

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

Judgment Reserved: 15.05.2017
Judgment Pronounced: 20th 06.2017

+ **W.P.(C) 23152/2005**

THE DIRECTOR (ADMN) NATIONAL AIRPORT
AUTHORITY OF INDIA Petitioner

Through Mr. Vaibhav Kalra, Advocate

versus

SHRI SURESH KUMAR Respondent

Through Mr. Atul T. N., Advocate

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

1. The petitioner, the Director (Administration) of the National Airports Authority of India vide this Writ Petition, impugns the award dated 25.05.2005 of the Presiding Officer of the Central Government Industrial Tribunal cum Labour Court-II, New Delhi whereby the claimant / respondent herein Sh. Suresh Kumar whose services were terminated with effect from 01.11.1995 was held entitled to be reinstated with effect from 01.11.1995 (within one month from the publication of the award) to the post of Safai Karamchari with 25% back wages with directions that in case of default, the workman i.e. the respondent herein would be entitled to get 10% interest over the entire back wages.

2. Notice of this petition was issued to the claimant / respondent herein Sh. Suresh Kumar in terms of order dated 07.12.2005 and *RULE* was issued vide order dated 20.10.2010. During the course of the proceedings vide order dated 09.09.2011 in C.M. Application No.10451/2010 under Section 17B of the Industrial Disputes Act, 1947 (filed by the applicant i.e. respondent herein only on 30.07.2010) (hereinafter referred to as the **I.D. Act**, 1947) filed by the respondent submitting that he had not been gainfully employed in any establishment after the date of termination of his services on 01.11.1995, the management i.e. the petitioner herein was directed to pay the last drawn wages or the minimum wages whichever was higher from 01.08.2010 onwards and continue to pay the same during the pendency of the petition and it was further directed that monthly wages would be paid to the respondent by the 7th day of each month with the arrears of wages directed to be paid within a period of four weeks from the date of the said order. The respondent was further directed to file an undertaking by way of an affidavit stating that in the event of the petitioner succeeding in the writ petition, the respondent would refund to the petitioner management, the difference between the minimum wages and the last drawn wages. The said undertaking was filed by the respondent by way of an affidavit dated 20.09.2011.

3. Arguments were addressed in the present petition on behalf of the petitioner by learned counsel Mr. Vaibhav Kalra and on behalf of the respondent by learned counsel Mr. Atul T.N.

4. The records of the Central Government Industrial Tribunal cum Labour Court-II, New Delhi in ID No. 108/97 were requisitioned and have been received and perused.

TERMS OF REFERENCE TO CGIT

5. The requisitioned records show that vide order dated 10.07.1997, the Central Government in terms of Section (1) 10 (1) (d) and 2A of the ID Act, 1947 had referred the dispute to the Central Government Industrial Tribunal, New Delhi

“Whether the action of the management to National Airports Authority of India in terminating the services of Shri Suresh Kumar, Safai Karamchari w.e.f. 1-11-95 is just and fair? If not, to what relief the concerned workman is entitled?”

CONTENTIONS OF THE WORKMAN/RESPONDENT

6. The respondent herein had claimed before the CGIT that he had been working in the Rajiv Gandhi Bhawan Departmental Canteen of the National Airport Authority, Rajiv Gandhi Bhawan, New Delhi as a Safai Karamchari since April, 1994 and that he and another person named Madhav were appointed on daily wages as unskilled workmen on the direction of the Ministry of Civil Aviation and Tourism (Department of Civil Aviation) to provide better services to the staff of the Ministry and National Division of the Airport Authority of India as the quantum of work was unmanageable for the existing staff of the canteen. It was further submitted by Sh. Suresh Kumar i.e. the claimant / respondent to the present petition i.e. the applicant before

the CGIT, that payment was made by the AAI through its contractor to the applicant and that the contractor had acted as a tout and had introduced the applicant to the management to get him appointed with the AAI as a daily wager. It was submitted by the respondent herein i.e. the claimant, that the work and duty was of a permanent nature and he had worked continuously till 31.10.1995 when his services were illegally and arbitrarily terminated. He further submitted that he was being paid on day to day basis instead of month basis unlike other regular employees including the class IV workers and that he was deprived of benefits like CPF, insurance, Medical, HRA and other benefits and the sword of insecurity hung on his head all the time.

7. Inter alia, the claimant further submitted that in order to remove these anomalies and irregularities he had requested that his services may be regularized, in furtherance to which on 31.08.1994 it was decided that the payment to the daily wagers working in the canteen (including the applicant i.e. respondent herein) would be made by the National Airports Authority of India and therefore the salary used to be paid by the said authority. The claimant / respondent herein also annexed the copy of the minutes of the meeting dated 31.08.1994 of the Ministry of Civil Aviation held in the office of the Joint Secretary of the Ministry of Civil Aviation & Tourism (Department of Civil Aviation) in order to discuss the problems in the Rajiv Gandhi Bhawan. Significantly, the records of the CGIT indicates that on 26.05.1998 when the proceedings were fixed for admission / denial

of documents before it, the said minutes of the meeting dated 31.08.1994 annexed as Annexure A were admitted by Mr. Sunil Tyagi, the authorized representative on behalf of the management.

8. Significantly, further it was mentioned in the said minutes that the following decisions were taken:-

- (i) *“All decisions concerning the Ministry portion of the building would be made only in consultation with the Ministry. The Director (Admn.) of thee (sic.) Ministry of Civil Aviation should be consulted on all matters of maintenance of building, gardens and general matters.*
- (ii) *National Airports Authority should provide accommodation for security staff of Ministry of Home Affairs immediately so that thee (sic.) present accommodation occupied by MHA security staff may be vacated for accommodating the office-Council.*
- (iii) *Shed for scooters / cycles should be constructed on priority basis by National Airports Authority.*
- (iv) *Thee (sic.) passage for BSF quarters neear (sic.) the garage should bee (sic.) closed as soon as possible as it is a security area and no outsider should be allowed to enter this area.*
- (v) *Suitable administrative arrangements will be made by National Airports Authority so that maintenance required in Rajiv Gandhi Bhavan is not delayed for want of financial sanction. Delegation of financial powers to the tune of Rs.25,000/- to the Maintenance Cell would be done.*

(vi) ***The payment of salaries of two daily wage workers working in the Departmental Canteen will be made by the National Airports Authority.***

(vii) *The Seminar Hall of National Airports Authority on 3rd floor would be used by the Ministry also and suitable modifications would be done to bring it up to standard."*

(Emphasis supplied)

9. The claimant i.e. the respondent herein, claimed that he was not paid his salary for the months of February, March, April, and May, 1995 for which he complained to the Chairman, Airports Authority of India on which the Manager and Director (Administration) got annoyed and threatened him to terminate his services but he continued to request and represent to the authorities to regularize his services to extend benefits to which the authorities kept re-assuring that they would regularize his services in due course. The claimant i.e. respondent herein, however, submitted that contrary to the assurance and understanding given to him, on 01.11.1995 when he went to join his duties, he was not allowed to sign the duty roster and was informed that his services had been terminated.

10. The claimant i.e. the respondent herein submitted that he had worked for 19 months continuously from April, 1994 to October, 1995 and his services were illegally terminated without following the due process of law and in gross violation of the provisions of the ID Act, 1947. He also annexed a copy of the duty roster showing that he had worked for 19 months continuously. The said document was, however, denied by the Department.

11. Furthermore, the claimant i.e. the respondent herein submitted that after his services were terminated other persons had been performing the same duties as being performed by him. He further submitted that there was continuity of work and the work was of continuous and permanent nature and that the authorities were estopped from taking such an action by their word and conduct and that the termination of his services was illegal and liable to be cancelled and that he was entitled to be reinstated in services with back wages and also regularization in service.

12. The very same contentions made before the CGIT have been reiterated by the claimant / respondent herein before this Court.

CONTENTIONS OF THE PETITIONER/MANAGEMENT

13. The petitioner / management had contended before the CGIT and before this Court that the claimant was never employed by the petitioner management and was not a workman in terms of Section 2 (s) of the ID Act, 1947 and that the reference made vide order dated 10.07.1997 to the CGIT was bad in law, in as much as, the reference presupposed that the claimant was a workman. It was also submitted by the management that the dispute between the parties as submitted before the Reconciliation Officer and stated in the failure report was that Sh. Suresh Kumar (present respondent) was not a workman under the Airports Authority of India and he was only a contract labourer under M/s. Arcon India Limited and that there was no occasion of termination of his services by the

management. It was further submitted by the management that in terms of Section 10 (4) of the ID Act, 1947, the CGIT can neither go into the question of existence of termination of service nor into the aspect whether Sh. Suresh Kumar (the present respondent) was a workman and that in terms of Item 3 of the Second Schedule of the Act, discharge or dismissal of the workman including reinstatement like grant of relief to the workman Act was the domain of the Labour Court and that the Industrial Tribunal could not have transgressed the jurisdiction of the Labour Court and the management sought that the proceedings be dropped as the order of reference was bad in law and liable to be set aside.

14. Inter alia, it was claimed by the management that the claimant / respondent Sh. Suresh Kumar was a contract labourer under M/s. Arcon India Limited and there was no relationship between the management and the claimant as the claimant was not enrolled in the muster roll of the management.

15. It was further submitted by the Management, i.e., the petitioner herein before the CGIT as it is submitted herein through the present writ petition that “the appropriate Government” has not prohibited the engagement of the Contract Labour through a contractor in terms of Section 10 of the Contract Labour (Regulation & Abolition Act, 1970). It has further been submitted by the Management, i.e., the petitioner herein, that the rules framed under the said enactment do not provide for absorption into service of a contract labour on termination of the services of the

contractors. It was also submitted by the petitioner that the National Airports Authority of India is a public sector establishment and for a workman to be taken as a regular employee, he could be so appointed only as per the rules, regulations and guidelines provided for the same from time to time and the claimant cannot seek the employment with the management by by-passing all the rules in relation thereto and that he cannot claim absorption solely on the ground that he had worked as a contract labour. It was further submitted that it is open to the public sector establishment to choose the mode of filling up vacancies to appoint persons other than those sponsored by the Employment Exchange.

16. A further submission was made on behalf of the management, i.e., the petitioner herein, that the word “employer” is not defined under the “I.D.Act, 1947” but the definition of the “principal employer” denotes the existence of a middle man, i.e., a Contractor and, therefore, there is no direct master and servant relationship between the management and the contract labour and thus there was no industrial dispute between the claimant and the management and the proceedings ought to have been dropped by the CGIT-cum-Labour Court-II and that the order of reference presupposed the termination of the service of the claimant by the management which was erroneous. It was also submitted by the management, i.e., the petitioner herein, that the claimant has not been engaged by the contractor for any work of the management

which was of a permanent nature and denied that the claimant had worked continuously till 31.10.1995.

17. The management, i.e., the petitioner herein, further submitted that the dispute, if any, existed between the contractor M/s. Arcon India Limited and the claimant and not between the claimant and the management, i.e., the petitioner herein, and that the respondent herein was engaged by the contractor for conservancy services as the contractor was a contractor of conservancy services and that the claimant had not been engaged for the canteen purposes. It was, *inter alia*, submitted by the management, i.e., the petitioner herein, that the contractor had deputed its workers on rotational basis at various points/areas of the Rajiv Gandhi Bhawan and categorically denied that the claimant and the other person, namely, Madhav, were appointed as daily wagers as unskilled workmen in April, 1994 and submitted that the claimant was working under the supervision of M/s. Arcon India Limited, i.e., the contractor and there is no direct relationship between the management, i.e., the petitioner herein, and the claimant.

18. The petitioner further submitted that the Ministry of Civil Aviation had been shifted to Rajiv Gandhi Bhawan and due to the temporary shortage of staff in CAD Canteen, for a short period, the claimant, i.e., the respondent herein was deputed by the contractor, i.e., M/s. Arcon India Limited. The management, i.e., the petitioner herein, denied that the appointment had been made to

provide better services to the staff of the Ministry and Information Division of the Airport Authority of India and denied that the quantum of work was unmanageable for the then existing staff of the canteen. The management, i.e., the petitioner herein, also claimed that the claimant was paid by the contractor, i.e., M/s. Arcon India Limited and the management, i.e., the petitioner herein, used to pay the money to the contractor for the maintenance of the canteen and at no point of time the petitioner had paid any wages to the contract labour or to the claimant.

19. The management, i.e., the petitioner herein, further submitted that the minutes of the meeting dated 31.8.1994 related to an internal meeting of the Officers of the Ministry of Civil Aviation and the Airports Authority of India for the upkeep and maintenance of the Rajiv Gandhi Bhawan wherein it had been decided to bear the costs of the two contract workmen by the Airports Authority of India and it was submitted by the management, i.e., the petitioner herein, that the claimant had been trying to mislead the Tribunal by misinterpretation of these facts. The management, i.e., the petitioner herein, also denied that the claimant was threatened with termination of his services when he claimed his salary for the months of March, April and May, 1995 and submitted that all records of payments and engagement of the claimant, terms and conditions necessary for employment were with the contractor and the claimant had deliberately not joined the

contractor as a party to the proceedings before the CGIT-cum-Labour Court-II.

20. The management, i.e., the petitioner herein, also denied that they did not allow the claimant to join his duties on 1.11.1995 and that he was not allowed to sign the register and that the management, i.e., the petitioner herein, had informed him that his services had been terminated. Rather, the management, i.e., the petitioner herein, submitted before the CGIT-cum-Labour Court-II that as the regular staff of the canteen was available in the Ministry of Civil Aviation, the services of the contractor employees were withdrawn and submitted that the matter of termination of services was a dispute between the claimant and the contractor, i.e., M/s Arcon India Limited and that the principal employer, i.e., the management, i.e., the petitioner herein had nothing to do with the termination and that the claimant, i.e., the respondent herein, cannot be considered to be an employee of the management, i.e., the petitioner herein.

21. During the course of arguments addressed on behalf of the petitioner, reliance was placed on the verdict of the Supreme Court in *Steel Authority of India Ltd. vs. National Union Water Front Workers and Others Etc.* AIR (2001) SC 3527 submitting to the effect that the Supreme Court in this case quashed the Notification issued by the Central Government on 9th December, 1976 under Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 whereby the Central Government had

prohibited the employment of contract labour for sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishment in respect of which the Central Government is the appropriate Government under the said Act and thus it was submitted that the respondent No.2, i.e., the CGIT-cum-Labour Court -II could not have given directions for regularization of services of respondent No.1, i.e., the claimant by observing that the Contract Labour (Regularization & Abolition) Act, 1970 was a beneficial piece of legislation. Specific reference was placed on behalf of the management, i.e., the petitioner herein, on observation in paragraph 103 of the said verdict of the Apex Court:

“The principle that a beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. We have already noticed above the intendment of the CLRA Act that it regulates the conditions of service of the contract labour and authorizes in [Section 10\(1\)](#) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of [Section 10](#) of the Act among other relevant factors. But, the presence of some or all those factors, in our view, provide no ground for absorption of contract labour on issuing notification under sub-section (1) of [Section 10](#). Admittedly when the concept of automatic absorption of contract labour as a consequence of issuing notification under [Section 10\(1\)](#) by the appropriate Government, is not alluded to either

in [Section 10](#) or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in [Section 10](#) or substitute for penal consequences specified in [Sections 23](#) and [25](#) a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible. We have already held above, on consideration of various aspects, that it is difficult to accept that the Parliament intended absorption of contract labour on issue of abolition notification under Section 10(1) of CLRA Act.”

22. *Inter alia*, it was submitted on behalf of the petitioner that the CGIT-cum-Labour Court II had overlooked the ratio of the verdict of the Supreme Court in the case reported in **2004 Vol. IV SCC page 126** submitting that the following factors have to be considered before coming to a conclusion that the Master and Servant relationship exists between the employer and the contract labour:

- (a) Control*
- (b) Integration*
- (c) Power for appointment and dismissal*
- (d) Liability to pay remuneration and deduct insurance contribution.*

- (e) *Liability to organize the work and supply tools and material*
- (f) *Nature of mutual obligation*
- (g) *Terms and conditions of contract*

and none of these factors existed in the instant case qua the claimant, i.e., the respondent herein, to conclude that the respondent was an employee of the management, i.e., the petitioner herein, and thus the impugned award was not sustainable in law and was liable to be set aside.

23. Reliance was also placed on behalf of the petitioner on the verdict of the Supreme Court in ***International Airport Authority of India v. International Air Cargo Workers' Union and Another***; (2009) 13 SCC 374, with specific reference to the paragraph Nos.37, 38 and 39 of the said verdict which are reproduced as under:

“37. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employee and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. But where there is no notification under section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was

sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise.

38. The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal

employer but that is secondary control. The primary control is with the contractor.”, –

to contend that it had not been proved that the contract between the principal employer and the contractor was sham, nominal and merely a camouflage to deny the employment benefits to the workmen, there is no question of an industrial adjudication directing the principal employer to absolve or regularize the services of the contract labour.

24. Reliance was also placed on behalf of the management, i.e., the petitioner herein, on the verdict of the Supreme Court in *Steel Authority of India Limited v. Union of India & Ors.*; (2006) 12 Supreme Court Cases 233, to contend that where the claimant had himself stated that the payment of his salary was being made by the Airport Authority of India through its contractor, a mutually destructive plea which had been taken by the claimant, i.e., the respondent herein, that he was also a workman of the principal employer could not be allowed and that the general principles of law of estoppel, acquiescence and waiver are applicable in an industrial adjudication.

25. Reliance was also placed on behalf of the management, i.e., the petitioner herein, on the verdict of the Supreme Court in *A.P. SRTC & Ors. v. G.Srinivas Reddy & Ors.*; (2006) 3 Supreme Court Cases 674 to contend that as laid down in *Steel Authority of India Limited v. National Union Waterfront Workers*; (2001) 7 SCC 1, as to whether the contract labour system was a ruse or a camouflage has to be adjudicated only by the Industrial Tribunal or the Court and not by the

High Court in its writ jurisdiction under Article 226 of the Constitution of India.

It was also contended by the management, i.e., the petitioner herein, while placing reliance on the observation in paragraphs No.9, 10 and 11 of the above verdict of the Supreme Court to contend that the High Court cannot in exercise of its jurisdiction under Article 226, direct absorption of the respondent on the ground that the work for which the respondent was engaged as a contract labour was perennial in nature. It was, thus, submitted on behalf of the management, i.e., the petitioner herein, that the impugned award dated 25.05.2005 directing reinstatement of the claimant, i.e, the respondent herein w.e.f. 1.11.1995 to the post of Safai Karamchari with 25% back wages and the 10% interest on the entire backwages, in the event of default, was wholly illegal and that it was sought to be set aside.

26. The paragraphs No.9, 10 and 11 of the said verdict are reproduced as under:

“9. In Steel Authority of India Ltd. & Ors. v. National Union Waterfront Workers & Ors. [2001 (7) SCC 1], a Constitution Bench of this Court overruled the decision in Air India (supra) and held that where contract labour are engaged in connection with the work in an establishment and employment of such contract labour is prohibited by issue of a notification under Section 10(1) of the CLRA Act, there was no question of automatic absorption of the contract labour working in the establishment and the principal employer cannot be required to absorb the contract labour. This

Court also held that on a contractor engaging contract labour in connection with the work entrusted to him by the principal employer, it does not culminate into a relationship of 'master and servant' between the principal employer and the contract labour. This Court held that whether the contract labour system was genuine or a mere camouflage has to be adjudicated only by the Industrial Tribunal/Court and not by the High Court in its writ jurisdiction.

10. We extract below the relevant portions of the principles summed up by this Court:

"(125.5)5). On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be

specified by it for that purpose in the light of para 6 hereunder.

(6). If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

126. We have used the expression "industrial adjudicator" by design as determination of the questions aforementioned requires enquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under [Article 226](#) of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be the Industrial Tribunal/Court whose determination will be amenable to judicial review."

[Emphasis supplied]

10. In this case, there was no notification under section 10(1) of CLRA Act, prohibiting contract labour. There was also neither a contention nor a finding that the contract with the contractor was sham and nominal and the contract labour working in the establishment were, in fact, employees of the principal employer himself. In view of the principles laid down in Steel Authority, the High Court could not have directed absorption of respondents who were held to be contract labour, by assuming that the contract labour system was only a camouflage and that there was a direct relationship of employer and employee between the corporation and the respondents. If respondents want the relief of absorption, they will have to approach the Industrial Tribunal/Court and establish that the contract labour system was only a ruse/camouflage to avoid labour law benefits to them. The High Court could not, in exercise of its jurisdiction under [Article 226](#), direct absorption of respondents, on the ground that work for which respondents were engaged as contract labour, was perennial in nature.”

27. The claimant, i.e., the respondent herein while reiterating the submissions made before the CGIT-cum-Labour Court-II placed reliance on the evidence led by him before the CGIT-cum-Labour Court-II through his affidavit wherein it has been categorically stated that his services had been taken on the direction of the Ministry of Civil Aviation & Tourism (Department of Civil Aviation) whereby he was appointed on daily wages as an unskilled workman in April, 1994 to provide better services to the staff of the Ministry and National Division of Airport Authority of India as the quantum of work was unmanageable for the existing staff of the canteen and that the

payment used to be made to the claimant, i.e., the respondent herein, by the contractor, who acted as a tout and who had introduced the claimant, i.e., the respondent to the management, i.e., the petitioner herein, to get appointed with the Airport Authority of India on daily wages.

28. The claimant, i.e., the respondent herein in his cross-examination on 6.7.2004 before the CGIT-cum-Labour Court-II on oath has stated that he was not working with the contractor and that he did not know about M/s.Arcon India Limited and that he was appointed by the Ministry of Civil Aviation and even submitted that he had received an appointment letter and that he used to mark his attendance in the attendance register which was kept before the Manager and that the National Airports Authority of India used to pay his salary in cash and he had been appointed in the Rajiv Gandhi Bhawan.

29. The representative of the management, i.e., the petitioner herein, Mr.K.S.Dalal, Assistant Manager, National Airports Authority of India, who had been examined by the petitioner as MW-1, before the CGIT-cum-Labour Court-II whilst reiterating the submission of the management, i.e., the petitioner herein, had stated before the CGIT-cum-Labour Court-II on being cross-examined by the claimant, i.e., the respondent herein, that:

- **he was not aware whether M/s Arcon India Limited was having any licence for employing persons as Labourers;**

- That M/s Arcon India Limited was given the contract for the maintenance and conservancies services in the year 1992;
- Staff to the canteen is provided by the Department of Canteens, Government of India;
- the canteen in question was under the control of Ministry of Civil Aviation;
- the attendance of the workman was being marked by the contractor;
- as regards the payment of salary to the workman for the month of February, 95, it was in the record that it had been paid to the workman;
- so far as the question of payment of the salary to the workman for the month of March to the month of May, 1995, this could be said after examining the record;
- it was wrong to say that the attendance of the workman was being marked by the management and it was the management who used to pay salary to the workman;
- it was wrong to say that the services of the workman had been terminated by the management wrongly;
- whether the nature of the job performed by the workman in the canteen was of a permanent nature, this could well be told by the contractor under whom the workman was working;
- whether the contractor was having a licence for engaging workmen or not he was unable to tell anything in relation thereto and;
- it was also stated by this witness that he was not aware whether form no.V was given to the contractor or not and that he was not aware about form No.V.

30. It was, thus, contended on behalf of the claimant, i.e., the respondent herein, that the evidence on record before the CGIT-cum-Labour Court-II, itself established that the claimant, i.e., the respondent herein was a workman of the Airport Authority of India and not of M/s.Arcon India Limited. It was submitted by the respondent that the testimony of Mr.K.S.Dalal, Assistant Manager of the Airport Authority of India, examined as MW-1, states that the salary for the month of February 1995 had been paid to the workman and that the question of payment of his salary to the workman for the month of May, 1995 could be stated after examining the record or in regard that the payment of the salary was being made by the management, i.e., the petitioner herein, and the factum that the witness of the management was not even aware whether the stated contractor had any licence for engaging workmen and whether any form No.V was given to the stated contractor or not, is itself an indicator that the contract, if any, between the management, i.e., the petitioner herein, and the stated contractor M/s Arcon India Limited was a sham and a camouflage as rightly held vide the impugned award. Reliance was also placed on behalf of the claimant, i.e., the respondent herein, on the verdict of the Supreme Court in ***Bharat Heavy Electrical Limited v. State of U.P.***; AIR 2003 SUPREME COURT 3024, to contend that the relevant records had not been produced by the management, i.e., the petitioner herein, including the alleged contract between the management and the stated contractor,i.e., M/s Arcon India Limited to show that M/s. Arcon India Limited was a contractor of the management, i.e., the petitioner

herein, and that thus an adverse inference had necessarily to be drawn against the management, i.e., the petitioner herein, in the facts and circumstances of the case.

31. Reference was made to paragraph No.13 of this verdict by the claimant,i.e., the respondent herein in support of the said contention which is reproduced as under:

“13. This apart, the finding that the respondents-workmen were the employees of the appellant, does not rest merely on the test of control. The other evidence and facts and circumstance of the case were also kept in mind in recording such a finding including a vital fact that the appellant did not produce the records alleging that they were not available which led to drawing adverse inference against them. It is not possible for us to hold that such concurrent findings recorded by the Labour Court and the High Court that the workmen were to be treated as the employees of the appellant are either perverse or based on no evidence or untenable at all.”

32. Likewise, reliance was placed on behalf of the claimant, i.e., the respondent herein, on the verdict of the learned Single Judge of this Court in ***Filmistan Exhibitors Limited v. N.C.T. Delhi, Thr. Secretary, Labour & Ors.***, in Writ Petition (Civil) No. 14259/2004 decided on 26.04.2006 reported in vol. VII-2007 (2) of the All India Services Law Journal to likewise contend that a party in possession of the best evidence is bound to place the same before the Court, and that in the present case, the management, i.e., the petitioner herein, had

failed to produce the terms of contract between the management and the stated contractor, i.e., M/s Arcon India Limited and an adverse inference in terms of Section 114 Illustration (g) of the Indian Evidence Act, 1872 is liable to be drawn against the management, i.e., the petitioner herein.

33. Likewise, reliance was placed on behalf of the respondent/claimant on the verdict of the Supreme Court in *M/s. Sriram Industrial Enterprises Limited v. Mehak Singh & Ors.*; AIR 2007 SUPREME COURT 1370, to contend that the non-production of the attendance registers and muster rolls by the employer, i.e., by the petitioner herein establishes that the best evidence had been withheld by the management, i.e., the petitioner herein, and that where the management, i.e., the petitioner herein, had not produced the records to show that the claimant, i.e., the respondent herein had not worked for more than 240 days in the year preceding the date of termination of his services, the mere denial by the management, i.e., the petitioner herein, of documents submitted by the claimant, i.e., the respondent herein, to show that he had worked for more than 240 days was insufficient.

34. Reliance was also placed on behalf of the claimant, i.e., the respondent on the verdict of the Supreme Court in *R.M.Yellati v. Asstt. Executive Engineer*; (2006) 1 Supreme Court Cases 106, to submit that in case of daily wagers (the claimant, i.e., the respondent herein, who was a daily wager), the workman could only call upon the employer to produce before Court the nominal muster roll for the

given period and other documents if in existence in as much as daily wage employees are not regular employees and are not given letters of appointment and are not given letters of termination and are not given any written document which they can produce as proof of receipt of wages and their attendance is maintained in loose sheets.

35. Reliance was placed on behalf of the claimant, i.e., respondent on the verdict of the Supreme Court in ***Director, Fisheries Terminal Division v. Bhikubhai Meghajibhai Chavda***; AIR 2010 SUPREME COURT 1236, to submit that the claimant/ the respondent's, services had been terminated without complying with the provision of Section 25-F and that as the claimant, i.e., the respondent herein, had worked for 240 days, and that thus the burden of proof shifted to the employer to prove that he did not complete 240 days of service in the requisite period to constitute continuous service and, thus, an adverse inference has to be drawn against the management, i.e., the petitioner herein, for non-production of these documents.

36. Likewise, reliance was placed on behalf of the claimant, i.e., the respondent herein, on the verdict of the Supreme Court in ***Raj Kumar v. Director of Education and Others***;, (2016) 6 Supreme Court Cases 541 to contend that non-compliance of Section 25-F of the "I.D.Act, 1947" made the termination and retrenchment of the claimant, i.e., the respondent herein illegal. Reliance was also placed on behalf of the claimant, i.e., the respondent herein on the verdict of the Supreme Court in ***M/s Hindustan Tin Works Pvt. Ltd. v. The Employees of M/s Hindustan Tin Works Pvt. Ltd. & Others***; (1979) 2 Supreme

Court Cases 80 to contend that there was no infirmity in the impugned award, for a workman whose services had been illegally terminated, is ordinarily entitled to full back wages except to the extent he was gainfully employed during the enforced idleness, and that there was thus no infirmity in the relief of reinstatement and full backwages awarded by the CGIT-cum-Labour Court-II vide the impugned award in the present case.

37. Reliance was also placed on behalf of the claimant, i.e., the respondent on the verdict of the Supreme Court in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Others***; 2013 (6) SLR 642 (S.C.) likewise to contend that there was no infirmity in the impugned award as his services had been wrongfully terminated and he cannot be denied backwages.

38. The presumptions culled out after adverting to the several verdicts of the Supreme Court as detailed in paragraph 33 of the verdict in ***Deepali Gundu Surwase*** (Supra) are as under:

“i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always keep (sic) in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or

workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (supra).

vii) The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee /workman.”

39. Reliance was also placed on behalf of the claimant, i.e., the respondent herein on the verdict of the Supreme Court in ***Raj Kumar Dixit v. Vijay Kumar Gauri Shanker, Kanpur Nagar***; (2015) 9 Supreme Court Cases 345 to contend that there was no infirmity in the impugned award directing reinstatement with 25% back wages, and that thus in the facts of the case this Court ought not to interfere with the impugned award.

40. Reliance was also placed on behalf of the claimant, i.e., the respondent on the verdict of the Supreme Court in ***Surendra Kumar Verma and Others v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi & Another***; (1980) 4 Supreme Court Cases 443, to contend that as the claimant, i.e., the respondent herein had

been improperly and illegally retrenched, he is entitled to claim reinstatement and that there was no infirmity in the impugned award.

ANALYSIS

41. On a consideration of the entire available record including the records before the CGIT-cum-Labour Court-II and the rival submissions made on behalf of either side, taking into account the factum that the claimant, i.e., the respondent herein had categorically deposed on oath that he had been employed by the National Airport Authority of India at the Rajiv Gandhi Bhawan Departmental Canteen of National Airport Authority at A-Block, Rajiv Gandhi Bhawan, New Delhi as a Safaiwala since April, 1994, coupled with the factum that the management, i.e., the petitioner herein, did not produce its contract with M/s Arcon India Limited, the stated independent conservancy contractor under whom the claimant, i.e., the respondent herein, was stated to have been engaged, despite an opportunity granted for production of the same in terms of proceedings dated 15.2.2012 and 20.3.2012 in this Court, wherein vide proceedings dated 15.2.2012, an opportunity had been granted to the management, i.e., the petitioner herein, during the course of arguments to ascertain as to why the contract between the management and the stated contractor M/s Arcon India Limited for providing labour to the management and the agreement whereby its contract was terminated, were not produced before the CGIT-cum-Labour Court-II due to which an adverse inference had been drawn against the management, i.e., the petitioner herein, in the impugned award coupled with the statement made by the

learned counsel for the management, i.e., the petitioner herein, on 20.3.2012 that it had not been possible to trace out the contracts between the petitioner and the contractor M/s Arcon India Limited and on the basis of whatever record was produced before the CGIT-cum-Labour Court-II, the Court may pass any appropriate orders for the non-production of the contract while disposing of the writ petition, an adverse inference has essentially to be drawn against the management, i.e., the petitioner herein, as has rightly been drawn by the CGIT-cum-Labour Court -II vide the impugned award dated 25.5.2005 wherein it has been observed to the effect that :

“It has been held in 2004 (4) 1 SCC page 126 that the factors to be considered *inter alia* are:-

(1) Control (2) Integration (3) Power of appointment and dismissal (4) Liability to pay remuneration and deduct insurance contribution (5) Liability to organize the work and supply tools and materials (6) Nature of mutual application (7) terms and conditions of contract.

It has been held in this case that if the work is of permanent and perennial nature they shall be deemed to be directly employed by the administration. In the present facts and circumstances of the case the workman is entrusted with the work of cleaning and sweeping Rajiv Gandhi Bhawan, Cleaning and Sweeping is a work of permanent and perennial nature. Contract labour cannot be employed for such work. The same view has been expressed by the Hon'ble Supreme Court in (1999) 3 SCC 601, 1994 SCC (L

& S) 765. The work of workman applicant is of perennial nature. It has been held in JT 2003 (1) SC 465 that contract labour should not be permitted when the work is of perennial nature. The Hon'ble Supreme Court in JT 1999 (2) SC 435 has held that Contract Labour (Regulation & Abolition) Act 1970 is a beneficial piece of legislation. It should not be considered with narrow pedantic approach. The widest possible meaning ought to be offered to the expressions used in the act and contract labourer should not be left on the mercy of the intermediary. From perusal of the citation referred to above it becomes quite explicite (sic.) that the workman was intrusted (sic.) with the work of safai. Such a work is work of perennial nature. Contract labour cannot be engaged for such nature of work. He worked under control and supervision of the management and he was integrated to the establishment. Later on payment was made through the NAA as such he was under control and supervision and payment of the management. No paper has been filed regarding any agreement of contract between M/s. Arcon India Limited and the management. The so called contractor has got no registration. There is no term of contract. In the circumstances contract shall be deemed to be camouflage and as such the workman will become an employee of the management and there shall be deemed to be a contract of service. In the facts and circumstance of the case there is no term of agreement so it shall be deemed that the workman was directly engaged by the management and there

was master and servant relationship between the management and the workman applicant. The law cited by the management is not applicable in the present facts and circumstances of the case.

The reference is replied thus:-

The action of the management of National Airport Authority of India in terminating the services of Shri Suresh Kumar, Safai Karamchari w.e.f. 01.11.1995 is neither just nor fair.”

that the claimant, i.e., the respondent herein had worked under the control and supervision of the management and that he was integrated into the establishment and later on payment was made through the Airport Authority of India and as such he was under the control and supervision of the management, i.e., the petitioner herein. The impugned award also rightly observed that no paper has been filed regarding any agreement of contract between M/s Arcon India Limited and the management and that M/s Arcon India Limited, the so called contractor, had got no registration.

42. This is so in as much as each of the observations made by the impugned award to the effect that :

- (i) **That the claimant, i.e., the respondent herein worked under the control and supervision of the management, i.e., the petitioner herein;**
- (ii) **that he was integrated to the establishment and that later on the payment was made through the NAAI and as such he was under the control and supervision of the management, i.e., the petitioner herein;**

- (iii) that no paper had been filed regarding any contract between the management and the stated contractor, i.e., M/s Arcon India Limited;
- (iv) that there was no term of contract;
- (v) that the so called contractor had got no registration
- (vi) that is the circumstance that the contract would have to be deemed to be a camouflage and as such the workman had to be deemed to be an employee of the management and there had to be deemed to be contract of services and;
- (vii) that in the facts and circumstances of the case there being no terms of agreement, it would have to be deemed that there was a contractual engagement by the management—

and thus a master and servant relationship between the management, i.e., the petitioner herein and the claimant, i.e., the respondent herein, are borne out through the evidence on record before the CGIT-cum-Labour Court-II and also through the submissions made on behalf of the petitioner during the proceedings dated 15.2.2012 and 20.3.2012 in this Court.

43. A consideration of the ratio of the verdicts relied upon on behalf of the claimant, i.e., the respondent herein, i.e., the following judgments:

- *Bharat Heavy Electrical Limited v. State of U.P.*;
- *M/s. Sriram Industrial Enterprises Limited v. Mehak Singh & Ors.*;
- in *R.M.Yellati v. Asstt. Executive Engineer*;
- *Director, Fisheries Terminal Division v. Bhikubhai Meghajibhai Chavda*;

- *Raj Kumar v. Director of Education and Others;*
- *M/s Hindustan Tin Works Pvt. Ltd. v. The Employees of M/s Hindustan Tin Works Pvt. Ltd. & Others;*
- *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Others;*
- *Raj Kumar Dixit v. Vijay Kumar Gauri Shanker, Kanpur Nagar and;*
- *Surendra Kumar Verma and Others v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi & Another;*

and the evidence on the record, i.e., the depositions of the claimant, i.e., the respondent and of MW-1 Sh. K.S.Dalal, on the record bring forth that the claimant, i.e., the respondent had undoubtedly worked for more than 240 days continuously with the Airport Authority of India, the management, i.e., the petitioner herein.

44. This is so, in as much as a mere denial by Mr.Sunil Tyagi, the Authorized Representative of the management, of the documents of attendance produced by the claimant, i.e., the respondent herein from April, 1994 till 31.10.1995, is insufficient to negate the claim of the claimant, i.e, the respondent herein, of his having continuously worked for more than 240 days with the petitioner, i.e., the National Airport Authority of India. This is so in as much as, despite best evidence being available with the management, i.e., the petitioner herein, of the muster roll and the attendance register, the same were not produced. Further more, **MW-1** Shri K.S.Dalal, the Assistant Manager of the National Airport Authority of India, **in his cross-examination had stated that the payment of the salary to the workman for the month of February, 1995, as per record, had**

been paid to the respondent workman and that the question of payment of the salary to him for the months of March, April and May, 1995 can be stated after examining the record, itself is an indicator that the payment of the salary to the workman was also being made by the National Airport Authority of India as is also brought forth through the **admitted document** on the record, i.e., the copy of the minutes of the meeting dated 31.8.1994, held in the office of the Joint Secretary of the Ministry of Civil Aviation and Tourism (Department of Civil Aviation) in which vide clause 6, **it was observed categorically to the effect that the payment of salaries of two daily wage workers (of whom one of them is the claimant respondent) working in the Canteen would be borne by the National Airport Authority of India.** Thus, the observation of the CGIT-cum-Labour Court-II, that the claimant, i.e., the respondent herein, had been integrated into the service of the National Airports Authority of India, cannot be dislodged by mere denial thereof by the petitioner in view of the categorical admission of the document, i.e., the minutes of the meeting dated 31.8.1994, by the petitioner coupled with the factum that the plea of the respondent that the claim of the claimant, i.e., the respondent herein had also been considered in the meeting dated 31.8.1994 which has also not been denied specifically and categorically through the pleadings on the record before the CGIT-cum-Labour Court-II nor in the proceedings in the present writ petition by the management, i.e., the petitioner herein. The factum that the petitioner has not produced any contract between the management and the stated contractor M/s Arcon India Limited itself necessitates

the drawing of an adverse inference against the management, i.e., the petitioner herein.

CONCLUSION

45. In the facts and circumstances of the instant case brought forth on record cogently through the evidence led before the CGIT-cum-Labour Court-II and the pleadings of the parties on record before the CGIT-cum-Labour Court-II and the averments made in the present writ petition and the contentions raised on behalf of either side, the adverse inference drawn by the CGIT-cum-Labour Court-II that in the absence of a contract between the management and the contractor M/s Arcon India Limited having been produced and in the factum of the stated contractor having no registration, in as much as MW-1, Sh. K.S.Dalal, the Assistant Manager of the management was not even aware, whether the contractor had any licence to employ his persons as labour, the corporate veil in the instant case has essentially to be lifted as laid down in *Secretary, H.S.E.B v. Suresh & Others* (supra) in which case the alleged contractor was not a licenced contractor. The inevitable conclusion that the Division Bench had drawn in the said case was to the effect that the so called contract was a mere camouflage, smoke and a screen and disguised in almost a transparent veil which could easily be pierced. The factum that the management, i.e., the petitioner herein, in the instant case has admitted vide minutes of its meeting dated 31.8.1994 that the salary of the claimant, i.e., the respondent herein would thenceforth be paid by the National Airport Authority of India thus makes it apparent that the veil in the instant

case has essentially to be lifted in favour of the claimant, i.e., the respondent herein.

46. Thus, the finding to the effect, in ID No.108/97 that the action of the National Airport Authority of India in terminating the services of Suresh Kumar, as Safai Karamchari, w.e.f. 1.11.1995 was neither just nor fair is upheld in as much as despite his having worked for a continuous period of 240 days, presumably in the instant case, which presumption has not been rebutted by the management, i.e., the petitioner herein, the termination of services of the claimant/ i.e., the respondent herein, for the reason that the services of the stated contractor were withdrawn as regular staff of the Ministry of Civil Aviation canteen was available, without any document of termination of the contract having been produced, makes it apparent that the claimant, i.e., the respondent herein, had been retrenched from the services of the petitioner in terms of Section 2-(oo) of the "I.D. Act, 1947" and the said retrenchment having been done without compliance of the mandatory conditions imposed under Section 25-F of the "Industrial Disputes Act, 1947", of a month's notice in writing indicating the reasons for retrenchment and the expiry of such period or payment of wages for the period of notice in lieu of such notice, and the payment of compensation equivalent to 15 days average pay for every completed year of continuous services or any part thereof in excess of six months and the requisite notices in the prescribed manner having not been issued by the appropriate authority, the termination of the services of the claimant, i.e., the respondent herein,

in the facts and circumstances of the instant case has to be held to be unjust and unfair, as rightly held vide the impugned award dated 25.5.2005 in Industrial Dispute No.108/97 by the CGIT-cum-Labour Court-II, New Delhi.

RELIEF

47. However, in the facts and circumstances of the instant case taking into account the factum that the termination of the services of the respondent herein was effected on 1.11.1995 from the post of Safai Karamchari, coupled with the factum that the application under Section 17B of the ID Act, 1947 bearing CM No.1045/2010 was filed by the workman only on 30.7.2010, though it had been contended by the workman that he was not gainfully employed anywhere and this submission has not been rebutted apart from a bare denial by the management, i.e., the petitioner herein, taking into account the factum of lapse of more than 21 years from the date of termination of the services of the respondent, i.e. from 1.11.1995, till date, i.e. 20.06.2017, it is not considered appropriate to grant any reinstatement of the claimant, i.e., the respondent herein with the management, i.e., the petitioner herein, in as much as admittedly the claimant, i.e., the respondent herein was working as an unskilled daily wager.

48. Reliance was placed behalf of the petitioner on the verdict of the Division Bench of this Court in ***Krishan & Others v. The Management of the Air Force School*** in LPA 305/2013 decided on 29.7.2015 reported in 2015 SCC Online 10769, wherein the

modification of the award dated 10.10.2005 directing reinstatement of the workman with 50% backwages to compensation in addition to the amount released under Section 17B of the Industrial Disputes Act, 1947, as directed by the learned Single Judge was upheld despite challenge by the workmen who sought reinstatement, in view of the factum that the appellant therein, had not denied that they had not been appointed through the regular recruitment process by inviting applications. In the instant case also, the claimant, i.e., the respondent herein has not been appointed through any regular recruitment process and had been working as an “unskilled” daily wager. Vide the said judgment in **Krishan & Others** (supra), the amount of compensation of Rs.40,000/- granted to each of the appellants along with the amount received under Section 17B of the I. D. Act, 1947 was held to be sufficient to meet the ends of justice in view of the finding of the Supreme Court in **Jagbir Singh v. Haryana State Agriculture Marketing Board and Another**; (2009) 15 Supreme Court Cases 327.

49. Vide the verdict of the Supreme Court in **Incharge Officer and Anr. V. Shankar Shetty** in Civil Appeal No. 7213/2010 decided on 31.8.2010, reported in 2010 (6) SLR 530 (SC) whilst advertng to the shift in the legal position through a catena of decisions that in the event of an order of retrenchment having been passed in violation of Section 25-F being set aside, an award of reinstatement, cannot automatically be passed and that the award of reinstatement of the daily wager with full back wages in cases where the workman had completed 240 days of the work in a year preceding the date of

termination, has not been found to be proper and instead compensation has been awarded. That the Supreme Court distinguished between a daily wager and one who holds a post and is a permanent employee, has essentially to guide the moulding of the relief in the instant case. The verdicts of the Supreme Court in *Incharge Officer and Anr. V. Shankar Shetty and* observations of the Supreme Court in *Jagbir Singh* (Supra) observing to the effect that

“ It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice

It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to

be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and permanent employee.”

and the observation of the Supreme Court in ***Senior Superintendent Telegraph (Traffic) Bhopal v. Santosh Kumar Seal and Others*** (Civil appeal No. 3815 of 2010) decided on 26.4.2010 observing to the effect :

“In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice.”

and observations vide para 5 of the verdict in ***Incharge Officer & Anr. V. Shankar Shetty*** (supra) to the effect makes it apparent that in the facts and circumstances of the instant case, the retention of the amount received under Section 17B of the Industrial Disputes Act, 1947 till date, pursuant to a direction dated 9.9.2011 of this Court in CM No. 1045/2010 and compensation to the tune of Rs.1,50,000/- to be paid by the petitioner/management to the respondent herein would suffice to meet the ends of justice, in as much as the period for which the claimant, i.e., the respondent worked with the management, i.e., the petitioner herein, from April, 1994 to 31.10.1995, was a short period, during which period the claimant, i.e., the respondent admittedly was engaged as an unskilled daily wager.

50. During the course of submissions made on 15.5.2017, when the arguments were addressed, it was submitted on behalf of the management, i.e., the petitioner herein, that a sum of Rs.5,54,398/- has already been paid to the respondent in terms of directions dated 9.9.2011 which was not refuted by the claimant, i.e., the respondent herein.

The payment directed herein above of the compensation amount to be paid by the management, i.e., the petitioner herein, to the claimant, i.e., the respondent herein be made within a period of six weeks from today, i.e.20.06.2017, failing which the petitioner would be liable to pay interest on the said amount @ 9% p.a. to the claimant, i.e., the respondent herein.

51. The writ petition is disposed of accordingly and the impugned award dated 25.5.2005 accordingly modified.

52. In the facts and circumstances of the case, there is no order as to costs.

ANU MALHOTRA, J

JUNE 20, 2017
madhu/sv