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

+ **LPA No.734/2013**

+ Date of Decision: 6th July, 2017

SOM NATH BHATT Appellant
Through Appellant in person.

versus

M/S KHANIJAU INDUSTRIES (ENGG.) PVT.
LTD. & ORS Respondents
Through Mr.R. Gupta, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

CM No.15751/2013 (for summoning of documents)

1. The appellant who appears in person, states that since the appeal itself needs to be heard, he does not press this application and he would proceed on the basis of the records available.

2. This application is dismissed as not pressed.

LPA No.734/2013

3. The appellant has preferred the present Letters Patent Appeal to assail the judgment of the learned Single Judge of this Court in WP (C) No.8863/2008 decided on 4th July, 2013.

The learned Single Judge had dismissed the appellant's writ petition under Article 226 of the Constitution of India wherein the appellant had challenged the Award dated 1st July, 2008 passed by the Presiding Officer, Labour Court XIX, Karkardooma Court, Delhi. The Labour Court had answered the reference made to it upon the appellant raising an industrial dispute against the appellant. The reference made to the Labour Court was whether the services of the appellant had been terminated illegally and/or unjustifiably by the management and if so, to what relief he was entitled and what directions were necessary in that respect.

4. The undisputed facts are that the appellant had been appointed by M/s Luxor Pen Company as Personnel Manager w.e.f. 4th May, 1993 on a consolidated salary of Rs.5,000/- per month. Subsequently, his services were transferred to the respondent management i.e. M/s Khanijau Industries (Engineering) Private Limited which was later known as Luxor Writing Instruments Private Limited. The services of the appellant were terminated on 4th May, 1998 which action, according to the Appellant, was illegal and without assigning reasons and consequently, he raised an industrial dispute claiming himself to be a workman covered by Section 2(s) of the Industrial Disputes Act.

5. The respondent-Management contested the proceedings by claiming that the Appellant was not a workman since he was holding a managerial position and also claimed that the

Appellant had been discharged from service in terms of clause 4 of the appointment letter. The appellant, on the other hand, contended that only his designation was that of Personnel Manager but he was performing the duties of a Miscellaneous Clerk and denied that he had any supervisory or managerial powers. On the basis of the pleading, the Labour Court framed the issue as to whether the appellant was covered within the definition of workman as defined in Section 2(s) of the Industrial Disputes Act as per the preliminary objection taken by the Respondent-Management.

6. After both sides led evidence before the Labour Court in support of their respective cases, the Labour Court came to the conclusion that the evidence on record amply established that the Appellant was not just posted as Personnel Manager, he was primarily discharging only supervisory and managerial functions. The Labour Court accordingly held that it was not proved that the Appellant was covered within the definition of 'workman' under Section 2(s) of the Industrial Disputes Act and, consequently, answered the reference against him.

7. Since the reference had been answered against him, the appellant preferred the aforesaid writ petition. In the impugned judgment, the learned Single Judge has taken note of the evidence recorded by the Labour Court and relied upon in the impugned award. The Learned Single Judge has specifically referred to exhibits WW1/M1, WW1/M2, WW1/16 & WW1/17 which were the Annual Performance Appraisal forms of the

workers/peons/drivers which contained the signatures and recommendations of the appellant for their increments and promotions. In the appraisal reports, the Appellant had not only given his assessment of the performance of the said workmen, but had also recommended their increments and promotions.

8. The original record is before us and we have also perused the same which shows that the appellant had filled various Annual Performance Appraisal forms of workers/Peons/Drivers as Initiating Officer/Unit Personnel Head, wherein he had made the recommendations and signed as Unit Personnel Head for grant of increments/promotions. We have also perused Exh.WW1/M 3 to M15 which are bills cum vouchers for reimbursement passed by the appellant under his signatures and these include vouchers in his own respect.

9. As noticed by the Learned Single Judge, the Labour Court while coming to the conclusion that the Appellant was performing supervisory and/or managerial functions had relied upon Ex.WW1/M 5 to M 15-which are orders for release of payment to different employees based on the authorisation by the Appellant, as well as on Exh.WW1/M18 which was the employment form whereby a person had been engaged as an unskilled temporary workman with the management under the signatures of the appellant. The record also shows that the appellant had initially denied his signatures on the documents relied upon by the management, but subsequently admitted the

same when he faced the prospect of his signatures being forensically examined.

10. The learned Single Judge has observed and, in our view rightly so, that in writ jurisdiction, the court is not sitting in appeal and is not required to re-appreciate the evidence. The concern of the court is to examine whether there was any perversity in the Award i.e. whether the findings of fact returned by the Labour Court were premised on cogent evidence or not. Clearly, there was relevant and pertinent evidence available before the Labour Court on the basis of which it returned the finding that the appellant was not a workman. In the face of the appellant's designation as a Personnel Manager, the onus fell upon him to show that despite the said designation, he was functioning and discharging duties merely as a clerk, which he failed to do. On the contrary, there is good evidence on record to show that he, indeed, functioned as a Manager and discharged managerial and supervisory functions.

11. In these circumstances, we find absolutely no merit in the appeal and the same is dismissed.

(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

JULY 06, 2017/aa