

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P. (C) 3801/2015**

Judgment reserved on : 11.07.2017
Date of decision : 07.05.02019

RAJ KUMAR AND ANR Petitioners
Through: Mr. Rishi Jain, Advocate
versus

THE SUPERINTENDENT ENGINEER & ANR Respondents
Through: Mr. Gautam Narayan, ASC and
Mr. R.A. Iyer, Advocates.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioners Shri Raj Kumar, s/o Shri Jai Lal Ram and Shri Upender Rai s/o Shri Jageshwar Rai vide the present petition have prayed that a mandamus be issued to the respondent nos.1 & 2 i.e. the Superintendent Engineer, Co-ordination Circle (Electricity), CPWD, RK Puram, New Delhi and the Executive Engineer (E.), PWD, Electrical Mtce, Division-M-253, GTBH Complex, Shahdara to regularize the petitioners from their initial period of employment and that they be directed to grant the petitioners temporary status w.e.f. 01.09.1993.

2. The petitioners have also sought directions in the nature of *certiorari* seeking that the impugned award dated 15.11.2014 in ID

No.269/2010 passed by the learned Presiding Officer of the Industrial Tribunal, KKD be quashed.

3. The respondents have been duly served with the notice of the petition and have put in appearance and have vehemently opposed the prayers.

4. As indicated vide the impugned award dated 15.11.2014 which has emanated from a Reference No. f 24 (12)/DLC/E/09/718 dated 05.03.2010 referred by the GNCT of Delhi on failure of conciliation proceedings whereby the dispute preferred by the learned Presiding Officer, Industrial Tribunal for adjudication was in the following terms:-

"Whether there existed an employer employee relationship between the management and Sh. Raj Kumar S/o Sh. Jai Lal Ram & Sh. Upender Ray S/o Sh. Jageshwar Rai and if so, workmen Sh. Raj Kumar S/o Sh. Jai Lai Ram & Sh. Upender Rai S/o Sh. Jageshwar Rai are entitled to get equal pay for equal work from the dates of initial appointment on casual basis, temporary status w.e.f. 01.09.1993 and regularization of services on completion of period from the date of initial employment, if so, to what relief they are entitled to."

5. The petitioners claimed that they have been appointed as khalasis under the management of the Executive Engineer (E.) at the GTB Hospital, Shahdara, Delhi in as much as the petitioner no.1 herein Raj Kumar was appointed on 06.10.1987 and the petitioner no.2 herein Shri Upender Rai was appointed on 19.09.1988 and the management disbursed wages to the said workmen in accordance with the notification of the Minimum Wages Act, 1948 for unskilled

categories and that the petitioners/workmen were also paid the difference of wages as revised from time to time as per the notification on minimum wages for hand receipt/ casual workmen and were also paid for the actual days of work performed by them in each month and the payment was made by the principal employer i.e. the PWD and that no contractor/ third person was involved in that process; that the workmen were also put on duty by the principal employer on day to day basis and no contractor/ third person was involved and there was a direct establishment of an employee-employer relationship; that the names of the workmen had been included in the seniority list prepared in respect of casual workmen; that the workmen had completed 240 days of work in each calendar year from the date of initial employment; that regular Khalasis/ workmen with the management who were performing the same and similar duty were getting regular pay scale and other benefits; that other workmen i.e. wiremen, Khalasis etc. who were working on work order under the same management had been paid arrears of wages calculated on regular pay scales from the date of initial employment; that the arrears had been paid on the directions of the Tribunal/ this High Court in a case and the said orders were implemented by the management; that services of persons junior to the petitioners herein had been regularized by the management; that as per notification dated 10.11.2000 issued by the Labour Department, Government of NCT of Delhi, the workmen were entitled to regular pay scales, holidays, hours of work and other conditions of service at par with regular counterparts; that as per Notification in the Gazette of India issued by the Ministry of Labour,

Government of Delhi and Government of NCT of Delhi, the service of Khalasis on contract basis had been prohibited under Section 10(1) of the Contract Labour (Regulation & Abolition) Act, 1970; that action of the management in keeping the workmen i.e. the petitioners herein Shri Raj Kumar and Shri Upender Rai on daily rated basis and denying them the benefits, pay scale etc. at par with their counterparts was an unfair labour practice and in severe violation of labour laws; that the workmen Shri Raj Kumar and Shri Upender Rai were entitled to be granted temporary status w.e.f. 01.09.1993 as per order issued by the Department of Personnel & Training and Director General, CPWD; that the workmen Shri Raj Kumar and Shri Upender Rai, the petitioners herein were entitled to get equal pay for equal work from the date of initial employment on casual basis, grant of temporary status w.e.f. 01.09.1993 and regularization of services on completion of period from the date of initial employment.

6. The managements are indicated to have filed their written statement to the statement of claim before the learned POIT contending to the effect that the claim for equal pay for equal work from the date of initial employment on casual basis w.e.f. 01.09.1993 was barred by the limitation; that the statement of claim was bad for mis-joinder and non-joinder of necessary parties; that no notice under Section 80 of the CPC had been served upon them, which was a statutory requirement before filing the suit against the government department; that the workmen were not employees under the management at any point of time or at any point, the relationship between the workmen and the managements was denied; that the

claimants were neither workmen under the definition of '*workman*' under Section 52(s) of the Industrial Disputes Act, 1947 nor '*employees*' under the Minimum Wages Act and their claims were not maintainable.

7. The managements through their statements before the learned POIT submitted that the petitioners herein Shri Raj Kumar and Shri Upender Rai had worked as contractors with the management continuously that the work order had been awarded to them for specific period; that the work order was being performed taking minimum wages as the bare rate against work done by the contract; that the work order was of six months and wages were paid every month on running bills and furthermore, the work order was renewed from time to time; that the names of the workmen had been deleted from the seniority list by Superintending Engineer, Co-ordinate Cell vide order dated 18.05.2010; that the workmen were simply contractors and work orders had been awarded to them from time to time; that the list/number of days submitted by the workmen had not been signed by any officer of the management; that the record seems to have been forged and fabricated to lead false evidence; that the order of the Tribunal referred through the statement of the claim was based on the basis of a seniority list but that the names of the workmen i.e. the petitioners herein had been deleted and this had been concealed by the workmen before the learned POIT; that the workmen were contractors and regular recruited by the management and they did not have any right to any post nor were they governed by rules and regulation governing regular employees.

8. The workmen through their rejoinder before the learned POIT reiterated their contentions and refuted the contentions of the respondents.

9. Issues were framed on 14.05.2010 by the learned POIT which were to the effect:

- i) *Whether the statement of claim is bad for mis-joinder and non-joinder of necessary parties? OPM*
- ii) *Whether the present claim is bad for want of notice under Section 80 of the CPC? OPM*
- iii) *As per terms of reference.*

10. The petitioners are indicated to have examined themselves i.e. Shri Raj Kumar as WW-1 and Shri Upender Rai as WW-2. The management examined Shri R.S. Nirbhay, Executive Engineer as MW-1.

11. The learned POIT repelled the contentions raised on behalf of the management arrayed as the respondent nos.1 & 2 herein in relation to the issue nos.1 & 2 and held to the effect that in as much as the proceedings in the case had been initiated on the basis of a reference made by the Government of NCT of Delhi, the claimants/workmen were not required to implead any other body as party to the dispute other than the parties to the dispute mentioned in the reference order and that there was no substance in the preliminary objection taken by the management to the effect that the claim was bad for mis-joinder and non-joinder of necessary parties and the issue no.1 was thus decided against the management, which apparently, is a correct analysis and correct adjudication of issue no.1 by the learned POIT.

12. As regards the issue no.2 also the learned POIT rejected the contention of the respondents that the claim was bad for want of notice under Section 80 of the CPC observing to the effect that no demand notice had been proved to have been sent to the management in terms of the verdict of the Hon'ble Supreme Court in ***Shambu Nath Goyal Vs. Bank of Baroda, Jullundur (1978) 2 SCR 793*** wherein the Hon'ble Supreme Court after referring to Section 2 (k) of the Industrial Disputes Act, 1947 had defined an industrial dispute to be:

“A bare perusal of the definition would show that where there is a dispute or difference between the parties contemplated by the definition and the dispute or difference is connected with the employment or non-employment or terms of employment or with the conditions of labour of any person, there comes into existence an industrial dispute. The Act nowhere contemplates that the dispute would come into existence in any particular, specific or prescribed manner. For coming into-existence of an industrial dispute a written demand is, not a sine qua non, unless of course in the case of public utility service, because Section 2 forbids going on strike without giving a strike notice.”

and that thus, apparently no demand notice was required to be served on the management for the claim in relation to the industrial dispute.

13. As laid down by the Hon'ble Supreme Court in ***“Shambu Nath Goyal”*** (supra) in as much as the Industrial Disputes Act, 1947 does not contemplate that the dispute would come into existence in any particular, specific or prescribed manner and that a written demand was, not a sine qua non, except in the case of public utility service, it is

apparent that the claim filed by the petitioners herein was not bad for want of notice under Section 80 of the Code of Civil Procedure, 1908.

14. As regards the issue no.3, which related to the terms of reference which terms of reference have already been adverted to hereinabove on the analysis of the evidence led by the petitioner nos. 1 & 2 herein as WW-1 & WW-2 respectively and the testimony of Mr. R.S. Nirbhay, the Executive Engineer of the respondents herein examined as MW-1, the learned POIT concluded to the effect that as per the own admitted facts of the management, there existed an employee-employer relationship between the management on the one hand and Sh. Raj Kumar s/o Jai Lal Ram and Sh. Upender Rai s/o Sh. Jageshwar Rai on the other hand and that there existed an employee-employer relationship between the management and the petitioners.

15. The deposition of the petitioners and of the witnesses of the respondent are depicted in paragraphs 8, 9 & 10 of the impugned award which read to the effect:-

“8. Workman Sh. Raj Kumar has examined himself as WW 1 and has relied upon documents Ex. WW1/1 to Ex. WW 1/6. In his affidavit he has reiterated more or less the contentions made in statement of claim. In cross-examination, WW 1 has admitted that except Ex. WW ½, other documents are photocopies only. He can not tell about the signature on Ex. WW ½ as to who signed the same. He has deposed voluntarily that the signature was made by the AE. He has denied the suggestion that the AE has no authority to sign the Ex. WW ½. He has deposed that he was not in possession of any appointment letter or any interview letter. He has deposed that no medical examination was done and that he started working with the management/department. He has deposed that he used

to work 9 hours in a day out of which 08 hours are duty hours and one hour is of over time. He has deposed that he is not in possession of any salary slip or payment of wages slip and that the payment for the work was made by cash by the cashier of the department. He has deposed voluntarily that an agreement was made as per the Minimum Wages Act. He has denied the suggestion that the management/department used to award contract work for a specific period. He has denied the suggestion that the work order was awarded for the period of 6 months and after that, the same used to be renewed time to time. He has denied the suggestion that there is no relationship of workman and management between the parties. He has denied the suggestion that the documents filed by him are not signed by any authority or officer of the management. He has admitted that he has made no complaint against the JE. He has denied the suggestion that he has filed forged and fabricated documents.

9. Workman Sh. Upender Rai has examined himself as WW 2 and has relied upon documents Ex. WW ½ to Ex. WW 2/6. In his affidavit he has reiterated more or less the contentions made in statement of claim. In cross-examination, he has admitted that except Ex. WW 2/2, other documents are photocopies only. He could not tell about the signature made on Ex. WW 2/2 as to who signed the same. He has deposed voluntarily that the signature was made by the AE. He has denied the suggestion that the AE has no authority to sign the Ex. WW 2/2. He has admitted that Ex. WW 2/2 does not bear seal of any authority/department. He has deposed that he is not in possession of any appointment letter or any interview letter. He has further deposed that no medical examination was done and that he started working with the management/department. He deposed that he used to work 9 hours in a day, out of which 08 hours are duty hours and one hour is one of over time. He has deposed that he is not in possession of any salary slip or payment

of wages slip and that the payment for the work was made by cash by the cashier of the department. He has deposed voluntarily that an agreement was made as per the Minimum Wages Act. He has denied the suggestion that the management/department used to award contract work for a specific period. He had denied the suggestion that the work order was awarded for the period of 6 months and after that, the same used to be renewed time to time. He has denied the suggestion that there is no relationship of workman and management between the parties. He has denied the suggestion that the documents filed by him are not signed by any authority or officer of the management. He has admitted that that he has made no complaint against the JE. He has denied the suggestion that he has filed forged and fabricated documents.

10. Management has examined Sh. R.S. Nirbhay, Executive Engineer as MW 1, relying upon document Ex. WW 1/1. In his affidavit, he has more or less, reiterated the contents of written statement filed by management. In his cross-examination, he has admitted that award dated 18.3.03 has been passed by the Tribunal in I.D. No. 38/95 in favour of workmen mentioned in Ex. MW 1/1 except those in serial nos. 6 and 7. He has admitted that this award was challenged by management before Hon'ble High Court and that Hon'ble High Court dismissed writ petition of management in WPC No. 282/04 dated 2.12.08. He has admitted that the management filed the SLP before Hon'ble Supreme Court, in this matter, which was also dismissed. He has deposed that the department paid the arrears of wages on implementation of award on same pay and allowances as regular work charged employees. He has deposed that no seniority list was issued by the department after issuing letter dt. 18.5.10 Ex. MW 1/1. He has admitted that department has regularized the services of those in the seniority list dated 9.12.02 w.e.f. 11.12.06 as per the policy framed by management with one time relaxation as per judgment of Hon'ble Supreme Court in the matter of Uma Devi Vs.

State of Karnatak. He has deposed that the workman Upender Rai and Raj Kumar were working under the control of concerned Jr. Engineer of Department. He has further deposed that the superior officer of the department is giving day to day work to the workmen and that payment of the workman is made by the department directly on daily rated basis workmen. He has deposed that management did not call the quotations from the workmen while issuing work order. He has deposed that work order is regularly awarded to the workmen after expiry of 6 months every year. He has further deposed that the regular workmen i.e. Khalasis are working under the same management and same site and that the management paid regular pay scale and allowances to the work charge employees. He has admitted the suggestion that labour department, GNCTD issued a notification on 10.11.2000 for payment of same salary and allowances to the contractor worker engaged in the same department. He has admitted the suggestion that the labour department GNCTD had also issued a notification dated 12.7.07 for prohibition the employment of contract labour in the process of operation of work specified in the schedule in the PWD including post of Khalasi. He has denied the suggestion that department is harassing the workmen and is not regularizing them.”

16. The analysis of the evidence led is depicted in Para 18 of the impugned award, which reads to the effect:-

“18. MW 1 has admitted, in his cross-examination, that workman Raj Kumar and Sh. Upender Rai were working under the control of concerned Jr. Engineer of department and that the superior officer of the department is giving day to day work to the claimants. MW 1 has further admitted in cross-examination that payment of workmen is made by the department directly daily rated basis. Workmen has relied upon the seniority list of Khallasi maintained by the management, in which

the names of workmen exist and the year of appointment is also mentioned as claimed by workmen. MW 1 has relied upon document Ex. MW 1/1 (order dated 18.5.2010 issued by Superintending Engineer (E) of the management), which clearly mentions, that the names of workmen Sh. Rai Kumar and Sh. Upender Rai was shown in the list of workers engaged on Hand Receipt/Muster Roll issued by Superintending Engineer (E) dated 13.07.2006. It is pertinent to mention here that order dated 18.5.2010 has been issued by Superintending Engineer (E) of the management, after the issuance of reference order dated 05.03.2010, deleting the names of workmen from the seniority list. Furthermore, the work order relied upon by the management pertains to the period after issuance of reference order. Thus, as per the own admitted facts of the management, there existed an employer employee relationship the management on one hand and Sh. Raj Kumar S/o Sh. Jai Lal Ram & Sh. Upender Rai S/o Sh. Jageshwar Rai on other hand. Thus, it is held that there existed an employer employee relationship between the management and Sh. Raj kumar and Sh. Upender Rai, Claimants.”

17. Apparently, there is no error nor perversity nor arbitrariness in the findings of the learned POIT in relation to the determination of the relationship between the petitioners and the respondent no.1, which thus does not warrant any interference.

18. This is so, in as much as the present petition is one under Article 226 of the Constitution of India. As laid down by the Hon'ble Supreme Court in **“Syed Yakoob Vs. K.S. Radhakrishnan and Ors.”** AIR 1964 SC 477, though a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals, these are cases where orders are passed by inferior courts or

tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions, a writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides questions without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. However, as observed by the Hon'ble Supreme Court in the said verdict vide para 7 thereof, though, a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court and this limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings and an error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be and that in regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding and similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari and that a Court must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings by a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding and the

adequacy or sufficiency of evidence led on a point and the inferences of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court and that it is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

19. It was further observed by the Hon'ble Supreme Court vide para 8 of the said verdict, which reads to the effect:-

“8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such

a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.”

20. The verdict of this Court in “*Parshuram Shah Vs. Govt. of NCT of Delhi and Anr* 2008 LLR 256” also likewise observes to the effect:-

“7. The arguments advanced on behalf of the petitioner workman, if entertained, would amount to interfering with the findings of facts as arrived at by the Labour Court after due appreciation of evidence. Law is well settled in this respect that the Labour Court is the final court of facts and it is not appropriate for this Court, while exercising jurisdiction under Article 226 of the Constitution, to reappreciate evidence or to interfere with the findings of facts as arrived at by the Labour Court. The jurisdiction exercised by the writ court under Article 226 is supervisory and not appellate in nature. Reappraisal of evidence without sufficient reason in law, to arrive at a finding of

fact contrary to those arrived at by the Subordinate Court, is not the intent of exercising the powers of judicial review. Reliance in this regard can be placed on the following judgments of the Supreme Court:

(i) Harbans Lal v. Jagmohan Saran AIR 1986 SC 302

(ii) B.C. Chaturvedi v. Union of India (1996) 1 LLJ 1232 SC

(iii) Indian Overseas Bank v. I.O.B. Staff Canteen Workers Union AIR 2000 SC 1508

(iv) P.G.I. of Medical Education and Research Chandigarh v. Rajkumar (2001) 2 SCC 54.

(v) Municipal Corporation of Delhi v. Asha Ram and Anr. 117 (2005) DLT 63.”

and thus, in that case where it was observed that that findings of the Labour Court were based on an appreciation of the material placed on the record which findings were neither perverse nor arbitrary nor capricious, it was held that it did not warrant any interference.

21. Thus, though the respondents through their counter affidavit vide paragraph 7.5 have stated to the effect that the petitioners had been employed along with the other persons who had been engaged on the basis of work order only with the CPWD and did not have any employee-employer relationship, and that their names were inadvertently included in the list of workers engaged on hand receipt/ Muster Roll, and that thus there did not exist any employee-employer

relationship between the petitioners and the respondents cannot be accepted as has rightly not been accepted by the learned POIT.

22. Furthermore, the respondents herein have not challenged the finding of the learned POIT in relation to the relationship between the petitioners and the respondent nos. 1 & 2 by filing any cross objections.

23. As has rightly been observed by the learned POIT, the names of the petitioners are mentioned in MW1/1, the order dated 18.05.2010, issued by the Superintending Engineer (E) of the Coordination Circle (Elect.) CPWD, deleting the names of the petitioners herein from the list of workers engaged on hand receipt/ Muster Roll which was issued by the Superintending Engineer (E) of the Coordination Circle (E) vide letter No.17(31)/ 2006/ Co.Cir. (E)/EC/1383 dated 13.07.2006 coupled with the factum that the said deletion of the names of the petitioners from the list of workers engaged on hand receipt/ Muster Roll as issued on 13.07.2006, deleting the names of the petitioners herein, had been issued on 18.05.2010 much after the reference dated 05.03.2010 made to the learned POIT by the GNCT of Delhi, the said finding of the learned POIT in relation to the existence of a relationship of an employee-employer between the petitioners and the respondents as observed in relation to the findings on issue no.3 in para 18 of the impugned award can thus not be faulted.

24. However, the learned POIT held the case of the workmen i.e. the petitioners herein to be barred by inordinate delay and laches observing to the effect that the petitioners were not entitled for the

relief claimed i.e. equal pay for equal work from the date of initial appointment on casual basis, a temporary status w.e.f. 01.09.1993 and regularization of service on completion of the period from the date of initial employment. It was observed by the learned POIT to the effect:

“19. Judicial notice is taken to the fact that relieves claimed by the workmen Sh. Raj Kumar and Sh. Upender Rai have their origin in the dates of initial appointments i.e. 06.10.1987 and 19.09.1988 respectively whereas the reference of the dispute has made on 05.03.2010 i.e. after more than 22 years of date of initial appointment of workman Sh. Raj Kumar and after more than 21 years of date of initial appointment of workman Sh. Upender Rai. Even if, the espousal letter of union available on record is dated 13.09.2008 is taken into account there are delays of 20 years and 19 years respectively.

20. In S. Shalimar Works Limited Vs. Their Workmen AIR 1959 SC 1217 it was held that though no limitation is prescribed for making reference of the dispute to an Industrial Tribunal, nevertheless, it has to be made within a reasonable period. In that case delay of 4 years in raising industrial dispute was held to be fatal. In another Authority reported as Nedungadi Bank Ltd. Vs K.P. Madhavakutty and others AIR 2000 SC 839, delay of 7 years was held to be a fatal and disentitled the workman to any relief. Similar view was reiterated in S.M. Nilajar and others Vs. Telecom District Manager. Karnataka 2003 (4) SCC 27.

21. In view of above proposition of law and also in view of inordinate delay of workmen, case of workmen is barred by delay and laches. Hence, workmen Sh. Raj Kumar and Sh. Upender Rai are not entitled for relieves claimed i.e. equal pay for equal work from the dates of their initial appointment on casual basis, temporary status w.e.f. 01.09.1993 and regularization of services on completion of period from the date of initial employment. Award is passed accordingly and reference.”

25. It is essential to advert to the names of the persons mentioned in Annexure P-13, the order dated 18.05.2010 relied upon on behalf of the respondents herein to contend that the names of the petitioners herein had been deleted from the list of Muster Roll/hand receipt workers with immediate effect in as much as there was no contact between those persons including the petitioners and the respondents and that they had only been issued work order from time to time to execute various sorts of work or for service in connection therewith and were being paid in the capacity of a contractor. The said names of the persons detailed in the letter dated 18.05.2010 are as under:

SI NO.	Designation	Name	Father's name
1.	AWM	Prem Pal Singh	Madan Lal
2.	AWM	Bhoodev Sharma	Onkar Sharma
3.	AWM	Surender Singh	Nain Singh
4.	AWM	Santosh Kumar	Ramchand
5.	Khallasi	Ram Nihore	Bhuee Dhar
6.	Khallasi	Upender Rai	Jageshwar Rai
7.	Khallasi	Raj Kumar	Jailal Ram
8.	MLD	Narender Singh	Govind Singh
9.	WM	Veer Sain	Kale Ram
10.	WM	Rampal	Dalip Singh
11.	WM	Rajinder Sharma	Harprasad Sharma

26. Significantly, ID No.38/1995 has admittedly been adjudicated upon by the learned POIT-1, KKD vide its award dated 18.03.2003. Vide the award dated 18.03.2003, the then learned POIT directed that the management was required to regularize the services of the workmen on their turn after placing them in the seniority list of daily rated workers keeping in view the length of services with it having been observed vide paras 17 to 21 thereof to the effect:

“17. To appreciate the case of parties, I have gone through the entire material available on record. WW-1 Shri Prem Pal Singh has proved the letter dated 17.3.87, Ex. Ww1/2 vide which his services were engaged for the period 17.3.87 to 16.6.87 for the period of three months, for a sum of Rs. 1333.80/-. He also produced similar letter for the period from 17.6.87 to 16.8.87 and further letter along with work order for various periods till the year 1998-99. The terms and conditions on which the work was awarded to him reads as under:

"1) The work shall be carried out as per instruction of Engineer-in- Chief.

2) The contract can be terminated any other time at any time.

3) The period of normal working hrs. Can as per requirement at site.

4) Nothing extra shall be paid other than No.2 shall be as per actual requirement.

18. Similar conditions have been imposed on all the work contractor, for example, the work contract was awarded vide order dated 23.8.97 for the period w.e.f. 25.8.97 to 24.12.97, for the period of four months at the rate of Rs.1950/- per month and for a total sum of Rs.78000/-. The terms and conditions of the contract read as under:

1. The work is purely temporary nature and contract can be terminated at any time without notice and assigning any reasons thereof.

2. The work shall be carried out as per instruction of Engineer-in- Chief.

3. The eight hours period shall be fixed by Engineer-in-Chief Charge and can be shifted any time other location.

4. A proportionate recovery will be carried out for not doing the work on any working days.

5. The rates will be increase as and when minimum wages are raised by N.C.T Delhi.

19. The workmen have further proved the attendance roll showing his work. The next letter proved by the workmen vides which the Director of Administration asked all the Chief Engineers to the list of all daily wage workers which is Ex.WW1/3. Ex.WW1/4 is implementation of judgment of Hon'ble Supreme Court in case of Surinder Singh and others vs. Engineer-in Chief, Central P.W.D in which the Govt. has decided to pay the same salary and allowance to all the daily rated Muster roll worker as admissible to regular counterparts. Ex.WW1/5 is the order for creation of 2 posts in various categories vide letter dated 20.9.1992. Similar affidavit and work order/ work done read have been produced by other workmen. It is evidence from the above mentioned record that the workmen were employed on daily wages basis and all the terms and conditions of daily wage workers entitled. They were paid the salary/wages of daily wage worker. They were required to do the work eight hours per day as per the instructions of the management on the location directed by the management, which culminated into the work of workmen as daily wage workers (worllers, sic). Consequently, it is held that the workmen mentioned in the reference had been working as daily wages worker.

20. The next question for consideration is "Whether the workmen entitled to be regularized on the post indicated against their names.

21. As discussed above, the evidence in as detail, the stand of the management remained that they had been given the work contract and workmen were not the daily wages worker of the management. But the plan takes by the management has been disproved and it already been held above that the workmen namely Prem Pal Singh, Hari Kishan, Santosh Kumar,

Rajender Sharma, Bhudev Sharma, Surender Singh, Ram Nihore and Hans Raj are daily wages worker of management. It is also admitted fact that the management had maintained separates seniority list for work charged establishment and muster roll as daily rated workers and the regularization was to be done in accordance with the seniority list, maintained by the management. It has been held that workmen are daily wages worker with their initial appointment; they can be regularized only as and when their turn in the seniority list com. admittedly, workmen have not been shown in the seniority list and not given the seniority. Consequently, "the management is required to be directed to regularize the services of the workmen on their turn after placing them in the seniority list of daily wages worker, keeping in view their length of services."

27. Vide the judgment dated 02.12.2008 in WP (C) 282/2004, it was observed to the effect that the workmen in relation to whom the said award had been passed by the Industrial Tribunal were to be treated as daily rated workers for the purpose of payment of their wages and for other purposes in relation to their engagement. However, in view of the verdict of the Hon'ble Supreme Court in ***Union of India Vs. Sheela Rani 2006 (13) SCALE 394*** with specific reference to para 10 of the said verdict which reads to the effect:

"The law is well settled on this issue. In State of Haryana vs. Jasmer Singh,(supra), a three-Judge Bench of this Court held that the regularization of daily rated workmen who had completed a certain number of years of service is a policy matter to be decided by the State. This Court held that the respondents who are employed on daily wages can not be treated on par with persons in regular service of the State holding similar post. Daily rated workers are not required to possess the qualifications prescribed for

the regular work nor do they have to fulfill the requirement relating to age at the time of recruitment. They cannot, therefore, be equated with the regular workmen for the purposes of their wages nor can they claim the minimum wage regular pay scale of the regularly employed”,

it was observed vide para 5 of the verdict in WP (C) 282/2004 dated 02.12.2008 that regularization of the daily rated workmen could only be in terms of the policy of the CPWD and that general directions could not have been given by the Tribunal as given by its award dated 18.03.2003 to the CPWD for regularizing the services of the concerned workmen who were found to be daily rated workers and thus the directions in the award dated 18.03.2003 of the learned POIT in ID No.38/1995 were thus modified to the extent that the respondents herein were directed to consider the daily rated workmen for their regularization in terms of its policy, if any, on the basis of seniority list.

28. Vide order dated 21.04.2011, the Petition for Special Leave to Appeal (Civil) No.26320/2009 filed by the CPWD assailing the order dated 02.12.2008 of this Court in WP No.16815/2006 was dismissed. Vide order dated 02.12.2008 in WP No.16815/2006, the payment directed to be made to the workers in terms of the award dated 18.03.2003 in ID No.38/1995 was upheld.

29. The petitioners herein are named at serial nos.6 & 7 of the list in the letter dated 18.05.2010 which relates back to the list of workers engaged on hand receipt/Muster Roll issued by the Superintending

Engineer, Coordination Circle-E, dated 13.07.2006 which included Shri Prem Pal Singh, Shri Santosh Kumar, Shri Rajender Sharma, Shri Bhudev Sharma, Shri Surender Singh, Shri Ram Nihor whose names were mentioned in ID 38/1995 and are also depicted in the order dated 18.05.2010 for deletion of the names of the said persons add from the hand receipt/Muster Roll which had been issued on 13.07.2006.

30. Reliance is *inter alia* placed on behalf of the petitioners on the verdict of the Hon'ble Supreme Court in ***Oshiar Prasad and Ors. Vs. Employers in relation to Management of Sudamdih Coal Washery of M/s Bharat Coking Coal Limited, Dhanbad, Jharkhand (2015) 4 SCC 71, Ajaib Singh Vs. Sirhind Cooperative Marketing-Cum-Processing Service Society Limited and Anr. (1999) 6 SCC 82, Raghubir Singh Vs. General Manager, Haryana Roadways Hissar JT 2014 (10) SC 168, Union of India and Ors. Vs. Tarsem Singh (2008) 8 SCC 648, Manjul Srivastava Vs. Government of Uttar Pradesh and Ors. (2008) 8 SCC 652, M.R. Gupta Vs. Union of India and Ors. (1995) 5 SCC 628.***

31. On behalf of the respondent *inter alia* reliance is placed on the verdict of the Hon'ble Supreme Court in ***Karan Singh Vs. Executive Engineer, Haryana State Marketing Board (2007) 14 SCC 291*** and on the verdict of this Court in ***Delhi Development Authority Vs. Its Work Assistant in W.P.(C) 3184/2003*** decided 24.07.2017.

32. In the instant case, in view of the admission of MW-1 as indicated vide para 10 of the impugned award to the effect that the regular workmen Khalasis were working under the same management and same site and that the management paid regular pay scale and

allowances to the work charge employees and the admission of MW-1 that the Labour Department of the GNCT of Delhi had issued a notification dated 10.11.2000 for payment of the same salary and allowance to the contract workers engaged in the same department and the admission of MW-1 that the Labour Department of the GNCTD had also issued a notification dated 12.07.2007 for prohibition of employment of contract labour in the process of operation of work specified in the schedule in the PWD including the post of Khalasi, for the limited period of three years prior to the reference made on 05.03.2010, undoubtedly, the petitioners are entitled to equal pay for equal work done by them, which be paid to them by the respondents within a period of three months of the date of this judgment, as in view of the verdict of the Hon'ble Supreme Court in ***Union of India Vs. Tarsem Singh (2008) 8 SCC 648*** in as much as to that extent, the claim made by the petitioners cannot be held to be barred by laches.

33. As regards the prayer made by the petitioners seeking a mandamus to the respondents to regularize them from their initial period of employment, apparently, the said prayer cannot be granted in view of the verdict of the Hon'ble Supreme Court in ***Secretary, State of Karnataka and Ors. Vs. Umadevi and Ors. (2006) 4 SCC 1*** that the names of the petitioners have been deleted from the Muster Roll on which their names admittedly existed as indicated vide the impugned award also which thus held that there existed a relationship of employee and employer between the petitioners and the respondents and in much as the petitioners herein are similarly situated to the workmen in WP (C) 282/2004 disposed of on 02.12.2008, it is directed

that the respondents shall consider the petitioners herein for their regularization in terms of its policy, if any, on the basis of the Muster Roll dated 13.07.2006 as issued vide letter no.17(31)/2006/Co. Cir (E)/EC/1383.

34. The petition is disposed of accordingly.

ANU MALHOTRA, J.

MAY 07th, 2019/vm

