

\$~R-213

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 3281/2004
NARPAT SINGH Petitioner
Through None.

versus

THE MGMT. OF GOVT. OF SER. COOP Respondent
Through None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **24.08.2017**

There is no appearance since 25.02.2016.

The petitioner and the respondents no. 1 & 2 have been served as per report dated 25.07.2017 in terms of the proceedings dated 13.07.2017 and are not present.

Rule was issued on 09.03.2004 and the matter was listed on 25.2.2009 in the category of the regulars and thereafter on 08.07.2015, 30.07.2015 and 29.09.2015 but there was no representation on behalf of either side and though learned counsel for the petitioner appeared on 09.12.2015 pursuant to a court notice but there was no representation from the side of the respondent and despite service of the court notice.

Thereafter on 25.01.2016, 01.02.2016, 01.03.2016, 18.03.2016, 05.04.2016, 03.01.2017, 06.01.2017, 09.01.2017, 10.02.2017, 11.01.2017, 20.01.2017, 24.01.2017, 30.01.2017, 02.02.2017, 08.02.2017, 14.02.2017, 01.03.2017, 06.03.2017, 20.03.2017, 21.03.2017, 23.03.2017, 31.03.2017,

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03.05.2017, 04.05.2017, 05.05.2017 and 13.07.2017. Thereafter, despite service of court notice for the date 27.07.2017 and till date i.e. 24.08.2017 there is no representation on behalf of the either side. It is thus considered appropriate to take up the petition as per the averments made therein and as per the record.

Vide the petition, the petitioner claims to have been initially appointed as a Pump Operator and then as an Electrician w.e.f. 22.12.1978 and claims to be an employee of the Government Servants Co-operative House Building Society Limited and had stated that he had drawn his last wages at Rs.850/- plus Rs.30/- as Cycle allowance / Tool allowance and that there after he had been dismissed vide letter dated 29.09.1989, which was served on him on 03.10.1989, whereafter conciliation proceedings were conducted which failed and thereafter the matter had been referred to the Industrial Tribunal by the appropriate Government and the petitioner had filed his Statement of Claim dated 18.04.1990 to which the management had filed the Written Statement dated 09.09.1992 and that the parties had led their evidence and had addressed arguments. It was further submitted by the petitioner that though it was erroneously held vide the impugned Award dated 18.08.2003 that the petitioner's dispute was not covered within the ambit of the Industrial Disputes Act, 1947 as defined under Section 2(k) of the Industrial Disputes Act, 1947 and that the tribunal erroneously held that it did not have jurisdiction to adjudicate upon the present dispute in terms of Section 2(k) of the Industrial Disputes Act, 1947, the petition had been filed.

Vide the impugned Award dated 18.08.2003 of the then Learned Presiding Officer, Industrial Tribunal-II, Karkardooma Courts, Delhi it was

held that there was no industrial dispute in terms of Section 2(k) of the Industrial Disputes Act, 1947 in as much as the management of the Government Servants Co-operative House Building Society Limited was not an 'industry'.

Reliance was *inter alia* placed vide the impugned Award dated 18.08.2003 on the verdict of the Hon'ble Supreme Court in case titled as ***Som Vihar Apartment Owners Housing Maintenance Society Limited Vs. Wromen C/o Indian Engineering and General Mazdoor, 2001 LIR 599*** wherein it was observed to the effect that : -

“Indeed this Court in Rajappa’s case (supra) noticed the distinction between such classes of workmen as domestic servants who render personal service to their masters from those covered by the definition 2(j) of the Industrial Disputes Act. It is made clear if literally interpreted these words are of very wide amplitude and it cannot be suggested that in its sweep it is intended to include service however rendered in whatsoever reason. In that context it was said that it should not be understood that all services and callings would come within the purview of the definition; service rendered by a domestic servant purely in a personal or domestic matter or even in a casual way would fell outside the definition. That is how this Court dealt with this aspect of the matter. The whole purpose of the Industrial Disputes Act is to focus on resolution of Industrial Disputes and the regulation will not meddle with every little carpenter or a blacksmith, a cobbler

or a cycle repairer who come outside the idea of industry and industrial dispute. This rationals which applies all along the line to small professions like that of domestic servants would apply to those who are engaged by a group of flat owners for rendering personal services even if that group is not amorphous but crystallised into an Association or a society. The decision in Rajappa's case (supra) if correctly understood is not an authority for the proposition that domestic servants are also to be treated to be workmen even when they carry on work in respect of one or many masters. It is clear when personal services are rendered to the members of a society and that society is constituted only for the purpose of those members to engage the services of such employees, we do not think its activity should be treated as an industry nor are they workmen. In this view of the matter so far as the appellant is concerned it must be held not to be "industry". Therefore, the award made by the Tribunal cannot be sustained. The same shall stand set aside."

Taking into account that the employer of the petitioner is a Government Servants Co-operative House Building Society Limited, it is apparent that it does not fall within the category of an industry in terms of the verdict of the Hon'ble Supreme Court in the case titled as *Som Vihar Apartment Owners Housing Maintenance Society Limited Vs. Wromen C/o Indian Engineering and General Mazdoor, 2001 LIR 599* in as much as the society was constituted only for the purposes of those members to

engage the services of such employees.

The petitioner thus does not fall within the category of a workman of a 'industry' as defined in Section 2(i) of the Industrial Disputes Act, 1947 and thus accordingly held vide the impugned Award dated 18.08.2003 bearing I.D. no. 403/90, there was no 'industrial dispute' in terms of Section 2(k) of the Industrial Disputes Act, 1947 between the parties.

In view thereof, there is no infirmity in the impugned Award dated 18.08.2003 of the then Learned Presiding Officer, Industrial Tribunal-II, Karkardooma Courts, Delhi in I.D. No. 403/90 and the petition bearing no. W.P.(C) 3281/2004 is thus dismissed.

ANU MALHOTRA, J

AUGUST 24, 2017/mk