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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P. (C) 6284/2004**

Reserved on: 9th November, 2017
Pronounced on: 22nd March, 2018

MOHIT ELECTRONICS ... Petitioner
Through: Mr. Viraj Datar and Vineet
Jhanji, Advocates
Versus

THE WORKMAN TAHIR HUSSAIN ... Respondent
Through: Mr. Rajiv Agarwal, Ms.
Mehgna and Mr. Sachin Kumar,
Advocates

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

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JUDGMENT

C. HARI SHANKAR, J.

1. Alleging that his services had been illegally terminated by the petitioner, the respondent initiated an industrial dispute, which was referred, by the Government of National Capital Territory of Delhi (hereinafter referred to as “the GNCTD”), for adjudication to the Labour Court, *vide* Order No F.24 (4875)/2000-Lab dated 7th February, 2001, with the following term of reference:

“Whether the services of Sh. Tahir Hussain have been terminated illegally and/or unjustifiably by the management

and if so, to what reliefs he entitled and what directions are necessary in this respect?”

2. The impugned Award, dated 22nd January, 2004, of the Labour Court, holds the termination, of the respondent by the petitioner, to amount to retrenchment, and, having been effected in violation of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act”), directs reinstatement, of the respondent, with continuity of service and full back wages.

3. Needless to say, the petitioner assails the said decision.

4. As is the norm, the respondent, during the pendency of these proceedings, moved an application, under Section 17-B of the ID Act, whereon this court, *vide* order dated 14th November, 2005, directed the petitioner to pay, to the respondent “wages at the higher of the two rates between the last drawn wages or minimum wages as are notified by the statutory authorities from time to time with effect from 22nd January, 2004”. This was, however, subject to the furnishing, by the respondent, of an undertaking, to the effect that, in the event of the respondent failing in these proceedings, he would reimburse, to the petitioner, the differential amount between the last drawn wages and the wages paid to him under the order dated 14th November, 2005. The requisite undertaking, in terms of the said direction, was filed, by the respondent, on 4th January, 2006.

5. Pursuant to the aforementioned reference, to the Labour Court, by the GNCTD, *vide* Order dated 7th February, 2001, Statement of Claim was filed, by the respondent, before the Labour Court. It was sought to be contended, therein, that the respondent had joined employment, with the petitioner (which operated from Shop No 441, Lajpat Rai market, Delhi) in January, 1986, on monthly wages of ₹ 10,000/–, as an Electrician and Video Mechanic, and that, despite his service being “unblemished and uninterrupted”, the petitioner, who was not maintaining any service record as required under the Delhi Shops and Establishment Act, 1954, illegally terminated the services of the respondent. The Statement of Claim contended that, pursuant thereto, a complaint was made, by the respondent, on 6th July, 2000, to the Asst Labour Commissioner, who directed the Labour Inspector to visit the premises of the petitioner, and that, on the occasion of the said visit, on 1st July, 2000, the Labour Inspector in fact found the respondent working in the premises of the petitioner. It is alleged, by the respondent, that, consequent on the said visit, the Labour Inspector directed the representative of the petitioner to appear before him on 18th July, 2000, at his office. Incensed thereby, the respondent would contend, the petitioner not only defaulted in compliance with the said direction of the Labour Inspector, but also terminated, forthwith, the services of the respondent. As such, it was sought to be contended that the services of the respondent had been terminated by way of victimisation, and that, owing to its having been effected without complying with the mandate of Section 25-F of the ID Act, the respondent was entitled to reinstatement with continuity of service and

full back wages. A list, enumerating the documents on which the respondent proposed to rely, was annexed to the Statement of Claim, to which I would be alluding, in detail, later in the course of this judgment.

6. The petitioner filed its written statement, in response to the Statement of Claim of the respondent, contending, essentially, that there was no employer-employee relationship between the petitioner and the respondent, as the respondent had never worked with the petitioner in any capacity at any point of time. It was sought to be averred that the respondent was a stranger to the petitioner-or at least to its business-and that, consequently, there could be no question either of termination, or of retrenchment, of the respondent by the petitioner. Section 25-F of the ID Act, therefore, it was sought to be contended, never came in for application in the present case. It was also sought to be contended that the respondent was, in fact, gainfully employed elsewhere.

7. The respondent cited only himself as his defence witness (WW-1), whereas the petitioner cited R.K. Suri, the proprietor of the petitioner and Vicky, a commission agent in Old Lajpat Rai Market, as their witnesses, who were, therefore, designated as MW-1 and MW-2 respectively.

8. The respondent filed his affidavit-in-evidence, sometime in May, 2002, basically reiterating the contents of his Statement of Claim.

9. Consequent upon filing of Statement of Claim by the respondent, and written statement by the petitioner by way of response thereto, the following issues were framed, by the Labour Court, as arising for its consideration, on 19th March, 2002:

“(1) Whether no relationship of employer and employee exists between the parties and whether the claimant is not a workman within the meaning of Section 2(s) of I.D. Act, 1947 as claimed for by the management in preliminary objection No. 2 raised by the management in its written statement?

(2) As per terms of reference.”

10. Oral evidence of the respondent, as WW-1, was recorded, before the Labour Court, on 3rd October, 2002. The respondent stood by his affidavit, which was exhibited as Ex.WW-1/A. The documents relied upon, by the respondent, in his favour were exhibited as under:

(i) Ex.WW-1/1 was an undated letter, from the President, Delhi Labour Union to Mr. Suri, proprietor of the petitioner.

(ii) Ex.WW-1/2 was a communication dated 6th July, 2000 from the Delhi Labour Union to Shri V.S. Arya, Assistant Labour Commissioner, GNCTD.

(iii) Ex.WW-1/3 was the Statement of Claim of the respondent.

(iv) Ex.WW-1/4 consisted of copies of visiting cards of the petitioner.

- (v) Ex.WW-1/5 was the copy of Identity Card of the daughter of the petitioner for the year 1998-99.
- (vi) Ex.WW-1/6 was the copy of a Bill, purportedly of the petitioner, bearing the respondent's signature.
- (vii) Ex.WW-1/7 was the copy of a bank pass book of the respondent, bearing the address of the petitioner.
- (viii) Ex.WW-1/8 consisted to two blank non-judicial stamp papers for Rs. 1,000/-, each stated to be "four pages of the registry" of the respondent's house, showing the address of the petitioner entered on the reverse, as "441, Lajpat Rai Market, Delhi-110006" i.e. the address of the respondent.
- (ix) Ex.WW-1/9 was the photocopy of a challan form of the Ghaziabad Development Authority (GDA), showing the name of the applicant as "Tahir Hussain" and the address for correspondence as "441, Lajpat Rai Market, Delhi-110006" i.e. the address of the petitioner.
- (x) Ex.WW-1/10 was the photocopy of a letter dated 26th April, 1993, from the respondent to the GDA, in which, too, the respondent entered the address of the petitioner as his address.
- (xi) Ex.WW-1/11 was another communication dated 16th November, 1993 from the respondent to the GDA in which, too, the address of the petitioner i.e. 441, Lajpat Rai Market, Delhi-110006 was shown as, the address of the respondent.
- (xii) Ex.WW-1/12 to Ex. WW-1/14 were post cards addressed to the respondent, purportedly by property dealers, in which the

address of the respondent was shown as “441, Lajpat Rai Market, Delhi-110006” i.e. the address of the petitioner.

(xiii) Ex.WW-1/15 was an envelope addressed to the respondent, stated to have been received at the address of the petitioner.

(xiv) Ex.WW-1/16 and Ex.WW1-17 were inland letters, addressed to the daughter of the respondent, with the address shown as the address of the petitioner i.e. 441, Lajpat Rai Market, Delhi-110006.

(xv) Ex.WW-1/18 was the copy of a letter, probably written in Urdu, stated to be received by the respondent from his relative in Pakistan, in which the address of the respondent was shown as “441, Lajpat Rai Market, Delhi-110006”.

11. Examination and cross examination of the respondent, as WW-1 took place on 3rd October, 2002 and 19th December, 2002.

12. In his examination-in-chief, the respondent proved his affidavit, as well as the various documents, already filed by him. His cross-examination, by the authorised representative of the petitioner, may be reproduced, in *extenso*, as under:-

“ I do not have any documentary evidence issued by either the proprietor or the partner of the Mgt. issued in my favour to show that relationship or employer and employee existed between the parties. Vol. Documents like letters received by me at the address of the Mgt., bank record relating to opening of bank account of my daughter

wherein address of the Mgt. has been mentioned, have already been filed on record. Sh. Ravinder Kumar Suri is the Prop. of M/S. Mohit Electronics. Three firms operate from the address in question i.e., 441, Lajpat Rai Market, and the names of the said firms are M/S. Uttam Chand Suri and Sons. 2. M/S. K.V.S. Electronics, & 3. M/S. Mohit electronics. Shri Uttam Chand Suri is the prop. Of M/s. Uttam Chand Suri & sons. Shri Sunil Suri is the brother of Shri Ravinder Kumar Suri is the prop. Of M/s. K.V.S. Electronics. It is correct that M/S. Mohit Electronics is situated on the 1st floor whereas the remainder firms are situated on the ground floor. It is correct that on the document Ex.WW1/1 to Ex. WW1/17 name of the Mgt. does not find a mention except on the visiting card and Ex.WW1/15. Further Vol. to say that address of the Mgt. i.e., 441, Lagpat Rai Market finds a mention therein. My attention did not used to be marked. Nor my signature used to be obtained on any attendance register. Vol. as and when Sh. Ravinder Suri did not used to be present in the shop, I used to prepare bills while booking the sets and also used to deliver the same to the parties and at that time I used to put my signature on the said bill. It is wrong to suggest that no bill was ever prepared by me. Vol. Bill bearing my signature which were issued by me two such bills/ are already on record, and the same are Ex.WW1/6. After seeing the judicial file the witness states that there is only one such bill Ex.WW1/6 which was issued by me and bears my signature. It is wrong to suggest that Ex.WW1/6 had been issued by the Mgt. when I had approached it as customer to get some electrical gazette rectifying. Vol. Name of the customer can be seen from the said bill which is mentioned as Shri Jagannath. Original of the said bill had been handed over to the customer and therefore it is not available with me. I had obtained Ex.WW1/6 from the shop. Again said I am in possession of the carbon copy of the said bill from which photocopy Ex.WW1/6 was obtained and I have shown the carbon copy to the Ld. AR of the Mgt. It is wrong to suggest that carbon copy of the bill from which Ex.WW1/6 was obtained, was taken by me from Shri Jagannath. Vol. it was taken by me from

the bill book. It is wrong to suggest that carbon copy Ex.P.1 from which Ex.WW1/6 was got made, is not in my handwriting. I know little bit of English. It is wrong to suggest that I do the job of repairing of electronics items on the *Patri* while sitting outside premises No. 441, Lajpat Rai Market, Delhi. It is wrong to suggest that those electronics items which I myself could not repair I used to get the same repair from M/S. Mohit Electronics. I have seen bill book interalia containing bill No. 3229 dated 30.5.90 which bears my signature at point A. That bill book is Ex.P.2 and aforesaid bill is Ex.P.3 (Court Observation Bill Book P.2 has been produced by Ld. AR of the Mgt.). Portion encircled at point B in Ex.P.3 is not in my handwriting. It is wrong to suggest that the encircled portion Mark B Ex.P.3 is on my own handwriting. Address mentioned on Ex.P.3 is not mine and even my name is not mentioned therein. It is wrong to suggest that Ex.P.3 had been issued by the Mgt. when I had approached for getting my VCR repair. Vol. When I myself repair, where was the need for me to approach the Mgt. It is wrong to suggest that address of the Mgt. has been mentioned on Ex.WW1/7, WW1/8, WW1/9, WW1/10, WW1/11, & WW1/11 to WW1/15, because I used to do the repair work while on the patri out side the shop of the Mgt. I have brought with me original of Ex.WW1/5. It is wrong to suggest that telephone No. and address mentioned on exhibit WW1/5 is that of Sh Upender Kumar Suri. Vol. There is only on telephone connection at premises No. 441, of which a line also goes to the first floor. It is wrong to suggest that I was never in the employment of M/S. Mohit Electronics. I know that firm by the name of M/S. Anil Electronics is situated at 528, Old Lagpat Rai Market. It is wrong to suggest that I have been doing work of the said firm on a job work basis. Vol. I am on friendly terms with them and therefore, I just got and sit there friendly only. It is correct that once in a while I do repairing job also while sitting in the shop of the said firm. It is wrong to suggest that I earned about Rs. 5,000/- per month by doing repairing job at the shop of firm of M/S/ Anil Electronics. Vol. I am able to earn about Rs. 400-500/- per month by

doing the said repairing work. It is correct that I know Shri Guddu prop. of M/S. Chadhary Electronics, at KK Block, Meena Bazar, Jama Masjid, Delhi. It is wrong to suggest that I do repairing job at this shop also. It is also wrong to suggest that I am able to earn Rs. 5,000/- per month by repair job at the shop of the said Shri Guddu. I did not make any complaint against the Mgt. for not maintaining my service record to any authority under the law. It is incorrect to suggest that I was not found working by the labour Inspector of Labour Deptt. with the Mgt. in question. It is incorrect to suggest that the averments made in my affidavit is false. It is also wrong to suggest that the documents placed by me on the court record are fabricated one. It is also wrong to suggest that I have deposed falsely. It is incorrect to suggest that I have not served any legal demand notice to the Mgt. prior to raise an industrial dispute. I do not remember if demand notice Ex.WW1/1 had been got issued by me through union or not to the Mgt. It is wrong to suggest that the present proceedings have been initiated by me as a counter blast to the quarrel which I have with the mgt. on account of non-payment of money towards the repair charges.”

13. The petitioner, *per contra*, filed, as its evidence, affidavits of MW-1 R.K. Suri and MW-2 Vicky, dated 19th December, 2002 and 27th February, 2003 respectively.

14. MW-1 R.K. Suri, in his affidavit in evidence, categorically denied having been ever appointed the respondent, or of there being any master-servant relationship between the petitioner and the respondent. It was asserted that the respondent was, in fact, repairing electrical items on the footpath (*patri*) in the market, independently, since long. It was also sought to be alleged that the respondent was

working in Shop no. 528, of M/s. Anil Electronics and M/s. Chaudhary Electronics, K-Block, Meena Bazar, from which he used to earn more than Rs. 10,000/- per month. The affidavit of MW-1 further stated that the respondent used to occasionally sit in front of the shop of M/s K.V.S. Electricals, on the ground floor of the building. In view of these assertions, the affidavit in evidence of MW-1 reiterated the stand canvassed in the written statement filed by the petitioner, before the Labour Court, that the respondent was not the petitioner's workman but was, in fact, a stranger to its business.

15. Examination and cross examination of MW-1 R.K. Suri took place on 17th April, 2003. In his examination in chief, MW-1 R.K. Suri proved his affidavit, which was, accordingly exhibited as Ex.MW-1/A. The cross examination of MW-1 deserves to be extracted in *extenso*, as under:

“Ex.WW1/4 & 5 are related to the mgt. The mgt. does maintain cash books like Ex.WW1/6 on Ex.WW1/7 address of the mgt. is correctly mentioned. Ex.WW/8 to WW1/11 does not bear complete address of the mgt. Vol. the estbl. is situated on the first floor but this fact has not been mentioned on Ex.WW1/8 to WW1/11. WW1/12 to WW1/15 do not bear complete address of the mgt. because the estbl. is situated on the first floor but this fact is not mentioned therein. Ex. P-2 relates to the mgt. No house tax is payable in respect of property no. 441 question of & therefore/it being/ assessed as the whole as a unit does not arise. I am not aware only one receipt used to be issued in respect of the aforesaid property by MCD or not. This fact must be in the knowledge of my brother. It is wrong to suggest that I am aware about the fact that only one receipt is issued by MCD in respect of the said property but have intentionally concealed the said fact from the court. It is correct that workman is electrician and T.V.

mechanic. It is wrong to suggest that workman was employed as a Electrician & T.V. Mechanic in January, 1986 & it is also wrong to suggest that workman had lastly drawn his wages @ of Rs. 10,000/- per month. I have no knowledge of the workman had lodge a complaint dt.6.7.2000 in the labour office regarding non-maintenance of record by the mgt. I do not know if in pursuance of the said complaint labour inspector & visited the estbl. & actually found the workman working. It is wrong to suggest that on this mgt. got annoyed & terminated his services. Vol. since the workman was never in the employment of the mgt. question of terminating his services does not arise. It is correct that demand notice had been got issued by the workman through his union. Question of my giving any reply to the said demand notice was never felt and it was never required. I did not attend the conciliation proceedings. Nor any reply was filed because it was not required. I have no evidence to show that the workman used to do the work of M/s Choudhary Electronics & Anil Electronics as mentioned in para 4 of my affidavit. Vol. I had only seen him working for them. I have also no evidence to show that the workman has been earning Rs. 10,000/- per month. No notice or pay in lieu thereof or retrenchment compensation was ever paid to the workman concerned. It is wrong to suggest that I have deposed falsely.”

16. MW-2 Vicky, in his affidavit-in-evidence, stated that he had been working as Commission Agent in the Old Lajpat Rai Market for about eight years, and that the respondent was working as an electronics mechanic sitting on the *patri* (footpath) and had, three to four years earlier being, doing the same work in front of the shop of M/s K.V.S. Enterprises. It was further averred that the respondent was also doing the work of Commission Agent. MW-2 categorically stated that the respondent was not employed with the petitioner, and had never worked with the petitioner, or with its proprietor Mr. Ravinder Kumar Suri. It was also sought to be stated that, during “negotiations”

with MW-2, the respondent had acknowledged that he did not work with the petitioner and had filed a false case against the petitioner at the instigation of certain other persons.

17. MW-2 Vicky was examined in chief, and cross-examined, on 17th April, 2003. In his examination-in-chief, MW-2 proved his affidavit aforesaid, which was, accordingly exhibited as Ex. MW-2/A.

18. The cross examination of MW-2 reads thus:

“ Even at present I work as Commission agent. It is correct that as commission agent. I take the perspective customers to the shops & after sale of the goods to them. I collect my commission from the shop. While working as commission agent. I had taken customers to the present mgt. also & it used to pay me commission. I learned about the pendency of the present case from various persons while working as commission agent in the market. I myself had enquired from MW1 that I had heard about pendency of the present case whereon he replied in the affirmative, MW1 had also told me that workman had told him to teach a lesson. I had told MW1 that I would help in the matter. It is wrong to suggest that since I collect commission from the estbl. in question, I have deposed falsely against workman at the instance of MW1. Vol. I have business transaction with workman as well. Apart from my oral evidence regarding taking of the customers to the workman & collecting my commission in respect of the sale resulting therefrom, I have no other documentary evidence in that regard. I have stated in my affidavit that the workman earns about Rs. 4000 to 5000/- per month. Apart from my oral deposition regarding monthly earnings of the workman to the tune earning Rs. 4000 to 5000/- a month. I have no evidence in that regard. I am also able to earn between Rs. 4000/- to 5000/- a month. I do not pay income tax. On average I visit the estbl. about 7/8 times. I am not aware of the earnings of MW1. Apart from my own oral statement, I have no other evidence to show that

workman concerned was never in the employment of the mgt.
It is wrong to suggest that I have deposed falsely.”

19. Having heard learned counsel appearing for the parties before it, the Labour Court proceeded, *vide* the impugned award dated 22nd January, 2004, to hold that the respondent was the employee of the petitioner, and had been retrenched in violation of Section 25-F of the ID Act. Consequently, the termination of the respondent was held to be illegal and unjustified, and the petitioner was directed to reinstate him with continuity of service and full back wages, as already noticed in para 1 hereinabove.

20. To arrive at its finding that the respondent was, in fact, the employee of the petitioner, the Labour Court relied upon the visiting cards (Ex.WW-1/4), which were admitted, by MW-1, in his cross-examination, to be the visiting cards of his shop, as well as the identity card of the respondent's daughter (Ex.WW-1/5), the challan form relating to the booking, by the respondent, of a flat with the GDA (Ex.WW-1/9), wherein, too the address of the petitioner was mentioned, (iv) Ex.WW-1/10, pertained to 1993 and which was received by the respondent, mentioning the address of the petitioner and (v) Ex.WW-1/11, which, again, was a letter pertaining to the year 1993, relating to allotment of a house number to the respondent, which was also received at the address of the petitioner.

21. The Labour Court expressed the view that, if the respondent had not been working with the petitioner, there was no reason for him to give the address of the petitioner as his own address for correspondence. The stress laid, by the petitioner, on the fact that its address, as mentioned in these documents, did not mention the fact that the petitioner was located on the first floor, was held to be unmerited, as the address of the petitioner, on the visiting cards exhibited as Ex.WW-1/4 – which the petitioner admitted to be its visiting cards – did not refer to the first floor either. The Labour Court opined that the receipt, by the respondent, of regular correspondence, at the address of the shop of the petitioner, indicated that the respondent worked there. Finally, the Labour Court observed that, as against the above evidence adduced by the respondent, the petitioner had not examined anyone, including the visitors to its shop, the brothers who were running the shop on the ground floor or any of its neighbours, to establish its case. As such, it was held that the factum of existence of employer-employee relationship, between the petitioner and respondent, stood conclusively established. Issue No. 1, as framed by the Labour Court was, therefore, answered, by it, in favour of the respondent and against the petitioner.

22. Following thereupon, Issue No.2, as framed by the Labour Court, was also decided in favour of the respondent, holding that the termination of the respondent from service, by the petitioner, amounted to “retrenchment” within the meaning of the ID Act, and having been effected without complying with the requirements of

Section 25, stood vitiated thereby. As such, the termination of the respondent was held to be illegal and unjustified; consequently, the petitioner was directed to reinstate the respondent with continuity in service and full back wages.

23. I have heard Mr. Viraj Datar and Mr. Rajiv Agarwal, learned counsel for the petitioner and respondent, at considerable length, and perused the record.

24. Mr. Datar, learned counsel appearing for the petitioner, first sought to question the very applicability, to his client, of the ID Act, contending that the petitioner could not be regarded as an “industry” as defined in Section 2(s) of the ID Act; it was emphasized, in this context, that there was no evidence of the petitioner having any employee in its establishment, except the respondent – assuming the respondent was the petitioner’s employee. Such establishments, Mr. Datar would seek to contend, were not “industries”, as held in the classic decision, of V. R. Krishna Iyer, J., speaking for a bench of seven learned Judges of the Supreme Court in *Bangalore Water Supply and Sewerage Board vs A. Rajappa*, (1978) 2 SCC 213. For the said proposition, reliance was also placed on *The Bombay Union of Journalists vs The Hindu*, AIR 1963 SCC 138. Without prejudice to this preliminary objection, Mr. Datar would contend that the evidence, which the respondent sought to rely upon, to advocate the existence of an employer-employee relationship between his client and the respondent, was merely in the nature of self-serving documents

created by the respondent himself, to which the petitioner was neither a party nor a signatory. None of the said documents, Mr. Datar would strive to point out, was issued by his client. He submits that, when subjected to incisive cross-examination, the respondent himself acknowledged this lacuna, by admitting that he had no documentary evidence, with him, as would serve to demonstrate that the petitioner was his master, and he, its servant, as also that the name of the petitioner did not figure in any of the said documents, save and except the visiting cards exhibited as Ex WW-1/4, and on the envelope marked as Ex WW-1/15. There was no attendance register to indicate the respondent as having attended work at the petitioner's, and the signature of the respondent, too, was to be found only in a a single handwritten "bill" exhibited as Ex WW-1/6, against which there was no evidence of any receipt of payment. Mr. Datar would submit that the onus, to prove the existence of employer-employee relationship, was squarely on the respondent, and that the Labour Court fell gravely in error in casting the said onus, instead, on the petitioner, in para 12 of the impugned order, which faulted the petitioner for not having produced evidence to indicate that the respondent was *not* its employee. At the same time, Mr. Datar sought to wish away the presence of the respondent, at the shop of the petitioner, at the time of visit by the Labour Inspector, by stating that the petitioner did, occasionally, take work from the respondent. Finally, Mr. Datar pressed into service the judgement of this Court in ***Chander Sen vs. J. B Garments, 160 (2009) DLT 18***, to bring home his point.

25. Arguing in response, Mr. Rajiv Agarwal, appearing for the respondent, submitted, first, that the question of whether the petitioner was, or was not, an “industry”, was a question of fact, and was being taken, for the first time, in the present proceedings, to which he strongly objected. No such issue, he pointed out, was framed by the Labour Court, and no such ground has even been taken in the writ petition filed before this court. Had such an objection been taken, Mr. Agarwal would submit, he would have had an opportunity to meet the same, and, therefore, while exercising its jurisdiction under Article 227 of the Constitution of India, this Court ought not to countenance such a submission on the part of the appellant. Mr. Agarwal has also placed reliance on *Bombay Union of Journalists (supra)*, and has submitted that the sufficiency of the evidence led before the Labour Court, as justification for the conclusions arrived at by it, was not a matter which was open for examination, by this Court, exercising writ jurisdiction over the award of the Labour Court. Judicial notice, Mr. Agarwal would submit, could be taken of the fact that, in order to exploit labour, many employers never issued appointment letters to workmen. Mr. Agrawal further alleged that the petitioner was resorting to approbate and reprobate, as much as, in the written statement filed before the Labour Court, the specific stand, of the petitioner, was that the respondent was “a stranger to the management”, who had “filed this case on the instigation of some persons to extract money illegally from the management”, whereas, before this Court, Mr. Datar had accepted that the respondent occasionally worked for the petitioner. As against this, Mr. Agarwal

points out that, in paras 5 and 6 of the present writ petition, an entirely new stand was taken, i.e., that the respondent was carrying on his business on the footpath (*patri*) outside the shop. (To this, Mr. Datar responds, rightly, that the said stand was taken by the petitioner before the Labour Court – as has already been noticed by me hereinabove.) Mr. Agarwal points out that this entire dispute originated because the petitioner was not maintaining any service record, or issuing any appointment letter to its workmen, including the respondent. My attention was invited, by Mr. Agarwal, to the cross-examination of MW-1, which, in his submission, was dissonant with the “*patri*” theory now being propounded. Finally, Mr. Agarwal would exhort, on this court, not to substitute the view of the Labour Court – which, in his submission, was well justified – with any alternate view.

26. Proceeding, now, to examine the rival submissions advanced by both counsel before me, I may state, the very outset, that the objection, of Mr. Agarwal, to the submission, of Mr. Datar, that the petitioner was not an “industry” within the meaning of the ID Act, being entertained at this stage, is well-founded, and merits acceptance. Mr. Agarwal is right in contending that the issue of whether an establishment was, or was not, and “industry”, within the meaning of the said Act, is not a pure question of law, but is, by its very nature, a mixed question of law and fact. Whether a particular establishment satisfies the indicia of an “industry”, as judicially interpreted by decision after decision of the Supreme Court, is one of the most involved issues in industrial jurisprudence. ***Bangalore Water Supply***

(*supra*) is, no doubt, the watershed decision on the point, and is, by now, *locus classicus*, constituting, as it does, a study as fascinating, legally, as semantically. Much water has, however, flowed down this bridge since then, , and the “zig-zag course of the landmark cases”, to which Krishna Iyer, J., so felicitously alluded in ***Bangalore Water Supply (supra)***, has become a veritable labyrinth. I need not, however, delve too deep into the jurisprudential contours of “industry”; suffice it to state that the argument of Mr. Datar might, had it been raised at the appropriate juncture and prosecuted with due diligence, have well merited consideration, especially in view of the following word of caution, sounded by Krishna Iyer, J., himself, in ***Bangalore Water Supply (supra)***, in para 88 of the report:

“We must hasten, however, to repeat that a small category, perhaps large in numbers in the mofussil, may not squarely fall within the definition of industry. *A single lawyer, a rural medical practitioner or urban doctor with a little assistant and/of menial servant may ply a profession but may not be said to run an industry. That is not because the employee does not make a contribution nor because the profession is too high to be classified as a trade or industry with its commercial connotations but because there is nothing like organised labour in such employment. The image of industry or even quasi-industry is one of a plurality of workmen, not an isolated or single little assistant or attendant. The latter category is more or less like personal avocation for livelihood taking some paid or part-time from another. The whole purpose of the Industrial Disputes Act is to focus on resolution of industrial disputes and regulation of industrial relations and not to meddle with every little carpenter in a village or bla ksmith in a town who sits with his son or assistant to work for the customers who trek in. The ordinary spectacle of a cobbler and his assistant or a cycle repairer with a helper, we come across in the pavements of cities and towns, repels the idea of industry and industrial*

dispute. For this reason, which applies all along the line, to small professions, petty handicraftsmen, domestic servants and the like, the solicitor or doctor or rural engineer, even like the butcher, the baker and the candle-stick maker, with an assistant or without, does not fall within the definition of industry. In regular industries, of course, even a few employees are enough to bring them within Section 2(j). Otherwise automated industries will slip through the net.”

(Emphasis supplied)

In view of this cautionary caveat, it is clear that a small shop, involving one or two workmen, cannot be regarded as an “industry”, howsoever widely one may interpret the expression. Para 42 of ***Bangalore Water Supply (supra)*** underscores the point, thus:

“A chronological survey of post-Banerji decisions of this Court, with accent on the juristic contribution registered by them, may be methodical. Thereafter, cases in alien jurisdictions and derivation of guidelines may be attempted. Even here, we may warn ourselves that the literal latitude of the words in the definition cannot be allowed grotesquely inflationary play but must be read down to accord with the broad industrial sense of the nation's economic community of which Labour is an integral part. To bend beyond credible limits is to break with facts, unless language leaves no option. Forensic inflation of the sense of words shall not lead to an adaptation breakdown outraging the good sense of even radical realists. After all, the Act has been drawn on an industrial canvas to solve the problems of industry, not of chemistry. A functional focus and social control desideratum must be in the mind's eye of the Judge.

(Emphasis supplied)

27. Mr. Datar would essentially exhort this court to acknowledge that his client was managing a shop on the first floor of the Old Lajpat Rai Market, with a job-hand or two to help him along, and could not, therefore, by the farthest stretch of imagination, be elevated to

“industrial status”. If one were to examine the facts, and given the public knowledge that we, as denizens of this city have of Old Lajpat Rai Market, one may be tempted to accept the submission; this court is, however, required to act, not on the basis of personal knowledge or public perception but on the basis of evidence, and, in the absence of any evidence being led, on the issue, this way or that, must refrain from pronouncing on the issue. The nature of the petitioner’s enterprise, its scale and sweep, the number of workers that the petitioner employs - essentially, whether the petitioner can be said to engage “organized labour” or not - are matters which have to be determined on the basis of evidence, and, in view of Section 106 of the Indian Evidence Act, 1872, the initial onus, in this regard, must be on the petitioner, who would be best conversant of the manner in which it conducts its affairs. No attempt, to canvass such a stand, appears to have been made at any earlier stage. I reiterate, therefore, that Mr. Agarwal’s objection, to Section 2 (j) of the ID Act being invoked at this stage of the proceedings, has to be accepted, and this court cannot allow Mr. Datar, therefore, to canvas this proposition now. It is not possible, therefore, to disturb the findings of the Labour Court on this ground.

28. Once the preliminary objection of Mr. Datar thus stands answered, all that remains to be seen is whether the finding, of the Labour Court, that the respondent was the employee of the petitioner, warrants interference, or not. I may, at once, note that, in case this finding of the Labour Court is upheld, the inevitable sequitur, in the

facts of the present case, would be the dismissal of the present writ petition, in view of the admitted position that there was no compliance with Section 25-F of the ID Act, while dispensing with the respondent's services.

29. This court does not sit in appeal over the decision of the Labour Court. I had, in *D.D.A. vs Mool Chand*, MANU/DE/2016/2017, culled out, from the volume of law enunciated by the Supreme Court on the subject, the following principles, to guide exercise of jurisdiction, against awards of Labour Courts and Industrial Tribunals:

- (i) The Labour Court/Industrial Tribunal is the final fact finding authority.
- (ii) The High Court, in exercise of its powers under Article 226/227, would not interfere with the findings of fact recorded by the Labour Court, unless the said findings are perverse, based on no evidence or based on illegal/unacceptable evidence.
- (iii) In the event that, for any of these reasons, the High Court feels that a case for interference is made out, it is mandatory for the High Court to record reasons for interfering with the findings of fact of the Labour Courts/Industrial Tribunal, before proceeding to do so.
- (iv) Adequacy of evidence cannot be looked into, while examining, in writ jurisdiction, the evidence of the Labour Court.

(v) Neither would interference, by the writ court, with the findings of fact of the Labour Court, be justified on the ground that a different view might possibly be taken on the said facts.

30. Applying these principles to the case at hand, I am unable to convince myself that the decision of the Labour Court calls for interference.

31. Exhibits WW-1/5, WW-1/6, WW-1/7 and WW-1/9 were all documents in which the address of the respondent was reflected as “441, Lajpat Rai Market, Delhi- 110006”, which was the address of the petitioner. Of these, Ex.WW-1/6 was a bill, raised by the petitioner, which bore the signature of the respondent. Besides baldly suggesting that the said documents, adduced by the respondent in his defence, were fabricated, the petitioner has not led any evidence to support the said allegation. The suggestion, to the said effect, was put to the respondent in cross examination, and was categorically denied by him. These are documents prior in point of time to the arising of the dispute in the present case and it cannot, therefore, be presumed that the address of the petitioner was entered in the said documents, merely to substantiate the case being set up by the respondent.

32. The respondent has also produced communications, addressed to him at the address of the petitioner, which were received by him/forwarded to him (as exhibits WW-1/10 to WW-1/18). Besides the above, it is an undisputed fact that, at the time when the Labour

Inspector visited the premises of the petitioner, the respondent was found working there. The explanation, proffered by the petitioner in this regard, i.e. that the petitioner used to occasionally avail the services of the respondent, appears on its face, to be escapist in nature.

33. In this context, I entirely endorse the views, expressed in para 12 of the impugned Award, that the petitioner was significantly remiss in failing to lead any evidence to support its stand that the respondent was not its employee. Mr. Datar's objection, to this finding of the learned arbitrator, that it amounted to a reversal of the onus of proof, which was cast on the respondent, is incapable of acceptance. Onus of proof, it is trite, is never static, and continuously shifts between the parties. The initial onus cast on the respondent to prove the factum of his employment with the petitioner having been discharged by him by way of Ex.WW-1/3 to Ex.WW-1/18, the onus shifted to the petitioner to prove to the contrary, and I find no infirmity, in the opinion, expressed in para 12 of the impugned Award, that the petitioner made no effort, whatsoever, towards the discharge thereof.

34. I also find substance, in the grievance voiced by Mr. Rajiv Aggarwal, that the petitioner has been adopting vacillating, and mutually incompatible, stands at different points of time, averring in one breath, that the respondent was a complete stranger to the petitioner; in the next, that the services of the respondent were "occasionally" used by the petitioner; and, in the next, that the respondent was plying his trade on the *patri* (footpath) outside the

building. Such prevarication necessarily has to result in an inference adverse to the petitioner.

35. Viewed in totality, therefore, it cannot be held, in my view, that the impugned decision of the Labour Court is so irrational, or perverse as to warrant interference under Article 227 of the Constitution of India.

36. I may, here, observe that the objection, voiced by Mr. Datar to the evidence adduced by the respondent in his favour i.e. that none of the documents bore the signature, stamp or seal of the petitioner, and that, sans the said documents, there was no other material to indicate employment, of the respondent, by the petitioner, may possibly suggest that a different view might also be taken on the available facts; having said that, however, no case for interference with the impugned award of the Labour Court would still be made out, in view of the trite position, in law, that the mere possibility of another view, on the facts, would not justify interference with the award of the Labour Court, under Article 227 of the Constitution of India. It is not for this Court, in exercise of the said jurisdiction, to burrow in the thicket and seek to espy whether any other view, different from that taken by the Labour Court, is possible, or to sift out all possible views emanating from the facts and determine, for itself, which is *most possible in its perception*. Once the view of the Labour Court is found to be plausible, as well as possible, the brief of this Court stands discharged, and any further inquiry into the matter, by me, would amount to conversion, of my

jurisdiction under Article 227 of the Constitution of India, from one of judicial review and superintendence, into one of appeal, which would obviously be impermissible in law.

37. In that view of the matter, I am of the opinion that no case, justifying interference with the impugned award of the Labour Court, can be said to be made out. The view taken by the Labour Court is a plausible view, which cannot be said to be vitiated on account of any patent illegality, or to be *ex facie* perverse.

38. Resultantly, the impugned award of the Labour Court is upheld in totality. However, the respondent's entitlement to wages, during the pendency of these proceedings, shall be limited to the amounts paid consequent to the orders passed by this Court, as referred to in para 3 (*supra*).

39. The writ petition is accordingly disposed of, without any order as to costs.

**C.HARI SHANKAR
(JUDGE)**

MARCH 22nd, 2018
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