

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P. (C) 8570/2007**

Judgment reserved on : 24.08.2017

Date of decision : 09.05.2019

SHRI BANSI BAHADUR SINGH Petitioner
Through: Mr. Sanjoy Ghose, Ms. Urvi
Mohan, Mr. Rhishabh Jetley,
Advocates.

versus

M/S KARTAR SINGH SIRA & SONS Respondents
Through: Mr. Vikas Nagpal, Advocate.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner Shri Bansi Bahadur Singh s/o Shri Uday Raj Singh vide the Writ Petition (C) No.8570/2007 seeks the setting aside of the award dated 02.02.2007 of the learned Presiding Officer, Labour Court-X, KKD, Delhi in ID No.2319/1995, vide which the reference made by the appropriate Government vide Reference No.F.24(2960)/92-Lab dated 15.10.1992 referred to the learned Labour Court-X for adjudication to the effect:

“Whether Shri Bansi Bahadur Singh left the job after full and final settlement or his services have been terminated illegally and/ or unjustifiably by the management and if so what directions are necessary in this respect?”

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was answered to the effect that the workman i.e. the petitioner herein had never been employed by the management of M/s Kartar Singh Sira & Sons and that there was no question of illegal termination of the services of the petitioner and that thus there had been no illegal termination of the services of the petitioner herein by the management, though, it was also held vide the said award to the effect that the management had neither pleaded nor led any evidence that the workman had left the job after full and final settlement as was one part of the reference made vide the reference hereinabove as made by the appropriate Government.

2. The petitioner seeks to contend that he was an employee of the respondent who was in the furniture business and that he had joined the respondent/ M/s Kartar Singh Sira & Sons as a salesman in the year 1986 on a monthly salary of Rs.850/-; that the proprietor of the respondent was one Shri Bakshish Singh who had got an ESI Card issued in favour of the petitioner but that on 07.12.1991, the respondent forcibly obtained the resignation of the petitioner and refused employment to him; that the respondent had made the petitioner sign on some blank papers and vouchers pursuant to which a legal demand notice dated 18.12.1991 was effected by the petitioner through his union i.e. Rashtriya General Mazdoor Union and a report dated 23.12.1991 was given by the Labour Inspector to the Rashtriya General Mazdoor Union; that the respondent had refused to reinstate the petitioner.

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3. It has been submitted by the petitioner through the petition that it was not recorded in the report of the Labour Inspector that the petitioner was never an employee of the respondent and that before the Conciliation Officer, the respondent had taken the stand that the petitioner had left his job after full and final settlement, which had been refuted by the petitioner herein and that a reference was thus made on 15.10.1992 by the appropriate Government.
4. The petitioner through his statement of claim dated 14.04.1993 reiterated his contentions of having been forced to resign on 07.12.1991 by the respondent qua which his signatures had been taken allegedly on a blank paper and vouchers on 12.12.1991.
5. The respondent through its written statement denied the existence of any employer-employee relationship between the parties and denied that any Labour Inspector visited the management.
6. Issues were framed on 25.09.1998 by the learned Labour Court to the effect:
*"i. Whether there exists no relationship of employer and employee between the parties?
ii. Whether the respondent is not an industry?
iii. As per terms of reference."*
7. The petitioner filed his affidavit for examination-in-chief and was subjected to cross-examination in which he stated that he was working with the respondent and used to prepare cabinets for televisions. The petitioner also testified that an ESI Card had been given to him by the respondent. The petitioner through cross-

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examination admitted that after his termination, he worked with another establishment from 1994 to 2001.

8. Shri Gurdeep Singh was produced as MW-1 on behalf of the respondent/ management and tendered his affidavit as Ex.MW1/A through which he supported the version put forth by the management in the written statement.

9. The learned Labour Court vide its impugned award dated 02.02.2007 gave its findings on the issues as under:

Issue No.1

The case of the workman is that, he was working with the management for the last five years as 'Sales-man' and was drawing salary of Rs. 850/- per month. On the other hand, the case of the management is that the workman was not in the employment of the management. The Hon'ble Supreme Court of India in a case reported as "2004 LLR 351" has held as under:

"BURDEN OF PROOF – For existence of relationship of employer and employee - It is well settled principle of law that the person who sets up a plea of its existence – The burden would lie upon him."

In view of the above referred judgement, the onus to prove this issue is upon the workman. The workman in order to prove this issue has examined himself as WW1 and filed his affidavit. Ex. WW1/A. In his affidavit Ex. WW1/A, the workman has stated that he was working with the management for the last five years as Salesman for a monthly salary of Rs. 850/-. The workman has also filed documents Ex. WW1/1 to Ex. WW1/6. Ex. WW1/1 is ESI Card in the name of the workman. Ex. WW1 /2 is a letter

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written by the General Secretary of the Union to the Labour Officer. Ex. WW1/3 is the report of the Labour Inspector. Ex. WW1/4 is the letter written by the workman to the management. Ex. WW1/5 is the postal receipt and Ex. WW1/6 is the acknowledgement card.

The Hon'ble Madhya Pradesh High Court (Indore Bench) in a judgment reported as "2001 (88) FLR 230" has held as under :

"To prove a contract of employment, there has to be a direct evidence to show some nexus between the claimant and the respondent. This can be of any kind such appointment letter, monthly payment slip, deduction of PF, payment of any dues which would show that he was in the employment, any correspondence wherein the respondent has admitted that claimant was in his employment. In substance, the courts are in favour of documentary evidence to record a definite finding on such type of issue. They are the best piece of evidence for coming to a conclusion one way or other."

The Hon'ble Delhi High Court in a judgment reported as "130 (2006) DLT 160" has held as under :

"Labour Law - Engagement and appointment in service can be established directed by existence and production of appointment letter, written agreement or by circumstantial evidence of incidental and ancillary records, in nature of attendance register, salary registers, leave records, deposit of PF contribution, ESI, etc."

As discussed above, in this case, the workman has filed six documents. Out of these, only 2 documents i.e. report of the Labour Inspector which is Ex. WW1/3 and the ESI card which is Ex. WW1/1 are the documents which can

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show that the workman was in the employment of the management. As regards the report Ex. WW1/3 of the Labour Inspector is concerned, I am of the view that the same has not been proved in accordance with law because the workman has not examined the Labour Inspector. Therefore, the said report cannot be considered. As regards the ESI card Ex. WW 1/1 is concerned, it is important to note that the name of the employer is not mentioned on the same. The management has denied that the ESI card pertains to it. The workman has not examined the ESI official in order to show that the ESI card pertains to the answering management. Therefore, under these circumstances, I am of the view that the ESI card Ex. WWI/1 does not show that the workman was in the employment of the management.

Apart from the documents mentioned above the workman has not filed any other document to show that he was in the employment of the management. In view of the judgments "2001 (88) FLR 230" and "130 (2006) DLT 160" (Supra). I am of the view that the workman has not filed any such document which could show that the workman was in the employment of the management. As regards the affidavit of the workman is concerned. I am of the view that the same cannot be relied upon because in his affidavit Ex. WW1/A, the workman has stated that he was unemployed since 07.12.1991. But., in his cross examination, he has submitted that he joined M/s Sahni Rubber in the year 1994 and he was removed from M/s Sahni Rubber in the year 2001. Therefore, it is clear that the workman has mentioned false facts in his affidavit, and therefore, it is not safe to rely upon his affidavit.

In view of the above discussion, I am of the view that the workman has failed to prove that he was employed with the management.

Accordingly, this issue is decided in favour of the management and against the workman.

Issue No. 2 :

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The onus to prove this issue is upon the management. The management has examined one Sh. Gurdeep Singh as MW 1 who has filed his affidavit. Ex. MW1/A. The perusal of his affidavit Ex. MW1/A shows that he has not mentioned in his affidavit that the management was not an industry.

Therefore, under these circumstances, I am of the view that the management has failed to prove that it is not an industry.

Issue is decided accordingly, against the management and in favour of the workman.

Issue No. 3 :

The first part of the reference is that whether the claimant has left the job after full and final settlement. In this regard, the management has not pleaded this fact and did not lead any evidence that the workman has left the Job after full and final settlement.

The other part of the reference is that whether the services of the workman were terminated by the management illegally. In order to prove this, the workman has filed his affidavit Ex. WW1/A wherein, he has stated that his services were terminated by the management illegally. The case of the management is that the workman was never in the employment of the management. In issue No. 1 above, it has been held that the workman was never employed by the management. Therefore, no question of illegal termination of his services by the management arises.

In view of the above, in my view the workman has failed to prove that his services were illegally terminated by the management.

In view of the findings on the issues above, I am of the considered view that the workman has failed to prove

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that he was employed by the management, and his services were illegally terminated by the management.

Reference is answered accordingly and the Award is passed."

10. The records of the learned Labour Court were requisitioned and have been perused. The records of the learned Labour Court bring forth clearly that Ex.WW1/1 placed on record by the petitioner is the ESIC identity card issued in favour of the petitioner bearing Insurance No.11-3888920 with the Employers Code No.11-8057. The petitioner through his affidavit dated 26.03.1999 Ex.WW1/A thus asserted that this document Ex.WW1/1 proves the relationship of employer and employee between him and the management. In his cross-examination recorded on 06.12.2001 by the learned Labour Court, **the petitioner denied that he was not working as a salesman and stated that he used to be sent along with the tempo in which the goods of the management were carried.** He further stated that he used to prepare cabinets of TV, columns and wooden speakers prepared by the management. **He stated that there was no GPF deduction and that he was not issued any appointment letter** and that the management also got the work of polishing done from him and the complete set of cabinet of TV was prepared by the management and at the time of delivery of the cabinet to the buyer, he, WW-1/ the petitioner used to take the challan from the purchaser and used to submit the copy of the same to the management. He further stated that he never obtained any order from the purchaser and most of the time, **he worked with the**

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management as a helper on the tempo and sometimes, he was also made to polish the cabinet.

11. The respondent examined Shri Gurdeep Singh, MW-1, s/o Shri Bakshish Singh s/o Sardar Kartar Singh, proprietor of M/s Kartar Singh Sira & Sons, the respondent as the Power of Attorney Holder of Shri Bakshish Singh, which was placed on record as Ex.MW1/1. This witness through his deposition Ex.MW1/A stated that the petitioner was never an employee with the management and that the management was run on a very small level and there was no department called the Sales Department and that the petitioner was never employed with the management. MW1/1 further stated that all the statutory benefits like EPF, ESIC have been provided to the employees of the management/respondent and **deposed on oath that the ESIC Code of the respondent is 11-12109-66 with the EPF Code being DL/9282 and produced Ex.MW1/1 and Ex.MW1/3 in support of the same.**

12. The management denied that it had obtained any signatures of the petitioner herein on the blank papers. The respondent also denied the receipt of any demand notice from the petitioner and reiterated that there was no employer and employee relationship between the claimant and the management and that there was no question of any relief being granted to the claimant much less any continuity of service and back wages.

13. Through his cross-examination conducted on 01.08.2006, MW-1 stated that Shri Jasbir Singh Sira is his brother and stated that he was doing a separate business under the name and style of M/s J.S.

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Enterprises and that he did not know whether till the date of his testimony i.e. 01.08.2006, Shri JS Sira was doing his business in the name and style of M/s J.S. Enterprises. MW-1 denied the suggestion raised on behalf of the petitioner that the claimant was working with the management and stated that the respondent had not appeared in the conciliation proceedings and could not answer whether the management had produced any document in the conciliation proceedings. The respondent also denied the receipt of any document during the course of the conciliation proceedings and denied that the management had stated in the conciliation proceedings that the claimant had left the job after receiving his full and final payment and stated that there was no question of payment to the petitioner who was working on duty on a trial basis and that he had been paid travelling expenses.

14. This witness MW-1 further stated that the petitioner had deposed in relation to the demand notice which, however, was not received by the respondent. This witness categorically denied that the petitioner had worked with the management for five years prior to his testimony continuously as a salesman for a monthly salary of Rs.850/- p.m. and also denied that when the petitioner demanded year leave etc. he was terminated on 07.12.1991 after taking his signatures forcibly on the resignation on full and final payment.

15. The records of the learned Labour Court indicate that the application filed by the petitioner under Section 18(3) (b) of the Industrial Disputes Act, 1947 for impleading M/s J.S. Enterprises, submitting to the effect that he, the petitioner had no knowledge that

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the management had issued the ESI Card of M/s J.S. Enterprises when he, the petitioner was doing the work of M/s Kartar Singh Sira & Sons,- was declined vide order dated 01.03.2004 by the learned Presiding Officer, Labour Court-X observing to the effect that according to the workman he was working only with management of M/s Kartar Singh Sira & Sons and that he had not claimed that he had worked with M/s J.S. Enterprises and that thus the learned Labour Court-X observed to the effect that it had not found any merit in the submissions made by the learned AR for the workman observing to the effect that the reference made by the appropriate Government referred to hereinabove clearly showed that the Court had to decide whether Shri Bansh Bahadur had left the job after full and final settlement from M/s Kartar Singh Sira & Sons whose name was mentioned in the reference or whether his services were terminated illegally and unjustifiably by the management and the learned Labour Court observed to the effect that it cannot exceed the terms of reference and thus the learned Labour Court could not go into the question of whether the workman was in the employment of M/s J.S. Enterprises or not and that thus the application seeking summoning of M/s J.S. Enterprises was dismissed.

16. Qua issue no.1 which related to the aspect as to whether there exist any relationship of the employer and employee between the parties, the learned Labour Court placing reliance on the verdict of the Hon'ble Supreme Court reported in **2004 LLR 351** observed to the effect that to prove the issue, the petitioner had examined himself as WW1 and had *inter alia* stated that he had worked with the

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management for the last five years as a salesman for a monthly salary of Rs.850/- and filed the documents Ex.WW1/1/ to Ex.WW1/6 and that Ex.WW1/1 was an ESI Card in the name of the workman, Ex.WW1/2 was a letter written by the General Secretary of the Union to the Labour Officer, Ex.WW1/3 was a report of the Labour Inspector, Ex.WW1/4 was a letter written by the workman to the management, Ex.WW1/5 was a postal receipt thereof and Ex.WW1/6 was acknowledgement card. The learned Labour Court held that out of these six documents only report of the Labour Inspector Ex.WW1/3 and ESI Card, Ex.WW1/1 were the documents which could show that the workman was in the employment of the management and that as per the report of the Labour Inspector, the respondent/ employer had refused to reinstate the petitioner on work and it was held by the learned Labour Court that the said document had not been proved in accordance with law because the workman had not examined the Labour Inspector and that thus the said report cannot be considered and as regards ~~the~~ Ex.WW1/1, the ESI Card, it was observed by the learned Labour Court that the name of the employer was not mentioned and that the management had denied that the ESI Card pertained to it and that the workman had not examined the ESI Official to show that the ESI Card pertained to the answering management. It was held by the learned Labour Court that Ex.WW1/1 did not show that the workman was in the employment of the management and that apart from these two documents i.e. Ex.WW1/1 and Ex.WW1/3, there was nothing to show that the petitioner was in the employment of the management.

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17. The averments made by the petitioner through his affidavit were not relied upon by the learned Labour Court in view of the statement made by the petitioner that he was not employed since 07.12.1991 whereas in his cross-examination, he stated that he had joined M/s Sahni Rubber in the year 1994 and was removed from the same in the year 2001 and that thus, the learned Labour Court observed to the effect that the workman had mentioned false facts in his affidavit and it was not safe to rely upon his affidavit.

18. It is the avowed contention raised on behalf of the petitioner through the present petition that the strict and technical rules of evidence do not govern the proceedings before the Industrial Adjudicators as laid down by the Hon'ble Supreme Court in *Anglo-American Direct Tea Trading Co. Ltd. V. Their Workmen & Another AIR 1963 SC 874* and reliance was placed on the observations therein to the effect:

"They can compel witnesses to appear, they can administer oath, they are required to follow certain rules of procedures; the proceedings before them are required to comply with rules of natural justice, they may not be bound by the strict and technical rules of evidence, but, nevertheless, they must decide on evidence adduced before them; they may not be bound by other technical rules of law, but their decisions must, nevertheless, be consistent with the general principles of law."

19. It was also submitted on behalf of the petitioner placing reliance on the observations in the verdict of the Hon'ble Supreme Court in *Grindlays Bank Ltd. V. The Central Government Industrial*

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Tribunal & Ors. AIR 1981 SC 606 wherein it was observed to the effect:

*“The object of giving such wide powers is to mitigate the rigour of the technicalities of the law, for achieving the object of effective investigation and settlement of industrial disputes, and thus assuring industrial peace and harmony. The discretion thus conferred on these authorities to determine the procedure as they may think fit, however, is subject to the rules made by the 'appropriate Government' in this behalf. Part III of the Industrial Disputes (Central) Rules, 1957 makes rules in this behalf. Rules 9 to 30 are the relevant rules regulating procedure. State Governments too have made their own corresponding rules. Except to the extent specified in sub-s.(3) of s. 11 of the Act and the rules framed thereunder, the provisions of the Code of Civil Procedure, 1908 are not applicable to proceedings before the authorities mentioned in sub-s.(1). **The provisions of the Evidence Act, in their strict sense, likewise do not apply to proceedings before the authorities.** Nevertheless, all these authorities being quasi-judicial in nature objectively determining matters referred to them, have to exercise their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice.”*

to contend to similar effect that the provisions of the Indian Evidence Act, 1872 in the strict sense do not apply to the proceedings before the Labour authorities. Undoubtedly, the said contention raised on behalf of the petitioner cannot be faulted with. However, it cannot be overlooked that the categorical assertions of the respondent in the instant case were to the effect that the ESI Card issued to the petitioner did not relate to the respondent.

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20. The records of the learned Labour Court as observed vide proceedings dated 15.01.2004 indicate that during the course of proceedings it had been pointed out that the ESI Number produced by the workman was not the ESI Number of the management and that the petitioner had stated that the son of Kartar Singh i.e. Shri Jasbeer Singh who was present in the Labour Court was also running the business in the name of M/s J.S. Enterprises and Shri Jasbeer Singh was asked by the learned Labour Court to tell the ESI Number, which he did not remember and was thus directed to file the affidavit either by himself or through Shri Gurdeep Singh mentioning the ESI Number of M/s J.S. Enterprises, **which affidavit was so filed dated 17.02.2004 of Shri Gurdeep Singh who stated that the ESI Number 11-8057 as quoted by the workman was the ESI Number of M/s J.S. Enterprises a proprietorship firm at 102, Kanti Nagar, Delhi-51, which was lying closed since 2001 and that the proprietor of the said firm was Shri JS Singh and that the respondent/ management was the separate entity and had no financial and administrative integrity between them and ownership of both were separate with separate addresses and location and shared no relations between the parties and that both the firms had separate books of accounts and different style of working.**

21. Significantly, as already observed elsewhere hereinabove, the application filed by the petitioner herein to implead M/s JS Enterprises was declined on 01.03.2004 it having been observed that the terms of reference could not be exceeded. The petitioner



has not assailed this order dated 01.03.2004 of the learned Labour Court at any stage.

22. Apparently, the circumstance of the petitioner seeking to implead M/s J.S. Enterprises through whom the ESIC Card was issued to the petitioner as a party to the reference is a circumstance, which cannot be overlooked. As already observed hereinabove, the order dated 01.03.2004 of the learned Labour Court-X declining the prayer to implead M/s J.S. Enterprises as a party to the reference was correctly declined and has not been assailed. As already observed vide the said order dated 01.03.2004 of the learned Labour Court-X, the ambit of the reference cannot be extended to include those who were not a party to the original reference made, which was in relation to the aspect of the petitioner having left the job after full and final settlement and his services having been terminated illegally and unjustifiably by the management of M/s Kartar Singh Sira & Sons.

23. As observed by the learned Labour Court-X vide the impugned award that no documentary evidence had been led by the petitioner to bring forth that he was in fact employed as a workman of the respondent in as much as Ex.WW1/1, the ESIC Card does not relate to the respondent.

24. Through the cross examination of the petitioner dated 06.12.2001, the petitioner stated that there was no contribution to the GPF deducted and that he was not issued any appointment letter and that he used to work as a salesman with the respondent and that the management also got the work of polishing done from



him and that the complete set of cabinets of TVs were prepared by him and that most of the time, he worked with the management as a helper on the tempo and sometimes, he was made to polish the cabinet. The said cross examination of the petitioner does not bring forth a relationship of an employer and employee between the parties in as much as there are discrepancies in the testimony of the petitioner himself as to the nature of duties and engagement between him and the respondent. The specific date of stated employment of the petitioner with the respondent has also not been put forth by the petitioner.

25. The contention raised by the petitioner herein is to the effect that there is a Labour Inspector's report dated 23.12.1991 i.e. Ex.WW1/3 to the effect that the management of the respondent had refused to take the petitioner herein into the services and the same without the Labour Inspector having been produced in the witness box being taken into account in as much as the strict rules of evidence do not apply in industrial adjudication in as much as in terms of Section 11(1) of the Industrial Disputes Act, 1947. Undoubtedly, though, the learned Labour Court may follow such procedure as it may think fit and thus, though in terms of Section 11(3) of the said enactment, the learned Labour Court is vested with the powers of a Civil Court under the Code of Civil Procedure, 1908 as when trying a suit in relation to the aspect of enforcing the attendance of any person and examining on oath, compelling the production of documents and material objects, issuing commission for examination of witness and in respect of

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such methods as may be prescribed, the same, however, as rightly contended on behalf of the petitioner, would not make the strict rules of evidence applicable to the Labour Court proceedings. However, the said factum, Ex.WW1/3 which incorporates a refusal of the respondent/ management to employ the petitioner, is not an indicator and cannot be read to the effect that the respondent by such refusal to employ the petitioner had admitted the existence of an employer-employee relationship between itself and the petitioner.

26. It is undoubtedly true that the records of the learned Labour Court indicate that placed thereon at **Mark-A** is the copy of the reply on behalf of the management to the statement of claim of the workmen before the Conciliation Officer, Zonal Officer, Karampura, Delhi. As per which, it had been mentioned in para-1 thereof to the effect:

"That para 1 of the statement of claim is wrong incorrect and hence denied. It is wrong to say that the workman was working with the management for the last five years. As per the record of the management the workman joined the management w.e.f. 04.11.1991 as a helper with monthly salary of Rs.850/- p.m. and he has received his full and final dues of Rs.1104/- upto 07.12.1991 and left the job of his own."

It cannot however be overlooked that even in the said reply, the respondent had contended that all the claims of the petitioner stood satisfied and that he has received his full dues of Rs.1104/- upto 07.12.1991 and that the petitioner had left the job of his own.

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27. In the circumstances of the case where the petitioner admittedly made a variant statement in relation to his contention that he had remained unemployed from 07.12.1991 till submission of his claim before the learned Labour Court-X but admitted during cross examination that he had been employed in the year 1994 and was removed from the services of M/s Sahni Rubber in the year 2001, the observations of the learned Labour Court to the effect that it was not safe to rely upon the affidavit of the petitioner and that he had failed to prove that he was employed with the management of the respondent, cannot be faulted with.

28. Even otherwise, the present petition is one under Articles 226 & 227 of the Constitution As laid down by the Hon'ble Supreme Court in "**Syed Yakoob Vs. K.S. Radhakrishnan and Ors.**" AIR 1964 SC 477, though a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals, these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions, a writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides questions without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. However, as observed by the Hon'ble Supreme Court in the said verdict vide para 7 thereof, though, a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court and this limitation necessarily

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means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings and an error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be and that in regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding and similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari and that a Court must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings by a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding and the adequacy or sufficiency of evidence led on a point and the inferences of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court and that it is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

29. It was further observed by the Hon'ble Supreme Court vide para 8 of the said verdict, which reads to the effect:-

"8. It is, of course, not easy to define or adequately describe what an error of law apparent

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on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly rounded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always

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depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."

30. The verdict of this Court in "*Parshuram Shah Vs. Govt. of NCT of Delhi and Anr*" (supra) also likewise observes to the effect:-

"7. The arguments advanced on behalf of the petitioner workman, if entertained, would amount to interfering with the findings of facts as arrived at by the Labour Court after due appreciation of evidence. Law is well settled in this respect that the Labour Court is the final court of facts and it is not appropriate for this Court, while exercising jurisdiction under Article 226 of the Constitution, to reappraise evidence or to interfere with the findings of facts as arrived at by the Labour Court. The jurisdiction exercised by the writ court under Article 226 is supervisory and not appellate in nature. Reappraisal of evidence without sufficient reason in law, to arrive at a finding of fact contrary to those arrived at by the Subordinate Court, is not the intent of exercising the powers of judicial review. Reliance in this regard can be placed on the following judgments of the Supreme Court:

(i) Harbans Lal v. Jagmohan Saran

(ii) B.C. Chaturvedi v. Union of India

(iii) Indian Overseas Bank v. I.O.B. Staff Canteen Workers? Union AIR 2000 SC 1508

(iv) P.G.I. of Medical Education and Research Chandigarh v. Rajkumar (2001) 2 SCC 54.

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(v) *Municipal Corporation of Delhi v. Asha Ram and Anr.*

and thus, in that case where it was observed that the findings of the Labour Court were based on an appreciation of the material placed on the record which findings were neither perverse nor arbitrary nor capricious, it was held that it did not warrant any interference.

31. In the facts and circumstances of the instant case, thus it is not considered appropriate to interfere in the findings of the learned Labour Court qua issue No.1 where by the learned Labour Court has observed to the effect that the petitioner had failed to prove that he was employed with the management and that issue no.2 has rightly been decided against the management and in favour of the workman. In the circumstances, thus, in view of the findings in relation to the issue no.1 having been upheld, the findings in relation to the issue no.3 of the learned Labour Court cannot be faulted with in view of the factum that the relationship of employer and employee between the petitioner and the respondent has not been established.

32. **The petition is thus dismissed. However, in view of the ESIC Card issued to the petitioner with the Employer's Code being 11-8057, as indicated vide Ex.WW1/1, it is open to the petitioner to seek redressal in accordance with law against the employer with the said employee code.**

33. It is essential, however, to observe that through the reply to the writ petition, it had been submitted by the respondent that appropriate orders be passed on the application under Section 340 of the Cr.P.C. dated 18.08.2006 that had been filed by the respondent against the

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petitioner for the offence of forgery on the basis of facts and documents placed on the record as the same was kept pending for decision by the learned Labour Court. A bare perusal of the records of the learned Labour Court indicate that vide order dated 02.02.2007 it had been observed by the learned Labour Court qua the application under Section 340 Cr.P.C. to the effect:

"As regards the application of the management U/s 340 Cr. P.C. is concerned, I am of the opinion that it is not in the interest of justice to make enquiry into the said application. Accordingly, the application is filed."

34. **The prayer thus made by the respondent/management submitting to the effect that the said application under Section 340 Cr.P.C. dated 18.08.2006 is pending consideration is devoid of all merits and the prayer made in relation thereto is declined.** Furthermore, as rightly observed by the learned Labour Court-X, it is not in the interest of justice to make an enquiry into the said application and the said application has rightly thus been directed to be filed by the learned Labour Court-X in the circumstances of the case specially where the contentions of the petitioner are to the effect that he was issued an ESIC Card by the respondent which ESIC Card however bears the employers Code of M/s J.S. Enterprises and not that of the respondent.

9-5-2019
ANU MALHOTRA, J.

MAY 9th, 2019/vm