

\$~

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

%

***Reserved on: 15.02.2023
Pronounced on: 17.03.2023***

+ **W.P.(C) 4389/2010**

OMJI SRIVASTAVA & OTHERS Petitioners
Through: Mr. Sandeep Kumar
Srivastava and Mr. Dinesh
Kumar, Advocates.

versus
P.W.D./C.P.W.D. Respondent
Through: Mr. Rishikesh Kumar and Mr.
Aditya Raj, Advocates for
respondent No. 1/ GNCTD.

**CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH
J U D G M E N T**

GAURANG KANTH, J.

1. The Petitioners/Workmen in the present writ Petition are assailing the impugned Award dated 18.09.2007 passed by the Presiding Officer, Industrial Tribunal-II, Karkadooma Courts in I.D No.81/2004 (“*impugned award*”).
2. Learned Labour Court, vide the impugned Award, was pleased to hold that there was no employer-employee relationship between the Petitioners/Workmen and Respondent No.1/Management. Learned Labour Court further held that the cause of the Petitioners/Workmen has not been espoused by the union.

**FACTS RELEVANT FOR THE CONSIDERATION OF
THE PRESENT WRIT PETITION:**

3. It is the case of the Petitioners/Workmen that they were working with Respondent No.1/ Management from 1992, 1993 and 1998 onwards. It is their case that they were entitled for the enhanced salary, HRA, DA, washing of cloth allowance, cycle allowance, earned leave, casual leave, festival leave, Provident fund, ESI benefits, bonus and all other benefits at par with regular employees of Respondent No.1/ Management.
4. The appropriate Government referred the following industrial dispute to the learned Labour Court for adjudication:

“ Whether the workmen (1) Sh Omji Srivastava, S/o Sh. B.P Srivastava, (2) Shri. Dinesh Kumar Srivastava S/o Sh. Har Sahai Srivastava (3) Shri. Shyamji Srivastava S/o B.P Srivastava (4) Manoj Srivastava S/o Sh. H.S Srivastava are entitled to increase in wages from October, 2002 and cycle allowance and uniform and if so, to what directions are necessary in this regard? ”

5. The Petitioners/Workmen filed their statement of claim stating that they were entitled for all the benefits as entitled to the regular employees of Respondent No.1/Management. Respondent No.1/ Management filed detailed written statement denying the employer-employee relationship between the parties. It is the case of Respondent No.1/ Management that they have awarded the contract for the security services to various contractors in accordance with law by way of tender process. The Petitioners/Workmen were employees of the said contractors. Respondent No.1/ Management categorically denied that any

payment has ever made by Respondent No.1/ Management to the Petitioners/Workmen.

6. Respondent No.2 (Contractor) failed to appear before the learned Labour Court despite service. Hence Respondent No.2 was proceeded exparte.
7. Based on the pleading of the parties, the learned Labour Court framed the following issues:

“(i) Whether the cause of the workmen has been duly espoused?(OPW)

(ii) Whether the relationship of employer-employee is in existence in the present dispute? (OPW)

(iii) Whether the Management is not an Industry?(OPM)

(iv) Whether the Claimants are entitled for increase in wages from October, 2002? (OPW)

(v) Whether the Claimant are entitled for cycle allowance? (OPW)

(vi) Whether the Claimants are entitled for uniform? (OPW)

(vii) In terms of reference”

8. In order to prove the case, the Petitioners/Workmen stepped into the witness box as WW-1, WW-2, WW-3 and WW-4. On behalf of Respondent No.1/Management, Mr. R.K Gupta, Executive Engineer, PWD Division-VI, Nangloi was examined as MW-1.
9. Based on the evidence adduced by the parties, the learned Labour Court concluded that the cause of the Petitioners/Workmen has not been duly espoused. Hence, Issue no.1 was decided against the Petitioners/Workmen. Learned Labour Court further held that the Petitioners/Workmen failed to prove that there was any employer-employee relationship between the Petitioners/

Workmen and Respondent No.1/ Management. In view of the said finding learned Labour Court answered the reference in negative by holding that the Petitioners/Workmen are not entitled for increase in wages, cycle allowance and uniform.

10. Being aggrieved by the impugned Award, the Petitioner preferred the present Writ Petition. Despite service, there was no appearance on behalf of Respondent No.2 (Contractor) in the present proceedings.

SUBMISSION ON BEHALF OF THE PETITIONERS/WORKMEN.

11. Learned counsel for the Petitioners/Workmen submits that Respondent No.1/ Management was the principal employer of the Petitioners/Workmen. Respondent No.1/ Management was engaging the Petitioners/Workmen through contractors in violation of the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 (“*CLRA Act*”). Learned counsel for the Petitioners/Workmen further submits that the Petitioners/Workmen were performing the job of Chowkidars at the office of Respondent No.1/ Management from 1992, 1993 and 1998. Hence, they are entitled for increment in wages, cycle allowance, uniform and all other benefits as admissible to the regular employees of Respondent No.1/ Management.

12. Learned counsel for the Petitioners/Workmen further submits that the Petitioners/Workmen were working under the direct control of the officers of Respondent No.1/ Management. Hence,

Respondent No.1/ Management was duty bound to make the payment to the Petitioners/Workmen as per Section 21 (4) of the CLRA Act. However, the learned Labour Court failed to appreciate this fact and rejected the Claim Petition filed by the Petitioners/Workmen.

13. In view of these submissions, the learned counsel for the Petitioners/Workmen prayed for setting aside the impugned Award.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

14. Learned counsel for Respondent No.1/Management argues in support of the impugned Award. Learned counsel submits that there was no employer-employee relationship between the Petitioners/Workmen and Respondent No.1/ Management. The Petitioners/Workmen were working under various contractors. The Petitioners/Workmen were never employees of Respondent No.1/ Management and hence they were not entitled for any benefits as claimed by them.

15. With these submissions, learned counsel for Respondent No.1/ Management prayed for dismissal of the present Writ Petition.

LEGAL ANALYSIS

16. This Court heard the arguments advanced by the learned counsel for the parties and perused the documents on record and Judgments relied upon by the parties.

17. A perusal of the records shows that the learned Labour Court dismissed the claim of the Petitioners/Workmen on two

grounds (i) union has not espoused the dispute raised by the Petitioners/Workmen and hence the same is not maintainable; and (ii) the Petitioners/Workmen failed to prove that there was an employer-employee relationship between the parties.

WHETHER THE CAUSE OF THE PETITIONERS/WORKMEN WAS PROPERLY ESPOUSED.

18. Learned Labour Court framed a specific issue, i.e. Issue No.1, *Whether the cause of the workmen has been duly espoused.* Regarding this issue, the burden of proof was on the Petitioners/Workmen. Learned Labour Court decided the said issue against the Petitioners/Workmen. The relevant portion of the impugned Award, reads as follows:

“ ISSUE NO. 1

7. Onus is on the workmen to prove that their cause has been duly espoused by the workers union. On careful perusal of evidence, it is found that there is no iota of evidence whatsoever by the workmen to prove that their cause has been espoused by the workers union. They have not examined any officer bearer of the workers union nor any espousal letter has been placed and proved on record. In the absence of any espousal letter and any other evidence whatsoever, it is held that cause of the workmen has not been duly espoused. Consequently, the claim is not maintainable and is liable to be rejected on this sole ground. The issue is accordingly decided against the workmen and in favour of the management”.

19. Before advertng to the facts of the present case, it is desirable to reiterate the law regarding the espousal of the industrial disputes. The learned Single Judge of this Court in ***Lord Krishna Textile Mills Vs Rampal Singh*** reported as ***2015 SCC Online Delhi 14532*** had an occasion to examine the law regarding espousal of

the industrial disputes, and summarized the law in this regard as follows:

“14. The term "Industrial Dispute" has been defined in Section 2(k) of the ID Act as follows:

"2. Definitions:- In this Act, unless there is anything repugnant in the subject or context, xxx xxxxxx

(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

15. The words 'industrial dispute' convey a meaning to the ordinary mind that a dispute must be such that would affect a large group of workmen and employers ranged on opposite sides on some general questions on which each group is bound together by a community of interest, such as wages, bonus, allowances, pensions, provident fund, number of working hours per week, holidays and so on. It is a settled law that an industrial dispute under Section 2(k) of the ID Act is raised before the authority concerned on a collective basis because a dispute not espoused by others of the class to which the aggrieved party belongs is not an industrial dispute. Therefore, a dispute between an employer and a single workman cannot be an industrial dispute unless it is taken up by a number of workmen or trade union.

16. It can be seen from above that an industrial dispute can be raised either for a workman or any person regarding whom the workmen have substantial interest in the employment or non-employment or terms of employment or conditions of labour. The expression, „any person“ in the definition has not been equated with workmen and it has a wider connotation. But „any person“ is also subject to limitation under the process of judicial interpretation. The expression „any person“ must have a direct relation with the workmen about whose employment or non-employment or terms of employment or conditions of labour, the workmen have direct and substantial interest. It means that any person must be an employee of the industry in which the workmen

are employees as well. The next point for consideration in this series is that whether an individual dispute can become an industrial dispute under Section 2(k) of the ID Act?

17. Prior to 1965, a workman who claimed relief for himself, or a few workmen, who individually claimed relief for themselves had no remedy under the ID Act unless their cause was espoused by a substantial section of other workmen of the same establishment. There were only two methods by which such disputes could have been espoused, namely:-

- (i) By a collective demand made by a substantial section of workmen; or*
- (ii) By espousal of individual causes by a trade union representing a substantial section of the workmen of the industry.*

18. In this context, the Hon"ble Supreme Court in "Workmen of Dimakuchi Tea Estate v. The Management of Dimakuchi Tea Estate", AIR 1958 SC 353 observed as under:-

"15. We reach the same conclusion by approaching the question from a somewhat different standpoint. Ordinarily, it is only the aggrieved party who can raise a dispute; but an 'industrial dispute' is put a collective basis, because it is now settled that an individual dispute, not espoused by others of the class to which the aggrieved party may belong, is not an industrial dispute within the meaning of S. 2(k). As Issacs, J., observed in the Australian case of George Hudson Ltd. v. Australian Timber Workers' Union, 32 CLR 413 at p. 441 (B):

"The very nature of an 'industrial dispute' as distinguished from an individual dispute, is to obtain new industrial conditions, not merely for the specific individuals then working from the specific individuals then employing them, and not for the moment only, but for the class of employees from the class of employers..... It is a battle by the claimants, not for themselves alone."

19. Thus before 1965, the court had consistently taken a view that a dispute which is neither a collective demand of a substantial section of workmen nor was an individual's cause espoused by a trade union, such a dispute was an "individual dispute" and did not attain the character of an "industrial

dispute" so as to give jurisdiction to the appropriate government to make a reference for adjudication.

However, it resulted in severe hardship to workmen in cases where the question of discharge, dismissal, retrenchment or termination of services of a workman was in issue. At that time, the workmen had to persuade the union for espousing their cases falling in such categories and the Union in turn, may or may not have taken initiatives to espouse even their genuine causes.

20. To prevent such hardships, Section 2A was inserted in the scheme of the ID Act vide Section 3 of Amendment Act 35 of 1965, which came into effect from 01.12.1965 (herein after referred to as the 1965 amendment). Section 2A of the ID Act reads as under:-

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute- (1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub- section (1) may, make an application direct to the Tribunal or Tribunal for adjudication of the dispute referred to therein after the expiry of forty- five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Tribunal or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Tribunal or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or

otherwise termination of service as specified in sub-section (1)."

21. A perusal of this Section shows that the dispute regarding discharge, dismissal, retrenchment or termination of the workman and any dispute or difference between that workman and his employer connected with or arising out of such discharge, dismissal, retrenchment or termination is deemed to be an industrial dispute under Section 2A (1) of the ID Act notwithstanding the fact that no other workman nor any union of workmen is a party to that dispute. Further, as per sub-section 2 of Section 2A of the ID Act, such a workman as aforementioned is empowered to directly approach the Tribunal or a tribunal for adjudication of the dispute as referred in Section 2A (1). However, in the cases of disputes not falling under sub-section 1 of the said Section, the position is the same as that before the 1965 amendment. For the disputes not covered under Section 2A (1) of the ID Act, its espousal must still be through a Union or a substantial number of fellow workmen.

22. What is observed from above is that the disputes falling under the categories specified under Section 2A of the ID Act are industrial disputes and all other kinds of disputes unless they are espoused properly through a substantial number of fellow workmen would fall under the category of „individual disputes“ which are not a subject matter of concern under the ID Act. Clearly, individual disputes cannot be adjudicated and decided under the ID Act as they do not fall under the definition of the expression „industrial disputes“ as defined under Section 2(k) thereof."

20. Based on the said legal principle, this Court examined the evidence adduced by the Petitioners/Workmen. The Petitioners/Workmen proved on record Exhibit WW-2/1 (Statement of Claim dated 23.12.2002 filed by the Hindustan Engineering General Mazdoor Union on behalf of the Petitioner before the Conciliation officer), Exhibit WW2/2 (AD card for the legal notice issued by the Union), Exhibit WW-2/3 (Authorisation letter dated 23.12.2002 issued by the Petitioners/Workmen to Hindustan Engineering General

Mazdoor Union), Exhibit WW2/4 to Exhibit WW2/7 (Demand letters dated 23.12.2002 & 05.02.2002 issued by the Hindustan General Mazdoor Union to the Respondent No.1 Management espousing the cause of the Petitioners/Workmen). These documents show that the Petitioners/Workmen authorised the Hindustan General Mazdoor Union to take up the cause. In pursuance of the said authorisation, the said union issued demand letters and filed the claim petition before the Conciliation Officer. Based on the said claim Petition, the appropriate Government referred the said dispute to the learned Labour Court for adjudication. Just because there was no witness from the Union, it cannot be said that the cause of the Petitioners/Workmen has not been espoused by the Union.

21.As held by Hon'ble Supreme Court in *J.M Jhadav Vs Forbes Gokak Ltd* reported as **2005 (3) SCC 202**, there is no particular form prescribed to effect the espousal. Generally, Union passes resolutions, however sometimes proof of support by the Union may also be available aliunde. It would depend upon the facts of each case. In the present case, even though no resolution was placed on record on behalf of the Union, from the documents placed on record by the Petitioners/Workmen, i.e. Exhibit WW2/1 to WW2/7, it is evident that the Hindustan General Mazdoor Union has espoused the cause of the Petitioners/Workmen.

22.In view of the aforesaid discussion, this Court is of the considered view that the learned Labour Court's finding
W.P.(C) 4389/2010

regarding Issue No.1 was not based on the evidence adduced by the parties and contrary to the settled position of law. Hence, the finding recorded by the learned Labour Court qua Issue No.1 is set aside and it is hereby held that the cause of the Petitioners/Workmen was properly espoused by the Union.

Whether there was an employer-employee relationship between the Petitioners/Workmen and Respondent No.1/ Management

23. Now, on the second issue i.e. whether there was an employer-employee relationship between the parties, this Court finds that no document has been placed on record by the Petitioners/Workmen to establish the employer-employee relationship. The onus to prove the said issue was on the Petitioners/Workmen. Except the plain statement made by the Petitioners/Workmen, there was no other documentary/oral evidence adduced by the Petitioners/Workmen to show that there was employer-employee relationship between the parties. On the other hand, Respondent No.1/ Management placed on record Exhibit MW1/1 Colly, the contract entered between Respondent No.1/ Management with various contractors for providing the security services. These Contracts were awarded through proper tendering process. It is the case of Respondent No.1/ Management that the Petitioners/Workmen were employees of these contractors. Learned Labour Court extensively dealt with this issue in the impugned Award and this Court finds no perversity or illegality in the said findings.

24. Learned counsel for the Petitioners/Workmen sought to rely on the Award dated 21.04.2006 passed by the learned Labour Court in ID No. 31/2003 to show that the Petitioners/Workmen had served with Respondent No.1/ Management for more than 240 days. However, a perusal of the said Award clearly shows that based on the evidence adduced by the Workmen therein, the learned Labour Court reached the conclusion that the Workmen concerned are not the employees of Respondent No.1/ Management, but that of Respondent No.3/Contractor. In the said proceedings, the Petitioners/Workmen contended that Respondent No.3/Contractor was not traceable and hence under Section 21 of the CLRA Act, it is the responsibility of Respondent No.1/ Management being the principal employer to implement the said Award. The said proceedings finally culminated as Order dated 03.09.2013 in **LPA 351/2013**. In the said LPA, the Hon'ble Division Bench of this Court observed that under Section 21(4) of the CLRA Act, in case the contractor fails to pay the wages of the workmen, the said amount can be recovered from the principal employer. In view of the said provision, the Hon'ble Division Bench directed the Deputy Labour Commissioner to consider the contentions of the parties and issue recovery certificate in accordance with law. In pursuance of the said direction, Respondent No.1/ Management paid the wages to the Petitioners/Workmen for the period from 27.10.2000 to 02.10.2002 in their capacity as Principal Employer with liberty to recover the said amount from the employer of the

Petitioner, i.e. Respondent no.3/Contractor therein. Hence, it is evident from the various orders passed in these proceedings that Respondent No. 3/Contractor was treated as the employer of the Petitioners/Workmen. Respondent No.1 Management was treated as the principal employer.

25. Sections 20 & 21 of the CLRA deal with the liabilities & responsibilities of the principal employer. As per Section 20 of the CLRA Act, it is the responsibility of the principal employer to ensure that the workmen are provided with the amenities as per sections 16, 17, 18 and 19 of the said Act. In case the contractor fails to provide the said amenities, the duty is cast upon the principal employer to provide the said amenities to the workmen at the cost of the contractor. Further as per Section 21 of the CLRA Act, it is the primary duty of the contractor to provide the wages to the workmen. However, in case of a failure on the part of the contractor to pay the wages to the workmen, duty is cast upon the principal employer to make the said payment which is subject to recovery from the contractor. However, in the present case, both Sections 20 & 21 are not attracted. As a Principal Employer, Respondent No.1/Management has no control over the Contractor to decide the service conditions of its employees. The determination of the service conditions of the employees was exclusively within the domain of the contractor. No evidence whatsoever has been placed on record to prove that Respondent No.1/Management has any control in determining the service conditions of the

employees of the contractor. Further, the Constitution Bench of Hon'ble Supreme Court in *Steel Authority of India Vs National Union Waterfront Workers* reported as **2001 (7) SCC 1** categorically held that no relationship of master and servant is created between the principal employer and the contract labour by virtue of engagement of the contract labour by the contractor in any work of or in connection with the work of the principal employer. This being the position, Petitioners/Workmen cannot claim the allowances & incentives as available to the regular employees of the principal employer.

26. Learned counsel for the Petitioners/Workmen also sought to rely on the recommendations of the Central Advisory Contract Labour Board dated 18.12.2001 to argue that Respondent No.1/ Management is engaging contract labour in a manner which is contrary to the provisions of the CLRA Act. However, a perusal of the said recommendations of the Central Advisory Board Contract Labour Board reveals that there was no recommendation from the Board for the abolition of contract labour regarding the post of 'Chowkidar'. The Petitioners/ Workmen were working as Chowkidars and it cannot be said that the employment of the Petitioners/Workmen through the Contractor was in contravention of the CLRA Act.

27. In view of the detailed discussion herein above, this Court is of the considered view that the learned Labour Court's finding qua Issue no.1 was not based on the evidence adduced by the parties. There was ample evidence on record to show that the cause of the

Petitioners/Workmen was properly espoused by the Union. Hence, the finding of the learned Labour Court with regard to Issue No.1 is hereby set aside. However, this Court concurs with the view expressed by the learned Labour Court regarding Issue Nos. 4, 5, 6 & 7. There was no evidence adduced by the Petitioners/Workmen to prove that there was an existence of employer-employee relationship between the parties and hence, the Petitioners/Workmen are not entitled for any benefits as available to the regular employees of Respondent No.1/ Management.

28. For the reasons as enumerated herein above, the present Writ Petition is partly allowed. No order as to costs.

MARCH 17, 2023

GAURANG KANTH, J.