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

%   <u>*Date of decision: August 17, 2015*</u>

+   **<u>LPA 899/2013</u>**

SURAJ & ORS   ..... Appellants

Represented by: Mr.Sudhir Kathpalia, Advocate.

versus

TATA SONS & ANR   ..... Respondents

Represented by: Mr.Sanjoy Ghose, Advocate for Respondent No.1.
Mr.Atul T.N., Advocate for Respondent No.2.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

<u>MUKTA GUPTA</u>, J.

1. The workmen of Tata Housing Complex Workers Union raised an industrial dispute pursuant to which a reference was made to the Industrial Tribunal on the following terms:

> *"Whether the services of Sh.Ramesh Chand, Nafe Singh, Rakesh Kumar, Vishwanath, Beer Singh, Pardeep Kumar, Ishwar Dayal, Attr Singh, Puran Chand, Ialman, Anil Kumar, Ranjeet Kumar, Sunil Kumar, Akhlesh Kumar, Sushil Kumar, Suraj Kumar, Rajiv Kumar, Raj Khatri, Mukesh, Vijay Pal, Kunj Lal and Vinay Kumar have been terminated illegally and/or unjustifiably by the Management and if so to what relief are they entitled and what directions are necessary in this respect?"*

2. In the claim it was stated that Ramesh Kumar was working as Store Keeper, Rakesh Kumar, Nafe Singh, Vishwanath, Pardeep Kumar as

Electricians and Veer Singh and Attar Singh as pump operators and the rest as helpers with the management were illegally terminated. It was further stated that the management neither issued any appointment letter nor provided other facilities like leave, bonus, PF and ESI. In the written statement the main claim of Tata Sons Ltd. was that it was not an employer of the workmen and there was no relationship of employer-employee between the two. In fact the averment in the claim was that the workmen had been engaged by Apartment Resident Welfare Association, 23, Prithviraj Road, New Delhi (in short 'ARWA'). ARWA was registered on March 20, 1999 whereas services of the workmen were terminated on July 08, 1999.

3. Out of the 16 workmen as noted above 11 settled the matter with the management during the course of proceedings before the learned Industrial Tribunal and thus only five workmen remained, that is, Ramesh Chand, Suraj, Veer Singh, Attar Singh and Sunil Kumar.

4. Vide award dated September 24, 2009 the learned Industrial Tribunal held that M/s Tata Sons Ltd. created a camouflage by forming ARWA in the year 1999 and there is nothing on record to show that the workmen consented to the arrangement of their services being taken over by ARWA. Thus the termination of the services of the workmen were held to be illegal and unjustified as provisions of Section 25F of the Industrial Dispute Act, 1947 (in short 'the ID Act') had not been complied with. The Industrial Tribunal held workmen Suraj, Veer Singh, Attar Singh and Sunil Kumar entitled for reinstatement with 30% back wages with the management/Tata Sons Ltd. from the date of termination of their services till the date of the award except the period they worked with ARWA. Since Ramesh Chand has

died he was not entitled for reinstatement however, the Industrial Tribunal has held that he is entitled to 30% back wages from Tata Sons Ltd. from the date of termination of his services till the date of his death except for the period he worked with ARWA.

5. Challenging the award dated September 24, 2009 to the extent it directs reinstatement with 30% back wages M/s Tata Sons Ltd. filed a writ petition against the five workmen impleading widow of Ramesh Chand as the legal heir. In the said writ petition applications under Section 17B of the ID Act were filed by the three workmen and the widow and son of late Attar Singh who had passed away during the pendency of the writ petition and the widow of Ramesh Chand. Vide impugned order dated July 31, 2013 the learned Single Judge held that in view of the material placed on record in response to the applications by M/s Tata Sons Ltd. showing that appellants Veer Singh, Suraj Kumar and Sunil Kumar were gainfully employed/self-employed no relief under Section 17B of the ID Act could be granted. Further, during the pendency of the writ petition Attar Singh passed away and thus his widow and son could not be granted the relief under Section 17B of the ID Act. Since against Ramesh Chand no orders of reinstatement was passed which is a pre-requisite for maintaining an application under Section 17B of the ID Act thus an application to the said extent was not maintainable.

6. Before this Court in the present appeal the order dated July 31, 2013 was challenged by Suraj, Sunil Kumar, Veer Singh and Deepak Singh and Nathu Devi, the son and widow of Attar Singh. During the pendency of the present appeal Sunil Kumar has settled the matter with M/s Tata Sons Ltd. and thus he does not press the present appeal.

7. As regards Deepak Singh and Nathu Devi who are the legal heirs of late Attar Singh the learned Single Judge noted that on March 05, 2010 the Court had stayed the operation of the award dated September 24, 2009 subject to the awarded amount being deposited in the Court. However, the application under Section 17B of the ID Act was not preferred till February, 2012 and in the meantime Attar Singh passed away on March 20, 2011. Having waited for two years to file the application and due to the death of Attar Singh the learned Single Judge held that widow and son of late Attar Singh were not entitled to any relief and we concur with the said decision.

8. This Court is now required to deal with the claim of Suraj and Veer Singh. A perusal of the material on record would reveal that in response to the application under Section 17B of the ID Act filed by Suraj and Veer Singh M/s Tata Sons Ltd. placed on record the material to show that Suraj was self-employed and was ironing the clothes of people. In the material placed on record Suraj admitted earning ₹3-5 per piece of cloth and was ironing about 50 pieces of cloth a day. The learned Single Judge held that even if discount of 60% was given and it was assumed that he was ironing 20 pieces of cloth in a day, he would on an average be earning ₹80/- per day which would translate to ₹2,400/- (Rupees Twenty Four Hundred Only). The last drawn wages of Suraj were ₹2,448/- (Rupees Twenty Four Hundred Forty Eight Only). Suraj being gainfully employed earning more or less the last drawn wages and thus was not entitled to any relief under Section 17B of the ID Act.

9. As regards Veer Singh, the learned Single Judge noted that the termination of his services has turned out to be a blessing in disguise for him. On the basis of material placed on record it is revealed that he had

turned into a Contractor, that is, an employer from an employee. He has taken up construction work and completes the same and hence is gainfully self-employed and was thus not entitled to wages under Section 17B of the ID Act.

10. Learned counsel for the appellant relying upon the decision reported in 187 (2012) DLT 270 (DB) *Lumax Automotive Systems Ltd.vs.Its workmen represented by Hindustan Engineering & General Mazdoor Union & Ors.* argued that if the workman is doing petty odd jobs then he cannot be termed as self-employed and would be still entitled to benefit under Section 17B of the ID Act.

11. In *Lumax Automotive System* (supra) this Court was dealing with the workmen who went back to their villages which had a total of 250 households and from their house itself or a small kiosk they were selling small things like sweets, biscuit etc. to the children. It was also noted that the monthly income from the shop did not exceed ₹1,000/-. This is not the position in the present case.

12. As noted above Veer Singh has already become Contractor employing workmen to do the job of plumbing and in any case he himself is carrying out plumbing work. Further even Suraj is ironing the clothes and the calculation of ₹2,400/- is on a conservative estimate whereas as per the evidence adduced he is earning far more than the same.

13. The Supreme Court in the case reported as (2007) 14 SCC 349 *Niranjan Cinema vs.Prakash Chandra Dubey & Another* held that the term "gainful employment" under Section 17B of the ID Act would include self-employment wherefrom income is generated. Income either from employment in an establishment or from self-employment merely

differentiates the source from which income is generated.

14. Considering the facts and circumstances of the case, we find no merit in the present appeal. The same is dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 17, 2015
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