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

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Reserved on: 13th April, 2018
Date of Decision: 20th April, 2018

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W.P.(C) No.605/2012

KISHAN VISHWAKARMA & TWO OTHERSPetitioners
Through Mr. Raj Kumar Maan, Advocate

versus

M/S GULSHAN ENGINEERING WORKS THROUGH ITS
PARTNERS SMT.MEHARUNISHA AND VILAL HAJI
.....Respondent
Through Respondent *ex parte*.

CORAM:
HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

1. The petitioners have filed the present petition under Articles 226 and 227 of the Constitution of India, with a prayer to set aside or modify the Award dated 14.01.2011 passed by the Presiding Officer, Labour Court XVI, Karkardooma Courts, Delhi (in short, called 'the Labour Court') in ID No.718/06/03. The Government of National Capital Territory of Delhi through its Secretary (Labour), vide reference No.F-24(4705)/2002/Lab./798-802 dated 31.03.2003 referred the dispute between the Management of the respondent and its workmen, to the Labour Court for adjudication, in the following terms of reference:

*"Whether the services of Sh. Kishan Vishwakarma & 6 Ors.
have been terminated illegally and/or unjustifiably by the*

management and if so, to what sum of money as monetary relief alongwith consequential benefit in terms of existing laws/ Govt. notification and to what other relief are they entitled and what directions are necessary in this respect?”

2. It is pertinent to mention here that the Labour Court has passed the impugned Award in respect of five workmen including the petitioners herein, whereas the impugned Award has been challenged by three workmen, i.e., the petitioners before this Court. Thus, this Court is considering the impugned Award in respect of these petitioners/workmen only.

3. The claim of the workmen including the petitioners herein and the written statement of the Management, as verbatim noticed by the Labour Court, are as follow:-

“As per claim, the workmen had been working on the post, monthly salary, date of joining as per chart given below:

<i>Sl. No.</i>	<i>Name</i>	<i>Post</i>	<i>Date of joining</i>	<i>Monthly Salary(in Rs.)</i>
1.	Kishan Vishwakarma	Fitter	15.03.95	2,500/-
2.	Sugriv	Pressman	15.03.95	2,000/-
3.	Jagdish Paswan	Pressman	15.03.95	2,000/-
4.	Vishram Yadav	Helper	10.05.95	1,500/-
5.	Dalip Jha	Pressman	15.03.95	2,000/-

It is stated that the management had no complaint against the workmen in their service period. It is further stated that all the workmen demanded the legal facilities i.e. Minimum Wages, ESI, PF, Earned Leaves etc. but the management had not provided the same and on demanding these facilities by the

workmen repeatedly, management got annoyed and terminated their services on 05.05.02 without giving any notice and notice pay and also without paying earned wages for the month of March, April and May 2002 and without conducting any domestic enquiry as well as issuing the charge sheet. It is further stated that all the workmen had made a complaint before Labour Inspector on which Labour Inspector visited the management and gave directions to the management to reinstate the workmen and to pay their earned wages but the management had refused the same. It is further stated that management took forcible signature of the workmen on the blank papers and vouchers before terminating their services. It is further stated that workmen sent a demand notice through registered AD on 13.05.02, which was not replied by the management. It is further stated that workmen tried to search the job at many places but they failed to get any job. It is further stated that all the workmen are entitled for reinstatement in service with full back wages and continuity of service alongwith consequential benefits.

The Management has stated in the written statement that workmen Kishan Vishwakarma and Sh. Sugriv Yadav have settled their full and final account on 12.04.02 out of their own free will for a sum of Rs. 13,110/- and Rs. 11,223/- respectively and as such there are no existing dues in favour of workmen and against the management. It is further stated that the claim of the claimant Dalip Jha is also not maintainable on the ground that the workmen had taken his full and final dues with the management in the year 2001 and after taking his full and final dues, workman Dalip Jha never again joined the duty with the answering management and therefore no relationship exists between the parties after 2001. It is further stated that the claim of the workmen namely Jagdish Paswan and Vishram Yadav is not maintainable on the ground that there was no relationship of employee and employer between the parties. It is further stated that the demand of the workmen for reinstatement in their services with full back wages deserves to be dismissed on the ground that the answering management has closed its business activities completely and permanently w.e.f. 10.04.02 onwards and the management has been suffering acute

financial problem in its business on account of recession in the market. It is further stated that the management has sold his machines to M/s Ravi Industries A-278, Okhla Industrial Area, Phase-II, New Delhi on 16.04.02. It is further stated that the closure of the factory has also been intimated to the Regional Officer, Employee State Insurance Corp. vide separate letter dt. 06.05.02 and the ESI Inspector inspected the firm and gave the report of closure on 23.01.03. It is further stated that the management also sent a letter to the Labour Commissioner, 5 Sham Nath Marg, Delhi. It is further stated that the concerned workmen are well aware of the fact of the closure. It is further stated that the claim of the workmen is liable to be dismissed on the ground that the workmen have suppressed the material facts of the case. It is further stated that the workmen have filed the present claim only to harass and blackmail the management in order to extort money from the management. It is further stated that no demand notice was ever served upon the management.

In reply on merits, it is denied that the name of the workmen whose names are mentioned in the table are true picture of their employment, post, salary and duration of service. It is submitted that Kishan Vishwakarma and Sugriv Yadav were working as helper since 01.11.98 and their last drawn wages were Rs. 2850/- and Rs. 2440/- per month. It is further stated that workmen Kishan and Sugriv Yadav have settled their full and final account with the management on 12.04.02. It is further stated that the workman Dilip Jha had already settled his account in the year 2001. It is submitted that management had provided all the legal and lawful facilities to the workmen, who worked with the management at the time of running the firm. Rest of the allegations are also denied by the management.”

4. On the basis of the pleadings of the parties, the Labour Court vide order dated 27.10.2005 framed the following issues:-

- i) Whether there existed any relationship of employer and employee between the workmen Jagdish Paswan and Vishram Yadav?

- ii) Whether the workmen Sugriv Yadav and Dilip Jha have taken their full and final dues from the management?
- iii) Whether the management has closed its establishment w.e.f. 10.04.2002?
- iv) As per terms of reference.

5. Learned counsel for the petitioners submitted that the factum of employment of petitioner No.1 (Kishan Vishwakarma) by the respondent/Management is not disputed either in the pleadings or in the evidence. The plea of respondent/Management before the Labour Court was that the petitioner No.1 had been paid Rs.13,110/- in full and final settlement of his account, which the petitioner had stoutly denied. There is no handwriting expert report to prove that the petitioner ever received the alleged amount of Rs.13,110/-. But the Labour Court has failed to render any finding in its Award dated 14.01.2011 in respect of petitioner No.1 and thus, rendered the entire Award as erroneous and against the facts on record.

6. Learned counsel for the petitioners also submitted that the Labour Court, while setting aside the termination of services of petitioner No.2 (Sugriv Yadav), failed to appreciate that as per evidence on record, the factory of the respondent/Management was running, as the Labour Inspector in his report dated 05.06.2002 found the factory working. It has been admitted by MW-1 and MW-2 in their evidence that there was neither any closure report, nor report of the Labour Department, nor surrender certificate of Sales Tax, and even, no Balance Sheet of the current year was filed to prove that no production or sale was done or that the factory was not running and it was closed. In these circumstances, the findings of the Labour Court were contrary to the facts and law that the factory was closed on 10.04.2002.

7. Learned counsel for the petitioners further submitted that the Labour Court ought to have considered the length of service of petitioner No.2 who had rendered more than 7 years continuous service, and thus, was entitled to be reinstated in service with full back wages or to a compensation to the tune of Rs.2 lacs, more so, when the amount of retrenchment compensation and other dues comes to Rs.21,000/-, the compensation of Rs.25,000/- as awarded in lieu of reinstatement is not justified in any manner.

8. Learned counsel for the petitioners also submitted that the case of petitioner No.3 (Jagdish Paswan) before the Labour Court was that the petitioner was engaged by the respondent/Management on 15.03.1995 as a Pressman, whose last drawn wages were Rs.2,000/- per month. He worked continuously till his services were terminated on 29.04.2002. It is a statutory obligation of the Management to maintain the record of attendance and wages of employees. The Management did not produce the record of attendance and wages of employees before the Labour Inspector who proved his report before the Labour Court by appearing as WW-5. The respondent/Management had not even produced the record of attendance and wages of employees before the Labour Court. The conclusion of the Labour Court that, petitioner No.3/Jagdish Paswan could not prove the relationship of employer and employee against the respondent/Management, was erroneous in the absence of production of record regarding the attendance and wages of employees. The Labour Court ought to have drawn an inference against the Management that the Management was intentionally withholding the documents to conceal the fact of employment of petitioner No.3 on the false and fictitious plea of missing of the record.

9. Learned counsel for the petitioners further submitted that the Labour Court has erroneously held that the factory of the Management was closed on 10.04.2002, without any evidence, just on the strength of statement of ESIC clerk, who said that an inspection of factory was made on 23.01.2003. There is no inspection report of ESIC. No balance sheet of the year of 2002 had been filed to prove that no production was carried out after 10.04.2002. The Labour Inspector/WW-5 visited the factory on 05.06.2002 and found the factory working. Thus, the conclusion of the Labour Court, in the absence of any material, that the factory of the Management was closed on 10.04.2002, is untenable in law.

10. I have heard the learned counsel for the petitioners and have gone through the impugned Award as well as the material placed on the record. The Labour Court, while deciding issue No.3, on the basis of claim, reply, evidence as well as documents on record, has held that the Management had closed its establishment w.e.f. 10.04.2002. In support of this inference, the Labour Court has relied upon document (Ex.MW1/2), which was addressed to the Secretary (Labour) Office, 5, Shamnath Marg, bearing the stamp of the labour office, informing the closure of the business since 10.04.2002 due to heavy losses in the business. The Labour Court has also relied upon the document (Mark X1), a letter dated 06.05.2002 written to the Regional Officer, ESIC, Delhi, informing the same fact. The said letter was stated to have been received by the ESIC. Mark X2 was an inspection note of the Inspector, ESIC, wherein it was stated that the Inspector, ESIC visited the premises on 23.01.2003 and recorded the fact that the firm was closed since 10.04.2002. Mark X3 was a receipt of money having sold the machines to one M/s Ravi Industries, A-273, Okhla Industrial Area, Phase-II. The

Labour Court has also come to the conclusion, after taking into consideration all these documents, that the Management has completed all the procedural formalities for the closure of its business and closed its business w.e.f. 10.04.2002 and accordingly decided the issue in favour of the Management and against the workman, holding that the Management had closed its establishment w.e.f. 10.04.2002.

11. In my view, the aforesaid findings are factual in nature, based upon the evidence led as well as the documents proved before the Labour Court, which cannot be disturbed by this Court in its powers under Articles 226 and 227 of the Constitution of India. The Labour Court has decided issue No.3 on the basis of the documents proved and the evidence led before it. Hence, in view of the aforesaid, I do not find any flaw or infirmity in these findings of the Labour Court regarding issue No.3.

12. At the time of arguments on 13.04.2018, learned counsel for the petitioners submitted that since the Labour Court has failed to render any findings in the impugned Award in respect of petitioner No.1, hence, the case of petitioner No.1 may be remanded back to the Labour Court. After going through the entire Award, I find that the Labour Court has failed to render any findings in the impugned Award in respect of petitioner No.1. Even no issue was framed in respect of the said petitioner. However, in the written statement filed by the Management, it was stated that petitioner No.1 Kishan Vishwakarma had settled his full and final account on 12.4.2002 out of his own free will for a sum of Rs.13,110/-. It was also submitted in the written statement that the said workman was working as Helper since 01.11.1998 and his last drawn wages was Rs.2,850/- per month. Though the said submissions were denied by petitioner No.1 in the replication filed

before the Labour Court. This Court has failed to understand as to why the case of petitioner No.1, Kishan Vishwakarma was not considered or dealt with by the Labour Court, particularly, in view of the facts that he had denied each and every submissions made by the Management in its written statement and also reiterated his claim raised in the statement of claim by filing the replication; even, he had filed his affidavit in evidence which was taken on record by the Labour Court and he was duly cross-examined by the Management; the Labour Court in the impugned Award has also dealt with the evidence of petitioner No.1, but still there is no finding rendered by the Labour Court in respect of the said petitioner. It is an error committed by the Labour Court and the matter requires to be remanded back to the Labour Court to consider the case and render the findings on the basis of pleadings, documents proved and evidence led, as per law, in terms of the reference, so far as the case and dispute of petitioner No.1 is concerned.

13. Learned counsel for the petitioners has further submitted that the Labour Court, while passing the impugned Award, has not given any reasons while granting lump-sum compensation of Rs.25,000/- to petitioner No.2. As far as Sugriv Yadav (petitioner No.2) is concerned, it has been held by the Labour Court, while deciding issue No.2 that the Management has failed to prove that Sugriv Yadav had taken his full and final dues towards all his claims and accordingly decided the issue in favour of petitioner No.2. However, taking into consideration that, since the Management had proved that it had closed its establishment w.e.f. 10.4.2002, petitioner No.2 was held to be entitled to receive a lump sum of Rs.25,000/- .

14. It is a fact, evident from the record that the Labour Court has not given any cogent basis or reasoning while quantifying the amount of

Rs.25,000/- as compensation to petitioner No.2. The matter requires factual appreciation and disposition. Hence, I deem it appropriate to remand back the matter to the Labour Court to reconsider the case regarding payment of lump-sum compensation to petitioner No.2 and take into consideration the facts and the law in this regard, giving cogent reasoning and the basis thereof.

15. As regards petitioner No.3 Jagdish Paswan, it has been held by the Labour Court that the said petitioner has not filed or proved any document on record to show that he was ever in the employment of the Management. The Labour Court was of the view that in any labour dispute, whenever a relationship has been denied, it is for the workman to prove the existence of the relationship, while relying on the judgments in *Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu & Ors.*, (2004) 3 SCC 514; *Swapan Dass Gupta v. First Labour Court of W.B.*, 1975 LIC 202 and *N.C. John v. Secy. Thodupusha Taluk Shop and Commercial Establishment Workers' Union*, 1973 (001) ILLJ 366 Kerala. Learned counsel for the petitioners submitted that, the finding and the conclusion of the Labour Court that petitioner No.3 could not prove the relationship of employee and employer between him and the respondent-Management was against the law and the facts proved on record. The Labour Court ought to have taken into consideration and drawn an inference against the Management in view of their failure to produce the documents, including record of attendance, wage register, etc. It is also submitted that the Management intentionally did not produce the said documents on the false and fictitious plea of missing the record. This Court is not inclined to make any observations, in the interest of justice, regarding the above submissions made by the learned counsel for

the petitioners, so far as petitioner No.3 is concerned. However, I deem it appropriate to remand back the matter to the Labour Court to also reconsider the case of petitioner No.3, in view of the evidence on the record and the law in this regard.

16. In view of the aforesaid discussions, the impugned Award dated 14.01.2011 is quashed and set-aside so far as the present petitioners are concerned, except the findings on issue No.3. It is clarified that this Court has not made any observations on the merits of the case of each individual petitioner. Accordingly, the matter is remanded back to the concerned Labour Court, so far as the petitioners are concerned, with a direction to reconsider their disputes and the claims, as per law.

17. The writ petition is accordingly disposed of. The Labour Court record be sent back immediately.

18. The parties are directed to appear before the concerned Labour Court on 04.05.2018 at 10:00 am. It is desirable that the matter may be disposed of as soon as possible, preferably within a period of six months.

CHANDER SHEKHAR, J

APRIL 20, 2018/b/tp