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

Date of decision: 23rd August, 2021

+ **W.P.(C) 8710/2021 & CM APPLs. 27143-44/2021**

**MANAGEMENT OF M/S INDRAPRASTHA POWER
GENERATION CO.LTD.**

..... Petitioner

Through: Mr. Ramesh Kumar Vats, Advocate.
versus

SH. YOGESH DUTT SHARMA

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed challenging the Impugned Award dated 26th September, 2020 by which overtime wages of Rs.10,399/- have been awarded along with interest, in favour of the Respondent/Workman. The operative portion of the order is set out below:

“21. In view of the facts & circumstances of the case and the cited case law the application of the applicant-workman stands allowed. Thus the ISSUE is decided in favour of the claimant and against the management. Consequently, this AWARD is passed in favour of workman claimant Shri Yogesh Dutt Sharma S/o Late Shri Jai Pai Sharma. The management-IPGCL is directed to pay the amount of Rs.10,399/- (Rupees Ten Thousand Three Hundred and Ninety Nine only) to the applicant Shri Yogesh Dutt Sharma S/o Late Shri Jai Pal Sharma, within 60 days, failing which the workman will be entitled to the interest on the abovesaid amount @12% per annum from the date of this award till its realization from the management.

The cost of the litigation is also awarded to the workman as provided in Section 11(7) of the Industrial Dispute Act.”

3. The case of the Petitioner, i.e., the Management of M/s. Indraprastha Power Generation Company Ltd. (*hereinafter “IPGCL”*), is that there has been an unexplained delay and latches by the Workman of more than 10 years which has not been considered by the Ld. Labour Court. It is further submitted by Mr. Vats, ld. counsel for the Petitioner/Management that the initial burden of establishing overtime work and entitlement to wages/allowance of Rs. 10,399/- has not been discharged by the Respondent/Workman who only relied upon a photocopy of the Delhi Vidyut Board (*hereinafter as ‘DVB’*) register. Since the DVB itself no longer exists and has been taken over IPGCL, as one of six successor corporate entities, unless and until, the liability of the DVB was established, the Petitioner could not have been saddled with this payment of overtime wages.

4. Mr. K. Vats, ld. counsel for Petitioner/IPGCL takes the Court through the judgment of the Supreme Court in ***R.M. Yellati v. Assistant Executive Engineer [(2006) 1 SCC 106]*** to argue that the initial burden of establishing overtime work and entitlement to wages/allowance has to be discharged, and a simple affidavit cannot be taken as sufficient evidence to discharge the said burden. He, further, submits that the document which has been produced by the Respondent/Workman is only a forged document, and could not have been considered.

5. A perusal of the Impugned Award shows that the claim was filed by the Workman on the ground that he was initially engaged in the DVB as a

Technical Assistant Grade-I with effect from August, 2000 to June, 2002, having Employee No: 32034. As per the Impugned Award, the submission of the Workman was that there were overtime wages which he was entitled to, which were recorded in a particular register by the DVB, as per which Rs.10,399/- was to be paid to him.

6. The Petitioner/Management also appeared before the Ld. Labour Court. The Workman led the evidence and for this purpose, he relied upon a photocopy of the register of the DVB, wherein the details of various overtime wages have been recorded, in respect of 9 employees.

7. The impugned award also shows that, apart from the Workman who had filed his evidence by way of his own affidavit along with the copy of the DVB register, the Petitioner/Management also led its evidence through two witnesses. Both these witnesses, surprisingly, claimed to have no knowledge about the basic facts even relating to the Tripartite Agreement executed on 28th October, 2000 between Government of NCT of Delhi, DVB the representatives of DVB employees, by which the IPGCL was constituted. The evidence on behalf of the Petitioner/Management did not inspire any confidence before the Labour Court.

8. This Court has also perused the extracted evidence of the witnesses examined by the Petitioner/Management in the impugned award. The said witnesses have completely avoided making any statement in respect of the copy of the DVB register which was filed by the Workman, nor was any other document filed on record to show that the claim of overtime wages was baseless. Under these circumstances, the Ld. Labour Court has awarded a sum of Rs.10,399/- to the Workman as overtime wages.

9. The relevant findings of the Labour Court are extracted herein below:

“4. From the pleadings of the parties, the following issues were framed on 23-07-2015:-

5. (1) To what amount, if any, the claimant is entitled to recover from the management ?

6. However, on the application of the management, an additional issue was framed by the court on 12-01-2016 i.e. “Whether the petition under Section 33-C(2) of the I.D. Act is not maintainable on the ground that claimant does not have pre-existing right ? OPM”. It is pertinent to mention here that this issue was decided in favour of the workman and against the management by the court vide its detailed order dated 19-11-2016.

EVIDENCE OF THE APPLICANT:

7. The Workman has examined himself as WW1 and filed his evidence by way of affidavit which is exhibited as Ex.WW1/A. In his evidenciary affidavit the workman has reiterated contents of the statement of claim. WW1 has only relied upon the document Mark A which is a copy A copy of details of overtime wages. No other witness was examined by the workman and his authorized representative closed his evidence on 21-02-2017.

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16.As per the testimony of MW-1: “It is wrong to suggest that there was any tripartite agreement before unbundling. I have no idea about the contents of any such tripartite agreement.....I am not fully aware of the facts of the case.” Admittedly, the DVB was in existence upto unbundling i.e. year 2002. The witness MW -1 further admitted that he was not fully aware about the facts of the case and the Senior Manager HR-I who could be having knowledge about such tripartite agreement. He did not know whether any person in PGDCL having any knowledge about the records of DVB. Admittedly some of the records of DVB may have been handed over to the IPGCL. The witness MW-1 did not know whether all the important

and relevant documents including the record of workman were handed over to IPGCL. Needless to say that the witness MW-1 ought to have known about the essential details of the matter. Be that as it may. There is no doubt that the “existing benefits” of the employees were intact which included the overtime dues etc.

17. The next explanation tend to have been given by the management-witness MW-1 is regarding the complete previous papers/service documents relating to the overtime etc. The management-witness MW-1 stated:

“It is correct that some of the records of DVB may have been handed over to the IPGCL I do not know whether all the important and relevant documents including the record of workman were handed to IPGCL. I do not have any knowledge about any RTI application which may have been filed by workman. I do not know whether there was any Public Information Officer, namely, Mr. Y. P. Arora in IPGCL in the year 2006 It is correct that IPGCL come within the purview of RTI Act which is the year 2005. It is correct that in IPGCL management maintains the finance record and billing record. It is correct that I am not fully aware about the complete facts ...”

18. The management-herein has also filed written submissions and have raised the following contentions:

- a. The claim of the applicant is time barred;*
- b. The applicant has not summoned the ex-officials of the erstwhile DVB- management nor have the original documents from the erstwhile DVB-management has been adduced in evidence;*
- c. The overtime not proved by the applicant.*

19. The contentions of the management do not hold water. It was the duty of the new management-herein to have made sure that each document was handed

over safely. The witness MW-1 further stated that he was not concerned with the maintenance of attendance record of the relevant period. He did not know whether there used to be a post of Time Keeper in DVB. As per MW-1 there was no such post of HR Department of IPGCL, however, there could be such post in the respective plants. He did not know the nature of duties of time Keeper. The DVB was unbundled in the year 2002. The IPGCL came into existence consequent to unbundled. The said witness MW-1 further admitted that he did not have any knowledge about RTI application which may have been filed by workman. The witness MW-1 did not know whether there was any Public Information Officer namely Mr. Y. P. Arora in IPGCL in the year 2006. It was also admitted by MW-1 that IPGCL came within the preview of RTI Act, 2005 but had no knowledge that a balance of overtime.”

10. The Court has also perused the impugned award as also the copy of the register of the DVB which has been placed on record. The said extract from the DVB register seems to have been filed after the Workman had obtained a photocopy of the same. It is obvious that the DVB's original register is not in the possession of the Workman, and he merely had a photocopy of the same, which he produced before the Ld. Labour Court. The said extract of the register shows that various details in respect of nine Workmen including their employee code, phone no. their designation, and the amount of overtime wages which are to be paid, has been recorded. Against the Petitioner's name, his Employee No. is recorded along with Rs.10,399/- as overtime wages to be paid to him. Thus, it is obvious that the best way in which the workman could have discharged the onus on him, has been done. It was upto the management to have established the contrary

once the initial burden was discharged by producing the original register of the DVB or to produce any other document to establish that the Workman did not deserve the amount to be awarded in his favour. However, the Award of the Ld. Labour Court and the evidence which is recorded on behalf of the Petitioner/Management clearly shows that the Petitioner/Management has completely avoided even dealing with the main issue in the affidavit, as also in the cross examination. The Ld. Labour Court is right in holding that the Petitioner/Management's evidence does not hold water.

11. This Court is of the opinion that the said evidence adduced by the Petitioner/Management does not inspire any confidence. Considering that the amount of overtime wages which has been awarded is Rs.10,399/-, this Court is of the opinion that the Impugned Award does not warrant any interference in this matter. The overtime wages to the tune of Rs.10,399/- shall now be paid to the Workman within eight weeks, failing which interest of 12% per annum as per the impugned Award would accrue.

12. Accordingly, the present petition, along with all pending applications, is dismissed.

PRATHIBA M. SINGH
JUDGE

AUGUST 23, 2021

dj/ad