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

+ **W.P.(C) 3691/2010**

SRI KISHAN AND ORS

..... Petitioners

Through: Mr. Surendra Bharti, Advocate.
(M:8929083871)

versus

APMC

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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12.03.2020

CM APPL. 53353/2019 (for early hearing)

1. For the reasons stated in the application, early hearing is allowed. Application is disposed of.

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2. The present petition challenges the award dated 25th January, 2010 by which the Petitioners'/Workmen's (*hereinafter*, "*Workmen*") claim for relief has been dismissed by the Labour Court.

3. The case of the Workmen is that they were working with the Respondent/Management (*hereinafter*, "*Management*") regularly at the Subzi Mandi, Okhla, New Delhi as *Safai Karmacharis* where they were not given any facilities and were also not paid minimum wages. The Workmen's services were terminated on 14th February, 1994, which termination was challenged by the Workmen who sought reinstatement with back wages and legal facilities.

4. The matter was referred by the Secretary (Labour), Government of

National Capital Territory of Delhi to the Labour Court. The statement of claim was originally filed in 1995. Evidence of the Workmen was recorded and after recording the same, the Labour Court came to the conclusion that the Workmen have not established the relationship of 'employer-employee' in this matter. The observations of the Labour Court are as under:

"14. Now turning to the evidence of workmen on record on this issue, WW1 admitted in his cross-examination that he had not filed any document to show that he was appointed by the management; that the notices Ex. WW1/1 and WW 1/4 were sent to the management by the union on his behalf. He denied the suggestion that he had never worked with the management at any point of time but he has not added anything further as to on what basis he denied this suggestion. WW2 also admitted in his cross-examination that he was not given any appointment letter by the management. Similarly, WW3 admitted in this cross-examination that he had been working on daily wages basis with the management; that he did not have any document to prove that he was appointed by the management. WW4 admitted in his cross-examination that he had not received any appointment letter from the management. Similarly, WW5 also admitted in his cross-examination that he did not have any document to show that he worked as a Sweeper. In the same way, there are depositions of remaining witnesses examined in this matter on behalf of the contesting workmen. All of them have admitted that they did not have any documents to show that they were ever employed by the management at any point of time. I have also carefully gone through the documents relied upon by the workmen in support of their contentions which are Ex. WW1/1 to WW 1/14 on record. These documents are mostly in the form of complaints written on behalf of the workmen to various authorities from time to time. None of these documents

establishes the regular employment at any point of time.

15. On the basis of above mentioned discussion coupled with entire oral as well as documentary evidence on record, I am of the considered opinion that the workmen herein have miserably failed to prove before this court that either there was any employer-employee relationship between the parties herein or that their services had really been terminated illegally and/or unjustifiably by the management. Accordingly, this issue is decided against the workmen and in favour of the management.

ISSUE NO.2

*16. The management has taken preliminary objections in the WS to the effect that the present claim of the workmen was not maintainable because these claimants were never employed by the management at any point of time. On the other hand, the strong contention of the workmen was that they were the employees of the management for many years before illegal termination of their services by the management. In view of these rival submissions, I am of the considered opinion, that the primary burden of proving the employer and employee relationship between the parties in this matter was upon the workmen. In coming to this conclusion, I also find support from the judgment of Hon'ble Supreme Court of India given in the case of **Workmen of Neelgiri Co-operative Marketing Society Ltd. vs. State of Tamil Nadu and Others 2004 LLR 351 (Supreme Court)**. The Hon'ble Apex Court held in this case held mainly to the effect that it was well settled principle of law that the person who sets up the plea of existence of relationship of employer and employee would have to prove it. It was also held in this case that the burden of proof was on the workman to establish the employer and employee relationship and that an adverse*

inference cannot be drawn against the employer if the employer failed to produce certain documents before the court. It was also held that where a person asserts that he was employed by the company and it is denied by the company then it was for him to prove that fact and that it was not for the company to prove that he was not any employee of the company but of some other person.

*17. As already discussed pertaining to issue no.1 above, the workmen have miserably failed to prove on record by way of any cogent evidence, either oral or documentary, to satisfy this court that any of them was ever employed by the management as its regular employee at any point of time. Accordingly, the workmen have miserably failed to establish employer and employee relationship between the parties herein and more particularly in view of the mandate of judgment of Hon'ble Supreme Court of India in **Workmen of Neelgiri Co-operative Marketing Society Ltd. case (Supra)**. Hence, the preliminary objections taken by the management to the above effect are found to be genuine and well established against the workmen herein. Accordingly, this issue is also decided against the workmen and in favour of the management.*

RELIEF: -

18. In view of the findings of this court on issue nos. 1 and 2 to the above effect, I am of the considered opinion that the workmen herein are not entitled to claim any relief against the management. An award is passed to the above effect and reference is answered accordingly.”

5. The point urged before this Court is that the Labour Court failed to take on record the documents i.e., the attendance rolls, which showed that the Workmen were, in fact, working with the Management at Subzi Mandi,

Okhla, New Delhi. Ld. counsel further submits that these documents should have been permitted to be taken on record and an opportunity ought to have been given to the Workmen to lead secondary evidence in the matter.

6. A perusal of the record shows that the cross-examination of the Workmen was conducted in 2001-2002 and the application for taking on record the additional documents was filed in 2008 i.e., after a delay of more than six to seven years. In reply to the application, the Management has clearly taken the stand that the alleged record is not available with the Management and the alleged photocopy of the documents cannot be admitted in the eyes of law. The application for taking on record additional documents was accordingly opposed.

7. A perusal of the award shows that at least five of the Workmen admitted that they did not have any documents to show that they were working with the Management in their cross examination. The application for reopening evidence after a span of 6-7 years is highly belated. Moreover, the services of the Workmen having been terminated way back in 1994, it is likely that they have found alternate work. In view of the long delay and long gap of time, the prayer for reinstatement cannot be considered and the matter does not deserve to be remanded back for evidence afresh.

8. The writ is accordingly dismissed. All pending applications are disposed of.

PRATHIBA M. SINGH, J

MARCH 12, 2020

dj/T