issued for 13th September, 2011 and stay granted subject to the petitioner depositing 50% of the awarded amount in the Court.

8. Accordingly, issue notice of this petition also by all modes including dasti returnable on 13th September, 2011.

9. Subject to the petitioner depositing 50% of the awarded amount in this Court within four weeks of today, there shall be stay of operation and implementation of the award.

10. Subject to orders of Hon'ble the Chief Justice, list all the five petitions before the same Bench on the next date.

11. The record of the Industrial Adjudicator be requisitioned. CM No.8624/2011 is disposed of.

CM Nos.8625/2011 and 8626/2011 (both u/S 151 CPC for exemption)

Allowed, subject to just exceptions."

8. Learned counsel for the respondents submits that the address of the petitioner as given in his claim petition was A-782, Shastri Nagar, Delhi – 52. The petitioner-management did not controvert that this was not their address. He submits that since the respondents were using the said address, there is sufficient evidence to establish the relationship of employer & employee between the parties. He submits that once the respondents stepped into the witness box and led their evidence categorically claiming

that they had been working as employees of the petitioner-management, the initial onus on the workman stood discharged.

9. In his rejoinder, learned counsel for the petitioner has pointed out that the order dated 03.06.2011 passed by the Court in W.P.(C.) No. 4189/2011 is not a final view in the matter, and it merely recorded the prima-facie view of the Court. He submits that a perusal of the judgment of the Supreme Court in **Krishna Bhagya** (supra) would show that the Supreme Court, in fact, allowed the petition of the management and once again put its stamp of approval on the earlier consistent view taken by it, that the mere non-production of the records by the management cannot lead to the drawing of adverse inference against the management while deciding the issue as to whether or not the employer-employee relationship exists between the parties.

10. Having heard learned counsel for the parties and considered the records as well as the decisions cited before me, it appears to me that the Court while passing the order dated 03.06.2011 had only made a prima-facie observation in relation to the judgment of the Supreme Court in **Krishna Bhagya** (supra). The petitioner had only been put to notice of the said judgment. However, the petitioner did not have the occasion to go through the same and make its submissions as made today before me. Learned counsel for the petitioner has been able to point out to me the real import of the judgment in **Krishna Bhagya** (supra) which, it appears, was missed by the Court while passing the order dated 03.06.2011. A detailed consideration of the said judgment shows that in that case also the termination of the services was challenged before the Labour Court by filing

an application under Section 10(4-A) of the I.D. Act. The same was contested by the Jala Nigam on the same ground, as in this case, that there was no relationship of employer and employee between the parties. However, this stand of the Jala Nigam was not accepted and the award was rendered by the Labour Court in favour of the workman. The award was challenged by the Jala Nigam in W.P. No. 40822/1999. The same was heard along with various other writ petitions and disposed of by a common order. While in the other cases there was a considerable delay in raising the industrial dispute, and the workman in those cases were non-suited on that ground, in the case of the workman in W.P. No.40822/1999, the learned Single Judge set aside the award of the Labour Court holding that there was no evidence to establish that the workmen had ever been in the service of the Jala Nigam. He held that the workman had not discharged the initial onus of proving that he had worked for more than 240 days with the Jala Nigam. The writ petition was allowed and the award of the Labour Court was set aside.

11. A writ appeal was preferred by the workman before the Division Bench, which was allowed. Consequently, the award was restored. The management then preferred the Special Leave Petition before the Supreme Court, which has been allowed by the judgment in *Krishna Bhagya* (supra), thereby setting aside the judgment of the Division Bench and restoring the view taken by the learned Single Judge.

12. The Supreme Court in *Krishna Bhagya* (supra) has adverted to its earlier decisions in *RBI Vs. S. Mani*, (2005) 5 SCC 100; *Batala Cooperative Sugar Mills Limited Vs. Sowaran Singh*, (2005) 8 SCC 481;

Surendranagar Distt. Panchayat Vs. Dahyabhai Amarsinh, (2005) 8 SCC 750; *Range Forest Officer Vs. S.T. Hadimani*, (2002) 3 SCC 25; *Municipal Corporation, Faridabad Vs. Siri Niwas*, (2004) 8 SCC 195; *M.P. Electricity Board Vs. Hariram*, (2004) 8 SCC 246; and the judgment in *R.M. Yellatti Vs. Executive Engineer*, (2006) 1 SCC 106.

13. In *R.M. Yellatti* (supra), the Supreme Court observed that the provisions of the Evidence Act, in terms, do not apply to the proceedings under Section 10 of the Industrial Disputes Act, 1947. However, applying general principles and on reading of the earlier decisions, the Supreme Court held that it had repeatedly taken the view that the burden of proof is on the claimant/workman to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there would be no letter of appointment or termination. There would be no receipt or proof of payment. Thus in most cases, the workman can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. It was also observed that the earlier decisions make it clear that mere affidavits or self-serving statements made by the claimant/workman would not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. It was also observed that the earlier decisions lay down that mere non-production

of muster rolls per se without any plea of suppression by the claimant/workman will not be the ground for the Tribunal to draw an adverse inference against the management.

14. In the present case, ^{the} management's witness did state that they maintain the records in relation to their workmen/employees and that the same could be produced. It is not the respondents' case that they moved the Labour Court requiring the petitioner-management to produce the said record. This being the position, and following the aforesaid dictum, in my view, no adverse inference could have been drawn against the petitioner-management merely because the management, of its own accord and voluntarily, did not produce the said record. It would have been a different matter if, either at the instance of the respondents-workmen, or on its own, the Labour Court had directed the petitioner-management to produce the records and the management had failed or refused to produce the same without any explanation for the same. That is not the position in the present cases.

15. So far as the evidence produced by the respondents is concerned, as noticed above, the same primarily is the EPIC of two of them, which show their address as A-782, Shastri Nagar, Delhi - 52. In the case of the other workmen, they had only produced the legal notice stated to have been sent along with the postal receipts/UPC.

16. So far as the address given on the EPIC for the aforesaid two respondents is concerned that, in my view, is not enough to establish that the said respondents were employed with the petitioner-management. It has come out in the cross-examination of both these workmen that A-782,

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Shastri Nagar, Delhi – 52 consists of residential rooms and that Sh. Hanuman Prasad Singh, the manager of the petitioner-management resides at the said address. The aforesaid evidence of these two respondents viz. their EPIC, at best, shows that A-782, Shastri Nagar, Delhi – 52, which was either a wholly residential accommodation provided by the management or may be a mixed use premises, was shown as the postal address by these two workmen. The case of the management was that Sh. Hanuman Prasad Singh was known to these workmen as they hailed from the same village and, out of sympathy, he had permitted them to furnish the said address for postal purpose and for the purpose of making the EPIC. No evidence to the contrary was led by these workmen. The production of the EPICs, by itself, does not establish the existence of an employer and employee relationship between the petitioner-management and these workmen. The observation of the learned Labour Court that in all the five cases, the EPICs have been produced with the same address is factually not correct. In my view, the finding that the respondents in these petitions had established the employer-employee relationship is completely erroneous and stems out of incorrect application of the law.

17. For the aforesaid reasons, the writ petitions are allowed and the impugned awards are set aside leaving the parties to bear their own Costs. The amounts deposited by the petitioner in the aforesaid cases be refunded to the petitioner along with interest accrued thereon.



VIPIN SANGHI, J.

JANUARY 07, 2013
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