



2024:DHC:1489



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

% **Date of order : 9th February, 2024**

+ **W.P.(C) 2677/2011**

THE MANAGER,CENTRAL WAREHOUSING CORPORATION

..... Petitioner

Through: **Mr. Shaiwal Srivastava, Advocate**

versus

VEER SINGH & 19 OTHERS

..... Respondents

Through: **Appearance not given**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner vide the present petition under Article 226 of the Constitution of India, seeks the following reliefs:

“(a) issue a writ of certiorari quashing the impugned award dated 30.11.2010 passed in I.D. No.23/2009 by the learned Central Government Industrial Tribunal-I, New Delhi;

(b) issue any other writ / direction or command as may deemed and fit and proper in the given facts and circumstances of the case.

(c) Summon the records of the case from the learned Tribunal.”

2. The petitioner herein is a statutory corporation established under the Warehousing Corporation Act, 1962 and is involved in transporting

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containers at Inland Clearance Port, Patparganj (hereinafter “ICD, Patparganj”) from various destinations including from Central Freight Station Jahawar Lal Nehru Port Trust, Navi Mumbai (hereinafter “CFS, Navi Mumbai”). In order to transport containers, the Corporation had purchased ten tractor trailers from M/s Volvo India Pvt. Ltd. (hereinafter “VIPL”) and entered into an agreement dated 19th November, 1999 with the said company.

3. Pursuant to the above stated agreement, M/s Volvo India Pvt. Ltd., agreed to run the above said tractor trailers with experienced trained staff and supervise, manage, maintain, and operate those trailers from ICD, Patparganj to CSF, Navi Mumbai.

4. Allegedly, the tractor trailers were not put to use and remained stationed at C.S.F. Navi Mumbai from October, 2003 to September, 2004, and on 6th May, 2006, services of those 20 drivers were terminated with.

5. Thereafter, the respondents filed a civil suit bearing no. 1174/2006 before the Trial Court which was dismissed as withdrawn. The respondents then filed a writ petition bearing number W.P (C) no. 9908-27/2006 before this Court which was also dismissed as withdrawn vide an order dated 21st September, 2007. Subsequently on 11th May, 2009, the respondent drivers raised an industrial dispute and the same was referred by the appropriate government to the Industrial Tribunal for adjudication.

6. The learned Industrial Tribunal in ID no. 23/2009 passed an award dated 30th November, 2010 wherein it held that the agreement dated 19th November, 1999 is a sham and bogus contract, and further awarded



compensation to the respondent drivers in lieu of reinstatement of their services.

7. Being aggrieved by the impugned award dated 30th November, 2010, the petitioner has assailed the same by way of the instant writ petition under Article 226 of the Constitution of India.

8. Learned counsel appearing on behalf of the petitioner submitted that the findings of the learned Industrial Tribunal, as outlined in the impugned award, are incorrect and lack evidence which makes the same liable to be set aside.

9. It is submitted that the learned Industrial Tribunal failed to consider the evidence presented by the petitioner before rendering the impugned award.

10. It is submitted that the findings of the learned Industrial Tribunal regarding the petitioner's supervision and control over the respondents, as well as the characterization of the agreement dated 19th November, 1999, as 'sham and bogus', are deemed to be perverse and therefore the impugned award cannot be deemed to be legal.

11. It is submitted that the respondents themselves admitted in their civil suit and writ petition that they were supervised by the contractors and received wages from them. The agreement with the VIPL was for a duration of 5 years, as evidenced by Exhibit M.W.1/5. Additionally, the bills submitted by the contractors and payments made to them have been duly proven. Despite this evidence, the learned Industrial Tribunal concluded



that the contract was sham and that the petitioner corporation had control and supervision over the respondents, which is incorrect.

12. It is submitted that the evidence provided by MW-1 clearly indicates that the respondents were under the supervision of VIPL, the contractor, and VIPL handled all the employment formalities concerning the respondents and after conclusion of the agreement, a new one was executed in favor of M/s Ornate Multi Model Carriers, responsible for employing drivers for the vehicles and therefore, the petitioner was not involved in determining who would be employed by the contractors.

13. It is submitted that despite the vehicles belonging to the petitioner, it was the contractor's responsibility to maintain them, cover any losses, and operate them according to the terms of the agreement, therefore, the findings that the petitioner exercised control and supervision are erroneous.

14. It is submitted that no notice was displayed by the petitioner at ICD, Tugalkabad, and no advertisement was published in the newspaper for inviting applications for the posts of heavy vehicle drivers. MW-1 testified that there were no such driver positions available within the petitioner's corporation, and no advertisements were placed in any newspaper. The respondents were not recruited, and no notice inviting applications for heavy vehicle driver positions was ever displayed at ICD, Tugalkabad, in November, 1999. The procedure of affixing or displaying recruitment notices is not customary within the petitioner-corporation for any position, and the petitioner does not operate an ICD or at the depot at Tugalkabad. Additionally, WW-1 admitted to not receiving any interview letter. Despite



these facts, the learned Industrial Tribunal concluded that the contract was 'sham', a conclusion made without sufficient evidence to support it.

15. It is submitted that one of the respondents namely Rambir Sharma, appearing as WW-1, admitted to the plaint filed in the learned Trial Court, Delhi, as Exhibit WW-1/1, and its Affidavit as Exhibit WW-1/2, wherein it was pleaded that they were supervised by the contractors and paid wages by them. He also admitted to the writ petition filed before this Court, Exhibit WW-1/3, wherein the same plea was taken. WW-1 acknowledged that he had no evidence to prove that he was paid wages by the petitioner.

16. It is further submitted that although it was suggested that Exhibit WW-1/5 was fabricated, WW-1 denied this claim. However, the original of Exhibit WW-1/5 was not produced, and it was also suggested to WW-1 that Exhibit WW-1/5 was not issued by the management. Despite this, the learned Industrial Tribunal held that Exhibit WW-1/5 was proven. Furthermore, it was asserted that the petitioner did not send the respondents for training; rather, VIPL employed them as drivers for vehicles after providing them training at its Bangalore office. Therefore, it is argued that the findings made by the learned Tribunal are perverse. Additionally, even if Exhibit WW-1/5 were genuine, it would not prove an employer-employee relationship between the petitioner and the respondents.

17. It is submitted that the finding of the learned Industrial Tribunal, stating that the respondents were engaged by the petitioner corporation outside the recruitment rules, is perverse. The petitioner did not directly engage or employ the respondents. Instead, they were contractual



employees hired, supervised, and paid by VIPL, NFC, and M/s Omate Multi Model Carriers ('OMMC' hereinafter), i.e., the contractors.

18. It is submitted that the vehicle remained idle, and no drivers were employed during the period of October, 2003 and September, 2004, therefore, the learned Industrial Tribunal committed a serious error by basing its findings on conjectures and assumptions, rendering the impugned award legally unsustainable.

19. It is submitted that the respondents received their payments from the contractors when they were employed by them to drive the vehicles, and they were under the supervision of the contractors. Hence, they cannot be considered as employees of the petitioner.

20. It is submitted that the respondents admittedly abandoned the vehicles and absconded with the keys and documents on 6th May, 2006 and keys as well as documents of the vehicles were only retrieved with the intervention of the police.

21. It is submitted that there is no employer-employee relationship between the petitioner and the respondents, and the findings suggesting otherwise are deemed to be incorrect.

22. It is submitted that WW9, Shri S.D. Sharma, testified that WW9/1 to WW9/21 were instructions given to the contractor regarding the loading of containers into vehicles and it is evident that these instructions were directed towards the contractors and not towards the employees of the contractor, i.e., the respondents. Therefore, the findings of the Learned Industrial Tribunal in this regard are deemed to be incorrect.



23. It is submitted that the burden of proving that the respondents were employees of the petitioner rested on the respondents, which they failed to discharge. Furthermore, the evidence presented by the respondents before the learned Industrial Tribunal was insufficient to establish an employer-employee relationship. Instead, the learned tribunal held that the respondents fabricated a story regarding their application submission, interview, and appointment as drivers. Despite the unassailable nature of MW-1's evidence, the learned tribunal's decision to categorize them as employees of the petitioner is erroneous.

24. It is submitted that the finding that the respondents were allotted residential accommodation at Navi Mumbai is deemed to be incorrect as no accommodation was allocated to the respondents at Navi Mumbai. It is further submitted that the respondents were using the corporation's address for receiving letters and sending money orders and the same does not establish that they were employees of the corporation or were allotted accommodation by the petitioner.

25. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner seeks that the instant petition may be allowed, and the relief be granted, as prayed.

26. *Per contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the present petition submitting to the effect that the present petition is a gross misuse of law and does not have merits.

27. It is submitted that the services of the respondents were suspended by the petitioner when they approached them regarding payment of salaries



and other emoluments granted to the employees of the petitioner Corporation.

28. It is submitted that the petitioner has failed to prove that the services rendered to them were through a contractor and the learned Court below also termed the said agreement as 'sham and bogus'.

29. It is submitted that the parameters adopted by the learned Court below establishes the relationship of employer-employee between the parties and therefore, the same is established beyond any doubt.

30. It is submitted that the salaries to the respondents were paid in form of vouchers issued by the petitioner and the respondents were also provided accommodation by the petitioner themselves.

31. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondent prayed that the instant petition, being devoid of any merits, may be dismissed.

32. Heard the learned counsel for the parties and perused the records.

33. The petitioner has approached this Court seeking setting aside of the impugned award dated 30th November, 2010, passed by the learned Industrial Tribunal in favour of the respondent workmen, whereby, the petitioner was directed to provide monetary compensation to the respondents in lieu of reinstatement of their services.

34. Before delving into the impugned order, this Court deems it important to reiterate the settled position of law regarding determination of employer employee relationship between the parties.



35. The Hon'ble Supreme Court in *Sushilaben Indravadan Gandhi And Another v. New India Assurance Company Limited And Others*, 2020 SCC ONLINE SC 367, while dealing with the aspect of the existence of employer-employee relationships in a given factual matrix, observed that, there are several factors that are equally important to be considered while distinguishing between an independent contractor and an employee, ensuring proper classification under labour laws and regulatory frameworks. The relevant paragraphs of the said judgment have been reproduced below:

“13. This Court has in a series of judgment indicated the tests to be followed in order to determine, in the context of the Industrial Disputes Act and the Factories Act, as to whether different kinds of persons who supply goods or services could be said to be “in the employ” of the employer. Thus, in Dharangadhra [Dharangadhra Chemical Works Ltd. v. State of Saurashtra, 1957 SCR 152 : AIR 1957 SC 264] , the question posed before the Court was whether the salt manufactured by a class of professional laborers, known as agarias, from rain water that got mixed with saline matter in the soil, could be said to be in pursuance of contracts of service with the appellant, as a result of which they would then be entitled to be treated as workmen under the Industrial Disputes Act. After setting out the definition of “workman” under Section 2(s) of the said Act, this Court referred to the earliest test laid down to distinguish between a contract of service and a contract for service, namely, that whereas in the latter case, the master can order or require what is to be done, in the former case, he can not only order or require what is to be done, but also how it shall be done.

14. After referring to a number of English judgments, the Court then held, giving the example of a ship's master, a chauffeur,



and a reporter on the staff of a newspaper as against a ship's pilot, a taxi man and a newspaper contributor, that the test would be whether work is done as an integral part of the business of the employer, in which case it would be a contract of service, or whether it was done as an accessory to such business, in which case it would be a contract for service. Other tests that were laid down were as to whether the master had the power to select the servant, whether he paid wages or other remuneration, whether the master had the right to control the method of doing the work, and whether the master had the right to suspend or dismiss the employee. Ultimately, the true test, according to the judgment, was held to be as follows : (Dharangadhra case [Dharangadhra Chemical Works Ltd. v. State of Saurashtra, 1957 SCR 152 : AIR 1957 SC 264] , SCR p. 160)

“The principle which emerges from these authorities is that the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work, or to borrow the words of Lord Uthwatt at p. 23 in Mersey Docks & Harbour Board v. Coggins & Griffith (Liverpool) Ltd. [Mersey Docks & Harbour Board v. Coggins & Griffith (Liverpool) Ltd., 1947 AC 1 (HL)] , AC at p. 23: “The proper test is whether or not the hirer had authority to control the manner of execution of the act in question”.

14. The nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition. As has been noted above, recent pronouncements of the Court of Appeal in England have even expressed the view that it is not necessary for holding that a person is an employee, that the employer should be proved to



have exercised control over his work, that the test of control was not one of universal application and that there were many contracts in which the master could not control the manner in which the work was done (vide observations of Somervell, L.J. in Cassidy v. Ministry of Health [Cassidy v. Ministry of Health, (1951) 2 KB 343 : (1951) 1 All ER 574 (CA)] , and Denning, L.J. in Stevenson, Jordan & Harrison Ltd. v. MacDonald & Evans [Stevenson, Jordan & Harrison Ltd. v. MacDonald & Evans, (1952) 1 TLR 101 (CA)]).”

15. *Ultimately, the Court in Dharangadhra [Dharangadhra Chemical Works Ltd. v. State of Saurashtra, 1957 SCR 152 : AIR 1957 SC 264] held that it would be a question of fact to be decided by all the circumstances of the case. It was further held that the mere fact that the agarias did piece-rated labour, the work being seasonal, and the fact that they can engage others to do the work for them, would not detract from the fact that they are professional labourers who have been hired by the employer. Finally, the Court refused to exercise its discretion to interfere with the Industrial Tribunal's finding that on the facts of the case these agarias would have to be considered as workmen under the Industrial Disputes Act.*

16. *In Chintaman Rao v. State of M.P. [Chintaman Rao v. State of M.P., 1958 SCR 1340 : AIR 1958 SC 388 : 1958 Cri LJ 803] , this Court held that Sattedars and their coolies were not workers within the meaning of Section 2(1) of the Factories Act. In so holding, the Court referred to the judgment of Dharangadhra [Dharangadhra Chemical Works Ltd. v. State of Saurashtra, 1957 SCR 152 : AIR 1957 SC 264] and held that the fact that bidi rolling was done outside the factory premises, and that such rolling can be done at any time that the Sattedar chooses clinched the issue in favour of the fact that Sattedars and their coolies were independent contractors. The Court then hedged its decision by stating that it was not intended to lay down that under no circumstances can a Sattedar be considered to be a worker within the meaning of the Factories Act.*



Ultimately, everything depends on the terms of the contract entered into between such person and the employer.

17. In Birdhichand Sharma v. Civil Judge [Birdhichand Sharma v. Civil Judge, (1961) 3 SCR 161 : AIR 1961 SC 644] , this Court found on facts that the persons employed in a bidi factory, who could work at the time they chose, on a piece-rated basis, the caveat being that if they came after mid-day they were not allowed to work, even though the factory closed at 7 p.m., that such persons were workers under the Factories Act. The earlier two judgments [Dharangadhra Chemical Works Ltd. v. State of Saurashtra, 1957 SCR 152 : AIR 1957 SC 264] ' [Chintaman Rao v. State of M.P., 1958 SCR 1340 : AIR 1958 SC 388 : 1958 Cri LJ 803] of this Court were discussed and emphasis was laid on the fact that the persons who were employed had to work within the factory premises and had to report to work before mid-day. Further, the "right of control" was extended to mean that so long as there is some amount of supervision by the management, inasmuch as the management has the right to reject the bidis prepared if they do not come up to the proper standard, would indicate that such persons would be workers.

18. In Shankar Balaji Waje v. State of Maharashtra [Shankar Balaji Waje v. State of Maharashtra, 1962 Supp (1) SCR 249 : AIR 1962 SC 517 : (1962) 1 Cri LJ 497] , this Court set out the established facts between one Pandurang, who was employed by the owner of a factory manufacturing bidis, and the employer, as follows : (SCR pp. 253-54 : AIR pp. 519-20, para 8)

"8. The first contention is based on the established facts of the case which, it is submitted, do not make out the relationship of master and servant between the appellant and Pandurang, inasmuch as they indicate that the appellant had no supervision and control over the details of the work Pandurang did in the factory. The following are the established facts:



(1) *There was no agreement or contract of service between the appellant and Pandurang.*

(2) *Pandurang was not bound to attend the factory for the work of rolling bidis for any fixed hours of work or for any fixed period. He was free to go to the factory at any time he liked and was equally free to leave the factory whenever he liked. Of course, he could be in the factory during the hours of working of the factory.*

(3) *Pandurang could be absent from work on any day he liked. He could be absent up to ten days without even informing the appellant. If he was to be absent for more than ten days he had to inform the appellant, not for the purpose of taking his permission or leave, but for the purpose of assuring the appellant that he had no intention to give up work at the factory.*

(4) *There was no actual supervision of the work Pandurang did in the factory.*

(5) *Pandurang was paid at fixed rates on the quantity of bidis turned out. There was however no stipulation that he had to turn out any minimum quantity of bidis in a day.*

(6) *Leaves used to be supplied to Pandurang for being taken home and cut there. Tobacco to fill the bidis used to be supplied at the factory. Pandurang was not bound to roll the bidis at the factory. He could do so at his place, on taking permission from the appellant for taking tobacco home. The permission was necessary in view of Excise Rules and not on account of any condition of alleged service.*

(7) *At the close of the day, the bidis used to be delivered to the appellant and bidis not up to the standard, used to be rejected."*

19. *On these facts, the judgment in Birdhichand [Birdhichand Sharma v. Civil Judge, (1961) 3 SCR 161 : AIR 1961 SC 644] was distinguished and that of Chintaman Rao [Chintaman Rao v. State of M.P., 1958 SCR 1340 : AIR 1958 SC 388 : 1958 Cri LJ 803] applied. The Court held : (Shankar Balaji Waje case*



[Shankar Balaji Waje v. State of Maharashtra, 1962 Supp (1) SCR 249 : AIR 1962 SC 517 : (1962) 1 Cri LJ 497] , SCR pp. 257 & 259-60 : AIR pp. 521-22, paras 15 & 18-19)

“15. Further, the facts of the case indicate that the appellant had no control and supervision over the details of Pandurang's work. He could not control his hours of work. He could not control his days of work. Pandurang was free to absent himself and was free to go to the factory at any time and to leave it at any time according to his will. The appellant could not insist on any particular minimum quantity of bidis to be turned out per day. He could not control the time spent by Pandurang on the rolling of a bidi or a number of bidis. The work of rolling bidis may be a simple work and may require no particular supervision and direction during the process of manufacture. But there is nothing on record to show that any such direction could be given.

18. It is true, as contended for the State, that persons engaged to roll bidis on job work basis could be workers, but only such persons would be workers who work regularly at the factory and are paid for the work turned out during their regular employment on the basis of the work done. Piece-rate workers can be workers within the definition of “worker” in the Act, but they must be regular workers and not workers who come and work according to their sweet will. It is also true, as urged for the State, that a worker, within the definition of that expression in the Act, need not be a whole-time worker. But, even then, the worker must have, under his contract of service, an obligation to work either for a fixed period or between fixed hours. The whole conception of service does not fit in well with a servant who has full liberty to attend to his work according to his pleasure and not according to the orders of his master.

19. We may say that this opinion further finds support from what we hold on the second contention. If Pandurang was a worker, the provisions about leave and leave wages should



apply to him. We are of opinion that they do not and what we say in that connection reinforces our view that Pandurang was not a worker as the three criteria and conditions laid down in Chintaman Rao case [Chintaman Rao v. State of M.P., 1958 SCR 1340 : AIR 1958 SC 388 : 1958 Cri LJ 803] for constituting him as such are not fulfilled in the present case.”

20. *In D.C. Dewan Mohideen Sahib & Sons v. United Beedi Workers' Union [D.C. Dewan Mohideen Sahib & Sons v. United Beedi Workers' Union, (1964) 7 SCR 646 : AIR 1966 SC 370] , the Court set out a sample agreement which disclosed the facts of the case before it, as follows : (AIR p. 373, para 4)*

“4. ... It seems that a sample agreement was produced before the High Court, which provided inter alia for the following terms:

- (1) that the proprietor should supply the tobacco and the bidi leaves;*
- (2) that the intermediary should engage premises of his own and obtain the requisite licence to carry on the work of having the bidis rolled there;*
- (3) that at no time should more than nine bidi rollers work in the premises of that intermediary;*
- (4) that the intermediary should meet all the incidental charges for rolling the bidis including the cost of thread and the remuneration paid to the bidi rollers;*
- (5) that for every unit of 1000 bidis rolled and delivered by the intermediary to the proprietor, the latter should pay the stipulated amount, after deducting the cost of the tobacco and the bidi leaves supplied by the proprietor;*
- (6) that the intermediary should not enter into similar engagement with any other industrial concern;*
- (7) that the price of the raw materials and price to be paid for every unit of 1000 bidis rolled and delivered were to be fixed at the discretion of the proprietor.*



Besides these conditions, the contract also provided that it was liable to termination on breach of any of the conditions, and that the proprietors had no connection with and that they assumed no responsibility for the bidi workers who had to look to the intermediary for what was payable to them for rolling the bidis.”

21. The earlier judgments of this Court were referred to in Dewan Mohideen Sahib [D.C. Dewan Mohideen Sahib & Sons v. United Beedi Workers' Union, (1964) 7 SCR 646 : AIR 1966 SC 370] . After applying the tests laid down in the said judgments, this Court found : (AIR p. 375, para 12)

“12. ... There is in our opinion little doubt that this system has been evolved to avoid regulations under the Factories Act. Further there is also no doubt from whatever terms of agreement are available on the record that the so-called independent contractors have really no independence at all. As the appeal court has pointed out they are impecunious persons who could hardly afford to have factories of their own. Some of them are even ex-employees of the appellants. The contract is practically one-sided in that the proprietor can at his choice supply the raw materials or refuse to do so, the so-called contractor having no right to insist upon the supply of raw materials to him. The so-called independent contractor is even bound not to employ more than nine persons in his so-called factory. The sale of raw materials to the so-called independent contractor and resale by him of the manufactured bidis is also a mere camouflage, the nature of which is apparent from the fact that the so-called contractor never paid for the materials. All that happens is that when the manufactured bidis are delivered by him to the appellants, amounts due for the so-called sale of raw materials is deducted from the so-called price fixed for the bidis. In effect all that happened is that the so-called independent contractor is supplied with tobacco and leaves and is paid certain amounts for the wages of the workers employed and for his own trouble. We can therefore, see no difficulty in



holding that the so-called contractor is merely an employee or an agent of the appellants as held by the appeal court and as such employee or agent he employs workers to roll bidis on behalf of the appellants. The work is distributed between a number of so-called independent contractors who are told not to employ more than nine persons at one place to avoid regulations under the Factories Act. We are not, however, concerned with that aspect of the matter in the present appeals. But there can be no doubt that the workers employed by the so-called contractors are really the workmen of the appellants who are employed through their agents or servants whom they choose to call independent contractors.”

22. The next case in chronological order is of seminal importance in deciding which side of the line a particular set of facts would lead to a conclusion that a contract is one for service or of service. Thus, in Silver Jubilee Tailoring House v. Chief Inspector of Shops & Establishments [Silver Jubilee Tailoring House v. Chief Inspector of Shops & Establishments, (1974) 3 SCC 498 : 1974 SCC (L&S) 31] , this Court had to determine whether there is a relationship of employer and an employee between a tailoring shop and persons employed by the owner of the shop for stitching purposes under Section 2(14) of the Andhra Pradesh (Telangana Area) Shops and Establishments Act, 1951. Section 2(14) of the said Act defined a “person employed” as meaning, in the case of a shop, a person wholly or principally employed therein in connection with the business of the shop. The facts were set out in para 7 of the said judgment as follows : (SCC p. 501)

“7. The following facts appear from the finding of the learned Single Judge [Silver Jubilee Tailoring House v. Hyderabad Tailoring Workers Union, 1968 SCC OnLine AP 300 : 1970 Lab IC 223] . All the workers are paid on piece-rate basis. The workers generally attend the shops every day if there is work. The rate of wages paid to the workers is not uniform. The rate depends upon the skill of the worker and the nature of the work.



When cloth is given for stitching to a worker after it has been cut, the worker is told how he should stitch it. If he does not stitch it according to the instruction, the employer rejects the work and he generally asks the worker to restitch the same. When the work is not done by a worker according to the instructions, generally no further work would be given to him. If a worker does not want to go for work to the shop on a day, he does not make any application for leave, nor is there any obligation on his part to inform the employer that he will not attend for work on that day. If there is no work, the employee is free to leave the shop before the shop closes. Almost all the workers work in the shop. Some workers are allowed to take cloth for stitching to their homes on certain days. But this is done always with the permission of the proprietor of the shop. The machines installed in the shop belong to the proprietor of the shop and the premises and the shop in which the work is carried on also belong to him.”

23. *After referring to several judgments of this Court, the Court in Silver Jubilee Tailoring House [Silver Jubilee Tailoring House v. Chief Inspector of Shops & Establishments, (1974) 3 SCC 498 : 1974 SCC (L&S) 31] then referred to judgments of the English and American courts as follows : (SCC pp. 505-508, paras 19-23 & 25-29)*

“19. In Cassidy v. Ministry of Health [Cassidy v. Ministry of Health, (1951) 2 KB 343 : (1951) 1 All ER 574 (CA)] , All ER at p. 579 Lord Justice Sommerwell pointed out that the test of control of the manner of work is not universally correct, that there are many contracts of service where the master cannot control the manner in which the work is to be done as in the case of a Captain of a ship.

20. In many skilled employments, to apply the test of control over the manner of work for deciding the question whether the relationship of master and servant exists would be unrealistic.

21. In Montreal v. Montreal Locomotive Works Ltd. [Montreal v. Montreal Locomotive Works Ltd., (1947) 1 DLR 161 (Can



SC)] , DLR at p. 169 Lord Wright said that a single test, such as the presence or absence of control, was often relied on to determine whether the case was one of master and servant, mostly in order to decide issues of tortious liability on the part of the master or superior and that in the more complex conditions of modern industry, more complicated tests have often to be applied. He said that it would be more appropriate to apply a complex test involving : (i) control; (ii) ownership of the tools; (iii) chance of profit; (iv) risk of loss, and that control in itself is not always conclusive. He further said that in many cases the question can only be settled by examining the whole of the various elements which constitute the relationship between the parties.

22. In *Bank Voor Handel En Scheepvaart N.V. v. Slatford* [*Bank Voor Handel En Scheepvaart N.V. v. Slatford*, (1953) 1 QB 248 : (1952) 2 All ER 956 (CA)] , All ER at p. 971 Denning, L.J., said : (QB p. 295)

‘... the test of being a servant does not rest nowadays on submission to orders. It depends on whether the person is part and parcel of the organisation....’

23. In *United States v. Silk* [*United States v. Silk*, 1947 SCC OnLine US SC 97 : 91 L Ed 1757 : 331 US 704 (1947)] the question was whether men working for the plaintiffs, Silk and Greyvan, were “employees” within the meaning of that word in the Social Security Act, 1935. The Judges of the Supreme Court of USA, agreed upon the test to be applied, though not in every instance upon its application to the facts. They said that the test was not “the common law test,” viz. ‘power of control, whether exercised or not, over the manner of performing service to the undertaking’, but whether the men were employees “as a matter of economic reality”. Important factors were said to be ‘the degrees of control, opportunities of profit or loss, investment in facilities, permanency of relations and skill required in the claimed independent operation’.



25. In *Market Investigations Ltd. v. Minister of Social Security* [*Market Investigations Ltd. v. Minister of Social Security*, (1969) 2 QB 173 : (1969) 2 WLR 1] the Court said : (QB p. 183)

‘I think it is fair to say that there was at one time a school of thought according to which the extent and degree of the control which B was entitled to exercise over A in the performance of the work would be a decisive factor. However, it has for long been apparent that an analysis of the extent and degree of such control is not in itself decisive.’

26. It is in its application to skilled and particularly professional work that control test in its traditional form has really broken down. It has been said that in interpreting “control” as meaning the power to direct how the servant should do his work, the Court has been applying a concept suited to a past age.

‘This distinction (viz. between telling a servant what to do and telling him how to do it) was based upon the social conditions of an earlier age; it assumed that the employer of labour was able to direct and instruct the labourer as to the technical methods he should use in performing his work. In a mainly agricultural society and even in the earlier stages of the Industrial Revolution the master could be expected to be superior to the servant in the knowledge, skill and experience which had to be brought to bear upon the choice and handling of the tools. The control test was well suited to govern relationships like those between a farmer and an agricultural labourer (prior to agricultural mechanisation) a craftsman and a journeyman, a householder and a domestic servant, and even a factory owner and an unskilled “hand”. It reflects a state of society in which the ownership of the means of production coincided with the profession of technical knowledge and skill in which that knowledge and skill was largely acquired by being handed down from one generation to the next by oral tradition and not by being systematically imparted in



institutions of learning from universities down to technical schools. The control test postulates a combination of managerial and technical functions in the person of the employer i.e. what to modern eyes appears as an imperfect division of labour [See Prof. Kahn-Freund in (1951) 14 Modern Law Review at p. 505.] .’

27. It is, therefore, not surprising that in recent years the control test as traditionally formulated has not been treated as an exclusive test.

28. It is exceedingly doubtful today whether the search for a formula in the nature of a single test to tell a contract of service from a contract for service will serve any useful purpose. The most that profitably can be done is to examine all the factors that have been referred to in the cases on the topic. Clearly, not all of these factors would be relevant in all these cases or have the same weight in all cases. It is equally clear that no magic formula can be propounded, which factors should in any case be treated as determining ones. The plain fact is that in a large number of cases, the Court can only perform a balancing operation weighing up the factors which point in one direction and balancing them against those pointing in the opposite direction [See Atiyah, PS, “Vicarious Liability in the Law of Torts”, pp. 37-38.] .

29. During the last two decades the emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor and in many cases it may still be the decisive factor. But it is wrong to say that in every case it is decisive. It is now no more than a factor, although an important one [See Argent v. Minister of Social Security, (1968) 1 WLR 1749 at p. 1759.] .”

24. Ultimately, the Court in Silver Jubilee Tailoring House [Silver Jubilee Tailoring House v. Chief Inspector of Shops & Establishments, (1974) 3 SCC 498 : 1974 SCC (L&S) 31] found that two important considerations clinched the issue in favour of deciding that the persons employed were employed wholly or



principally in connection with the business of the shop. First and foremost, machines on which sewing took place were supplied by the proprietor of the shop. And, secondly, supervision and control in tailoring business terms would include the right to reject sub-standard work. These factors were held to outweigh the fact that such persons did not have to work exclusively for the owner of the shop as also that they are not obliged to work for the full day.

25. *In Hussainbhai v. Alath Factory Thezhilali Union [Hussainbhai v. Alath Factory Thezhilali Union, (1978) 4 SCC 257 : 1978 SCC (L&S) 506] , this Court was confronted with persons who are engaged to make ropes from within a factory which manufactured ropes. What was argued before the Court was that the workmen were not the employer's workmen but only the contractor's workmen. The question that came up for consideration was whether they are “workmen” within the meaning of Section 2(s) of the Industrial Disputes Act. The test applied by this judgment to find out whether such persons are “workmen” was as follows : (SCC p. 259, para 5)*

“5. The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like may be resorted to when labour



legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43-A of the Constitution. The court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearances."

Applying this test, the economic reality of control of the employer over the workman's subsistence, skill and continued employment pointed to such persons being direct employees of the owner."

36. Upon perusal of the above-cited paragraphs, it is made out that the tests given by the Hon'ble Court have evolved over a period of time where, the Hon'ble Court had included various determinant factors to determine the employer-employee relationship between the parties.

37. The above-cited judgement also expounded certain other factors such as payment of salary, control over the work done, appointment of the workers etc. Therefore, the said factors also become important for the Courts to determine the relationship between the parties.

38. The nature and scope of powers conferred to the writ Court has been explained by the Hon'ble Supreme Court and this Court time and again and therefore, the position of law regarding the same is clear. Hence, the only limited question left before this Court is whether the order passed by the learned Tribunal suffers from any illegality or not and whether there is employer-employee relationship between the parties or not.

39. The concluding paragraph of the impugned award is reproduced hereinbelow:



“..Claimants rendered more than six years service to the Corporation Ranbir Sharma, Ram Bachan Chauhan, ram Karan are in their thirties while Manoj Kumr Sharma is aged about 30 years. Karan Singh has reached 50 years of age, Ram Kumar is 56 years old, while Rambir Singh is 44 years old as on date. None of them could get any job, as deposed by them. Other claimants are also sailing in the same boat. Taking into consideration the fact that specialized training was accorded to the claimants to run tractor trailers and the period of service rendered by them to the Corporation. I think it expedient that compensation to the tune of rupees three lacs each to Ranbir Sharma, Ram Bachan Chauhan, Ram Karan and Manoj Kumar Sharma would be adequate amount for them to settle in life, while a sum of rupees two lacs each for remaining claimants would meet ends of justice, in lieu of their reinstatement in service. Lesser amount of compensation is awarded to remaining claimants since they have almost played their innings in life and would have served the Corporation for a considerable lesser period than Ranbir Sharma, Ram Bachan Chauhan, Ram Karan and Manoj Kumar Sharma, in case termination order had not come into operation. Accordingly the Corporation is commended to pay compensation to the claimants as qualified above, in lieu of reinstatement of their services. An award is, accordingly, passed. It be sent to the appropriate Government for publication...”

40. The findings arrived at in the impugned award have been reasoned by analysing *inter alia* that the workmen had originally been selected by the petitioner corporation only after proper interviews, screening tests and verification of documents, followed by subsequent post-hire specialised training in order to make them proficient for the position they had been hired for. Hence, the learned Industrial Tribunal in the impugned award as



reproduced herein above, opined that the workmen are entitled to be paid compensation in lieu of reinstatement

41. The concluding paragraph of the impugned order also clearly states that the respondent workmen had worked with the petitioner for more than 6 years, therefore, the termination could not have happened without payment of the adequate compensation to them.

42. Furthermore, another aspect dealt by the learned Court below is that the workmen were not provided any notice regarding termination, therefore, establishing the non-fulfilment with the procedure established by the law. The learned Court below had also appreciated the material evidence and the testimonies for determining the question of employer-employee relationship between the parties.

43. The relevant paragraphs of the impugned award, i.e. 31, 32, 33, 34 & 41 makes it crystal clear that the respondent workmen were directly under control of the petitioner and were paid salaries/wages through vouchers issued by the petitioner.

44. Hence, it is crystal clear that the findings arrived at by the learned Industrial Tribunal are based on the evidence placed before it by the petitioner and the workman, and no such evidence has been placed before this Court to arrive at a different view, as it did in the impugned award.

45. Therefore, this Court concludes that the instant matter has been heard at length by the learned Tribunal and the petitioner had been granted sufficient opportunities to justify as to why the respondents should not be compensated in lieu of reinstatement. Since no error on account of



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appraising evidence by the learned Tribunal is noted by this Court, the relief as prayed by the petitioner cannot be granted.

46. In view of the above discussion of facts and law, this Court finds no infirmity in the impugned award dated 30th November, 2010, passed by the Presiding Officer, Central Government Industrial Tribunal No. 1, Karkardooma Courts, Delhi, in ID no. 23/2009 and the same is, hereby, upheld.

47. Accordingly, this instant writ petition stands dismissed. Pending applications, if any, also stand dismissed.

48. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 9, 2024
gs/av/ryp