



2025:DHC:11872



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

Reserved on: 13.10.2025

Pronounced on: 24.12.2025

+ W.P.(C) 8220/2011

RAJESH SHARMA

.....Petitioner

Through: Mr. Kshitiz Mahipal, Ms.
Khairun Nisa, Advs.

versus

LUSENT TECHNOLOGY HINDUSTAN & ORS

.....Respondents

Through: Mr. Mohit Sharma, Adv.

CORAM:

HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

RENU BHATNAGAR, J.

1. The challenge in the present writ petition is to award dated 28.04.2010, passed by the learned Additional District and Sessions Judge, POLC-VII, Karkardooma, Delhi (hereinafter 'Labour Court') in I.D. No. 346/2004, whereby the claim of the petitioner alleging illegal termination and seeking reinstatement with consequential benefits was dismissed on the ground that the petitioner failed to establish the existence of any relationship of employer and employee between himself and Respondent No. 1.

2. Before advertng to the plea of the parties, this Court finds it appropriate to first lay down the facts for adjudication.



2025:DHC:11872



3. The petitioner claims he was appointed as an Accountant with Lucent Technologies Hindustan Pvt. Ltd., who is Respondent No. 1 herein, on 15.04.1996 initially at a salary of Rs. 4,000/- per month and lastly drawing Rs. 17,000/- per month.

4. That M/s Tandon Vikas & Associates, Chartered Accountants, E-285, East of Kailash, New Delhi (Management No.2/Respondent No.2) introduced the workman with Management No. 1/Respondent No.1 herein.

5. The petitioner cleared a written test and interview conducted by Respondent No. 1, after which he was selected and appointed as an Accountant. He performed duties such as maintaining ledgers, preparing vouchers and day-to-day statements.

6. The petitioner alleges that although he worked regularly and continuously. He was not paid the money for the additional work taken from him. Respondent No. 1/Management No. 1 used to make payment of his salary to vouchers of Management No. 2. This practice continued till the year 2001. Thereafter, the payments of the earned salary of the workman were made to M/s J.K. Monga & Associates, G-8, Pratap Bhawan, I.T.O., New Delhi (hereinafter referred to Respondent No. 3). It is alleged that the claimant had no relation whatsoever with Management No. 3. There was no privity of contract between the petitioner and the Management No. 3. Respondent No. 1 did not regularise his services and instead showed him as working on the rolls of Respondent No. 3 to avoid legal obligations.

7. The petitioner states that he fell ill with jaundice on 04.05.2004, informed his superior on 05.05.2004 and remained under treatment



2025:DHC:11872



until 26.05.2004.

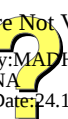
8. According to him, when he reported back on 31.05.2004, he was not allowed to rejoin and his salary for March 2004 was withheld. He sent a legal notice dated 13.07.2004 which was replied to by Respondent No. 1 on 29.07.2004.

9. He filed I.D. No. 346/2004 on 04.10.2004 before the learned Labour Court alleging illegal termination and seeking reinstatement with consequential benefits.

10. In response to the claim, Respondent No. 1 denied that the petitioner was ever in its employment. It was stated that there was no relationship of employer and employee between the petitioner and Respondent No. 1 which was evident as the petitioner's salary was paid through cheques issued by Respondent No. 3. He worked with Respondent No.1 on behalf of Respondent No. 3 only for the period from August, 2002 to April, 2004.

11. It was stated that there has been no employer-employee relationship between the petitioner and Respondent No. 1 and the same is evident from the Purchase Order dated September 14, 2004 which was placed on the Respondent No. 3 by Respondent No. 1 which clearly mentioned that the services which were required to be provided.

12. It was stated that the petitioner was posted with Respondent No. 1 on behalf of Respondent No. 3 to execute the said work. This fact was also evident from the letter issued by Respondent No. 3 to Respondent No. 1. It was further stated that the documents which were provided by the petitioner in support of his claim did not prove that





2025:DHC:11872



the petitioner was or is the employee of Respondent No.1 as the copy of the access card is a normal access card which had been given to the petitioner as the petitioner was posted with Respondent No. 1 as the employee of the Respondent No.3. The letter issued by Respondent No. 1 clearly stated that the petitioner was working with Respondent No. 1 through Respondent No. 3 and therefore, the petitioner could not claim that he is an employee of Respondent No. 1.

13. It was stated that the American Express Credit card was a personal card of the petitioner and Respondent No. 1 had nothing to do with it. Further, the phone connection (Hutch) was on petitioner's own name and not through Respondent No.1's corporate connection and Respondent No. 1 never paid for such phone bills of the petitioner.

14. The learned Labour Court proceeded to frame the following issues for adjudication:

- (i) whether a relationship of employer and employee existed between the petitioner and Respondent No. 1;
- (ii) whether the petitioner was entitled to reinstatement with consequential benefits and from which management and;
- (iii) relief.

15. Respondent No. 2 and 3 were *ex parte* before the learned Labour Court and have not appeared before this Court as well.

16. The learned Labour Court examined Smt. Neena Dhinda, Manager (Human Resources) of Respondent No. 1 as MW-1.MW-1 had filed original board resolution in her favor as Ex. MW-1/1A, purchase order dated 14.09.2004 as Ex. MW-1/1, letter issued by



2025:DHC:11872



Respondent No. 3 showing the petitioner as an employee of Respondent No. 3 as Ex. MW-1/2 and reply to the legal notice as Ex. MW-1/3.

17. Based upon the testimony of the petitioner and Respondent No.1, the learned Labour Court concluded that there was no relationship of employer and employee between the petitioner and Respondent No. 1 and therefore, the question of reinstatement and consequential benefits does not arise. The claim was dismissed *vide* award dated 28.04.2010.

18. The said order is challenged by the petitioner by filing the present writ petition.

SUBMISSIONS

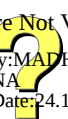
(on behalf of the Petitioner)

19. Mr. Bhavesh Singh, learned counsel appearing on behalf of the petitioner submitted that the impugned award is wholly perverse, having been passed in disregard of the pleadings and evidence on record.

20. It is submitted that the learned Labour Court had erred in not appreciating that a unique HR I.D. number for the petitioner was issued.

21. It is submitted that Respondent No. 2 and 3 were proceeded *ex parte* in I.D. No. 346/2004. However, at the instance of Respondent No. 1, Respondent No. 3 issued a letter, which, according to the petitioner, demonstrates a conspiracy between the managements.

22. It is submitted that the appointment letter and the payroll





2025:DHC:11872



arrangements were a mere sham and camouflage, and that the actual supervision, control and regulation of his employment were exercised by Respondent No. 1. It is further submitted that even Respondent No. 1 had admitted that the petitioner was appointed on a contract basis, yet the learned Labour Court failed to extend relief to the petitioner.

23. It is submitted that the learned Labour Court failed to note that Respondent No.1 had violated the provisions of Sections 7, 9, 10, and 12 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter 'CLRA') and failed to impose any penalties upon the management for such violations.

24. It is submitted that under the CLRA, the principal employer is accountable and responsible for its liabilities towards workers engaged through contractors. It is further submitted that Section 21(4) of the CLRA specifically casts the responsibility upon the principal employer to ensure payment of wages in cases where the contractor fails to pay within the prescribed period or makes short payment. It is submitted that the learned Labour Court failed to apply these provisions and consequently denied him relief.

25. It is submitted that the Bombay High Court in ***Cummins (I) Ltd. v. Industrial Cleaning Services, 2017 SCC OnLine Bom 5*** (decided on 05.01.2017) has clarified the legal position concerning the liability of a principal employer in matters involving contract labour. The Court observed that in the event of failure of the contractor to pay the amount of gratuity, the workman shall be at liberty to adopt such proceedings as maybe available to him in law against the principal employer under the provisions of CLRA read with The Payment of



2025:DHC:11872



Wages Act, 1936.

26. Therefore, in view of the foregoing submissions, it is submitted that the present petition may be allowed and the impugned award dated 28.04.2010 may be set aside.

SUBMISSIONS

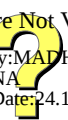
(on behalf of the Respondent No. 1)

27. *Per Contra*, Mr. Vikram Dhokalia, learned counsel appearing for Respondent No. 1 supported the findings of the Labour Court and contended that the impugned award calls for no interference by this Court. It is submitted that the Labour Court had, after an exhaustive appraisal of the evidence, correctly held that no relationship of employer and employee existed between the petitioner and Respondent No. 1.

28. It is submitted that it is well-settled in law that a claim for reinstatement and back wages is maintainable only upon the workman establishing the existence of an employer-employee relationship with the management. It is further submitted that the petitioner failed to prove that any employer-employee relationship existed between him and Respondent No. 1 and the learned Labour Court, after appreciating the evidence on record, rightly rejected his claim.

29. It is submitted that the petitioner cannot now be permitted to seek a fresh adjudication by this Court on matters already concluded by a reasoned finding of the Labour Court.

30. It is submitted that the petitioner had approached the learned Labour Court in his individual capacity, without being represented by





2025:DHC:11872



any union of Respondent No.1. The dispute raised by him, therefore, did not qualify as an 'industrial dispute' within the meaning of Section 2(k) of the ID Act.

31. It is submitted that for the applicability of Section 25F of the ID Act, the first requirement is the existence of an employer-employee relationship between the workman and the employer. In absence of such a relationship, the said provision has no application.

32. It is submitted that Respondent No. 1 had clearly stated before the learned Labour Court that no employer-employee relationship existed between it and the petitioner. In support, Respondent No. 1 produced a purchase order dated 14.09.2004 showing that Respondent No. 3 was engaged to provide services, and it was pursuant to this arrangement that Respondent No. 3 deputed the petitioner to Respondent No. 1's premises.

33. It is submitted that the petitioner was never employed by Respondent No. 1 in any capacity and no employer-employee relationship ever existed between them. It is further submitted that the petitioner is not a workman and was drawing a salary of Rs. 17,000/- per month from Respondent No. 3.

34. It is submitted that none of the documents filed by the petitioner establish that he was ever an employee of Respondent No.1. It is submitted that the access card issued to him was a routine entry pass provided only because he had been deputed to work with Respondent No. 1 by Respondent No. 3.

35. It is submitted that the American Express Credit Card relied upon the petitioner is his personal card and has no connection



2025:DHC:11872



whatsoever with Respondent No.1. It is further submitted that the Hutch phone connection was in the petitioner's own name, was never provided through Respondent No. 1 and no bills for the same were ever paid by Respondent No. 1.

36. It is submitted that Respondent No. 1 never conducted any test or selection process for the petitioner. It is further submitted that the petitioner was an employee of Respondent No. 3, which is evident from the salary cheques placed on record by the petitioner himself, all of which were issued by Respondent No. 3.

37. It is submitted that the provisions of the CLRA have no application to Respondent No. 1, as the conditions of Section 1(4) of the CLRA are not met. The Act applies only to establishments in which twenty or more workmen are or have been employed as contract labour on any day of the preceding twelve months. It is submitted that Respondent No. 1 has never engaged twenty or more workmen as contract labour at any point in the relevant period and therefore, the CLRA does not apply to its establishment. It is further submitted the consequently, no obligations or liabilities under the CLRA can be invoked against Respondent No. 1 in the present proceedings.

38. It is submitted that the reliance placed by the petitioner on judgment concerning the Payment of Gratuity Act, 1972 is wholly misplaced, as the present case is not one where the petitioner has alleged non-payment of gratuity or raised any claim under the Payment of Gratuity Act, 1972. It is further submitted that the petitioner has never contended that gratuity was undue or unpaid and



2025:DHC:11872



no proceedings under the Gratuity Act were ever initiated.

39. It is submitted that the present dispute is confined to the petitioner's claim of alleged illegal termination and reinstatement and therefore any reference to principles governing gratuity or the judgment of the Bombay High Court in *Cummins* (supra) is irrelevant to the present matter.

40. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed as devoid of merits.

ANALYSIS

41. Heard learned counsel appearing on behalf of the parties and perused the material on record.

42. In the present matter, the petitioner alleges that the learned Labour Court disregarded crucial material such as identity cards, correspondence issued and the circumstances indicating supervision and control by Respondent No. 1. He stated that the learned Labour Court wrongly concluded that there is no relationship of employer and employee between the petitioner and Respondent No. 1. In these circumstances, it invites the attention of this Court to observe whether any error of law arising from non-consideration of relevant evidence by the learned Labour Court has occurred.

43. Before examining the evidentiary value of the materials relied upon by the parties, it is necessary to advert to the settled position regarding the burden of proof in cases involving a disputed claim of employment. The Hon'ble Supreme Court in *Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of T.N.*, (2004) 3 SCC 514 has held



2025:DHC:11872



that the initial onus lies squarely on the person asserting the existence of an employer-employee relationship. Unless this burden is discharged through cogent evidence, no obligation arises on the alleged employer to disprove the claim or to produce records. The Hon'ble Supreme Court summarised the governing tests as follows:

Burden of proof

“ 47. It is a well-settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him.

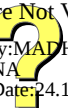
48. In N.C. John v. Secy., Thodupuzha Taluk Shop and Commercial Establishment Workers' Union [1973 Lab IC 398 : (1973) 1 LLJ 366 (Ker)] the Kerala High Court held: (LAB IC p. 402, para 9)

The burden of proof being on the workmen to establish the employer-employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer-employee relationship.

49. In Swapan Das Gupta v. First Labour Court of W.B. [1976 Lab IC 202 (Cal)] it has been held: (LAB IC para 10)

Where a person asserts that he was a workman of the company and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

50. The question whether the relationship between the parties is one of employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse.”





2025:DHC:11872



44. To determine the existence of an employer-employee relationship, this Court finds guidance in the principles laid down by the Hon'ble Supreme Court in *Balwant Rai Saluja v. Air India Ltd.* (2013) 15 SCC 85, wherein the Apex Court has exhaustively surveyed the jurisprudence governing when the workers engaged through an intermediary may, in law, be treated as employees of the principal establishment. The Hon'ble Supreme Court noted that the determination of such a relationship cannot rest on a single test but must be guided by a holistic appreciation of multiple indicators recognised across precedents.

45. The Hon'ble Supreme Court drew upon both English and Indian decisions, emphasising that the main feature across cases has been the degree of actual control and supervision exercised by the alleged employer. It further clarified that superficial or secondary elements of control, which are inevitable in a contract-labour arrangement, do not by themselves create an employment relationship. What the Court requires is a demonstration of complete or ultimate control, coupled with factors such as the power to appoint, pay, discipline, and terminate, and whether the worker is fully integrated into the purported employer's establishment. These principles guide the inquiry into whether the contract is genuine or a mere façade to evade statutory obligations. The relevant part of the aforesaid judgment is quoted below:

*“52. To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, this Court must apply the test of **complete administrative***



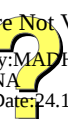
control. Furthermore, it would be necessary to show that there exists an employer-employee relationship between the factory and the workmen working in the canteen. In this regard, the following cases would be relevant to be noticed.

59. In *Ram Singh v. UT, Chandigarh* [(2004) 1 SCC 126 : 2004 SCC (L&S) 14] , as regards the concept of control in an employer-employee relationship, it was observed as follows: (SCC p. 131, para 15)

“15. In determining the relationship of employer and employee, no doubt, ‘control’ is one of the important tests but is not to be taken as the sole test. In determining the relationship of employer and employee, all other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. It is necessary to take a multiple pragmatic approach weighing up all the factors for and against an employment instead of going by the sole ‘test of control’. An integrated approach is needed. ‘Integration’ test is one of the relevant tests. It is applied by examining whether the person was fully integrated into the employer's concern or remained apart from and independent of it. The other factors which may be relevant are — who has the power to select and dismiss, to pay remuneration, deduct insurance contributions, organise the work, supply tools and materials and what are the ‘mutual obligations’ between them. (See *Industrial Law*, 3rd Edn., by I.T. Smith and J.C. Wood at pp. 8 to 10.)”

60. In *Bengal Nagpur Cotton Mills case* [*Bengal Nagpur Cotton Mills v. Bharat Lal*, (2011) 1 SCC 635 : (2011) 1 SCC (L&S) 16] this Court observed that: (SCC p. 638, paras 9-10)

“9. In this case, the industrial adjudicator has granted relief to the first Respondent in view of





2025:DHC:11872



its finding that he should be deemed to be a direct employee of the appellant. The question for consideration is whether the said finding was justified.

10. It is now well settled that if the industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. Two of the well-recognised tests to find out whether the contract labourers are the direct employees of the principal employer are: (i) whether the principal employer pays the salary instead of the contractor; and (ii) whether the principal employer controls and supervises the work of the employee. In this case, the Industrial Court answered both questions in the affirmative and as a consequence held that the first Respondent is a direct employee of the appellant.”

61. Further, the above case made reference to International Airport Authority of India case [International Airport Authority of India v. International Air Cargo Workers' Union, (2009) 13 SCC 374 : (2010) 1 SCC (L&S) 257] wherein the expression “control and supervision” in the context of contract labour was explained by this Court. The relevant part of International Airport Authority of India case [International Airport Authority of India v. International Air Cargo Workers' Union, (2009) 13 SCC 374 : (2010) 1 SCC (L&S) 257] , as quoted in Bengal Nagpur Cotton Mills case [Bengal Nagpur Cotton Mills v. Bharat Lal, (2011) 1 SCC 635 : (2011) 1 SCC (L&S) 16] is as follows: (Bengal Nagpur Cotton Mills case [Bengal Nagpur Cotton Mills v. Bharat Lal, (2011) 1 SCC 635 : (2011) 1 SCC (L&S) 16] , SCC pp. 638-39, para 12)



“12. ‘38. ... if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.’ (International Airport Authority of India case [International Airport Authority of India v. International Air Cargo Workers' Union, (2009) 13 SCC 374 : (2010) 1 SCC (L&S) 257] , SCC p. 388, paras 38-39)”

62. *A recent decision concerned with the employer-employee relationship was that of Nalco case [National Aluminium Co. Ltd. v. Ananta Kishore Rout, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353] . In this case, the appellant had established two schools for the benefit of the wards of its employees. The writ petitions were filed by the employees of each school for a declaration that they be treated as the employees of the appellant company on grounds of, inter alia, real control and supervision by the latter. This Court, while*



answering the issue canvassed was of the opinion that the proper approach would be to ascertain whether there was complete control and supervision by the appellant therein. In this regard, reference was made to Dharangadhra Chemical Works case [Dharangadhra Chemical Works Ltd. v. State of Saurashtra, AIR 1957 SC 264] wherein this Court had observed that: (Nalco case [National Aluminium Co. Ltd. v. Ananta Kishore Rout, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353] , SCC pp. 768-69, para 22)

“22. ‘14. 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 and Harbour Board v. Coggins & Griffith (Liverpool) Ltd.* [1947 AC 1 : (1946) 2 All ER 345 (HL)] , “The proper test is whether or not the hirer had authority to control the manner of execution of the act in question”.’ (Dharangadhra Chemical Works case [Dharangadhra Chemical Works Ltd. v. State of Saurashtra, AIR 1957 SC 264] , AIR p. 268, para 14)”

63. The Nalco case [National Aluminium Co. Ltd. v. Ananta Kishore Rout, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353] further made reference to *Workmen of Nilgiri Coop. Mktg. Society Ltd. v. State of T.N.* [(2004) 3 SCC 514 : 2004 SCC (L&S) 476] , wherein this Court had observed as follows: (Nalco case [National Aluminium Co. Ltd. v. Ananta Kishore Rout, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353] , SCC p. 771, para 27)

“27. ‘37. The control test and the organisation test, therefore, are not the only factors which



can be said to be decisive. With a view to elicit the answer, the court is required to consider several factors which would have a bearing on the result: (a) who is the appointing authority; (b) who is the paymaster; (c) who can dismiss; (d) how long alternative service lasts; (e) the extent of control and supervision; (f) the nature of the job e.g. whether it is professional or skilled work; (g) nature of establishment; (h) the right to reject.

38. With a view to find out reasonable solution in a problematic case of this nature, what is needed is an integrated approach meaning thereby integration of the relevant tests wherefor it may be necessary to examine as to whether the workman concerned was fully integrated into the employer's concern meaning thereby independent of the concern although attached therewith to some extent.' (Workmen of Nilgiri Coop. Mktg. Society case [(2004) 3 SCC 514 : 2004 SCC (L&S) 476] , SCC p. 529, paras 37-38)"

64. *It was concluded by this Court in Nalco case [National Aluminium Co. Ltd. v. Ananta Kishore Rout, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353] that there may have been some element of control with Nalco because its officials were nominated to the Managing Committee of the said schools. However, it was observed that the abovesaid fact was only to ensure that the schools run smoothly and properly. In this regard, the Court observed as follows: (SCC p. 772, para 30)*

"30. ... However, this kind of 'remote control' would not make Nalco the employer of these workers. This only shows that since Nalco is shouldering and meeting financial deficits, it wants to ensure that the money is spent for the rightful purposes."

65. *Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship*



2025:DHC:11872



would include, *inter alia*:

- (i) who appoints the workers;
- (ii) who pays the salary/remuneration;
- (iii) who has the authority to dismiss;
- (iv) who can take disciplinary action;
- (v) whether there is continuity of service; and
- (vi) extent of control and supervision i.e. whether there exists complete control and supervision.”

46. The Hon’ble Supreme Court also observed that in cases involving contractors, the central question is whether the contractor is operating as a genuine independent intermediary or merely as a device or camouflage to obscure the real employment relationship. The principles laid down in the Constitution Bench decision in ***Steel Authority of India Ltd. v. National Union Waterfront Workers***, (2001) 7 SCC 1, were reaffirmed, underscoring that if a contract is found to be non-genuine or a façade, the workers must be treated as direct employees of the principal employer.

47. In the present matter, the petitioner asserts that he was, in substance, an employee of Respondent No. 1, notwithstanding the routing of salary through Respondent No. 3. In his cross-examination, the petitioner stated that he was never an employee of Respondent No. 1 as he was not on its payroll. He also stated that all the cheques exhibited by him before the learned Labour Court was issued by Respondent No. 3. He further stated that the appointment letter issued to him was of Respondent No. 2, which was not produced before the learned Labour Court. The principles emerging from ***Balwant Rai Saluja*** (supra) require the Court to consider whether there existed complete administrative control on the part of Respondent No. 1 over



2025:DHC:11872



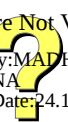
the petitioner and whether the petitioner was functionally integrated into its establishment.

48. Before the learned Labour Court, the petitioner appeared as WW-1. Before the learned Labour Court, the petitioner/workman placed reliance on documents i.e. an identity card issued by Respondent No. 1 as Ex. WW-1/1, a certificate issued by Respondent No. 1 as Ex. WW-1/2, statement of accounts showing address of Respondent No. 1 as Ex. WW-1/3, Mobile bill issued by Hutch in name of the petitioner as Ex. WW-1/4, copies of cheques as Ex. WW-1/5 to Ex. WW-1/9, his medical reports as Ex. WW-1/10, the legal demand notice and reply thereto as well as UPC and AD Card as Ex. WW-1/11 to Ex. WW-1/15. The relevant portion of the testimony of petitioner as recorded before the learned Labour Court reads as follows:

“It is correct that I was never an employee of Lucent Technologies directly as I was not on pay roll of the Lucent Technologies. It is correct that all the cheques EX.WW1/5 to 9 have been issued by J.K. Mongra & Associates. It is correct that my salary cheques were issued by J.K. Mongra & Associates only from the beginning and not by Lucent Technologies. I was issued appointment letter by Tandon & Associates. I have not placed the same on record.

I have not filed any document showing which shows that Management No. 1 put me to written test and interview and I was selected by them.

I have not filed any complaint to Labour Deptt or trade union for alleged violation by Management No. 1. I have not raised any





2025:DHC:11872



objection or made any complaint to any authority when my salary which was paid by Management No.2 till 2001, was changed to M/s J.K Monga & Associates as mentioned by me in para 9 of my affidavit.”

49. MW-1 stated in her testimony that the petitioner was working as an accountant and drawing a salary of Rs. 17,000/- per month. He was issued an identity card. She also stated that the petitioner was never an employee of Respondent No. 1 and had been posted by Respondent No. 3 to work with Respondent No. 1. It was also stated that Respondent No. 1 does not maintain any attendance register.

50. The record reveals that the petitioner has not produced material demonstrating that Respondent No. 1 possessed the authority to appoint, dismiss, discipline or regulate the terms of his employment. The admitted facts that salary was paid by Respondent No. 3 and that the petitioner did not possess any appointment letter issued by Respondent No. 1 points this Court towards the lack of administrative control.

51. Applying the framework of **Balwant Rai Saluja** (supra) here, the evidence placed on record does not indicate that Respondent No. 1 undertook responsibilities ordinarily associated with an employer. The petitioner has not shown that Respondent No. 1 handled his leave, attendance, disciplinary matters, insurance contributions, or other employment-related incidents. On the contrary, the materials from Respondent No. 3, including salary cheques and certification of employment, indicate that the petitioner's service conditions were governed exclusively by Respondent No. 3.



2025:DHC:11872



52. Now adverting to the submission of the petitioner that the employment arrangement between the petitioner, Respondent No. 1 and Respondent No. 3 was complex only as a façade to conceal the real employer, which is Respondent No. 1. However, referring to the material on record, there is no evidence that the arrangement between Respondents No. 1 and 3 was created to evade statutory obligations or to disguise a direct employment relationship. The existence of a purchase order identifying the services to be rendered by employees of Respondent No. 3, coupled with the petitioner's admission that he was placed at the premises of Respondent No. 1 by Respondent No. 3, suggests that the intermediary arrangement was genuine.

53. The petitioner also claims that the learned Labour Court ignored the issuance of the access/identity card by Respondent No. 1. This Court is of the view that mere issuance of such card by Respondent No. 1 does not advance the petitioner's case. Such cards are routinely issued to all persons who require entry to a workplace, including contract personnel or visitors solely for operational and security purposes. An access card does not regulate the terms of employment, nor does it indicate appointment, supervision, disciplinary control or payment of wages. It is therefore insufficient to infer an employer-employee relationship.

54. A principal employer's general supervision over work performed on its premises does not, by itself, establish a master-servant relationship. As explained in *International Airport Authority of India* (supra) and reiterated in *Balwant Rai Saluja* (supra), secondary or operational control arising from the nature of work



2025:DHC:11872



allocation does not displace the contractor's primary authority over employment. In the present case, even if Respondent No. 1 issued directions concerning the petitioner's day-to-day tasks, such instructions fall within the permissible ambit of secondary control and do not amount to complete administrative control necessary to infer direct employment.

55. From the material placed on record and applying the principles laid down in the aforesaid precedents, this Court finds that the petitioner has not discharged the burden of proving the existence of an employer-employee relationship with Respondent No.1. The petitioner has relied primarily on the issuance of an access card and the fact that he performed duties within the premises of Respondent No. 1. However, these factors, even if accepted constitute indicators of secondary control, which the Hon'ble Supreme Court has held to be insufficient to establish direct employment in the absence of evidence relating to appointment, payment of wages, disciplinary authority or other core incidents of employment.

56. The record does not show the matters related to service conditions, including attendance, leave, supervision of employment terms emanating from Respondent No. 1. The record shows that the salary of the petitioner was paid exclusively by Respondent No. 3. No appointment letter was ever issued by Respondent No. 1 to the petitioner. Further, the existence of a purchase order and the petitioner's own admission that he was deputed by Respondent No. 3 reinforce the genuineness of the contractual arrangement and negate the assertion that the contractor was a mere façade.



2025:DHC:11872



57. It is also relevant to note that the petitioner has sought to rely upon the provisions of CLRA. However, the applicability of the said enactment is contingent upon the establishment employing twenty or more workmen as contract labour, as envisaged under Section 1(4) of the CLRA. In the present case, it is not disputed by the appellant that Respondent No. 1 did not employ twenty or more contract workmen at any point of time so as to attract the applicability of the CLRA. Consequently, the statutory scheme under the CLRA cannot be invoked against Respondent No.1 and no liability under the said enactment can be fastened upon it.

58. The petitioner has neither raised any grievance regarding non-payment of wages nor has he made any prayer before this Court alleging non-payment of gratuity under the Payment of Gratuity Act, 1972. No relief has been sought on these counts, nor is there any material on record suggesting denial of such dues. The scope of the present proceedings is thus confined solely to the petitioner's assertion of a direct employer-employee relationship with Respondent No. 1 and the challenge to the legality of the alleged termination.

59. The jurisdiction of this Court in matters arising from industrial adjudication is supervisory and not appellate. This Court cannot re-appreciate evidence merely because another view may be possible. Interference is justified only where the findings of the Labour Court are shown to be perverse, based on no evidence.

60. The Hon'ble Supreme Court in *Atlas Cycle (Haryana) Ltd. v. Kitab Singh*, (2013) 12 SCC 573 has held that the interfering of a High Court is correct where the Labour Court has overlooked material

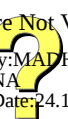


evidence. In such situations, the error ceases to be factual and becomes a legal one. The relevant part of the judgment has been quoted below:

“15. We are satisfied that the learned Single Judge thoroughly analysed all the aspects and arrived at a correct conclusion. It is settled law that when the Labour Court arrived at a finding overlooking the materials on record, it would amount to perversity and the writ court would be fully justified in interfering with the said conclusion. We are conscious of the fact that the High Court exercising writ of certiorari jurisdiction would not permit to assume the role of the appellate court, however, the Court is well within its power to interfere if it is shown that in recording the said finding, the Tribunal/Labour Court had erroneously refused to admit the admissible and material evidence, or had erroneously admitted any inadmissible evidence which has influenced the impugned finding, the writ court would be justified in exercising its remedy. In other words, 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.”

61. This Court, however, finds no perversity or error of law in the conclusion reached by the learned Labour Court, which was duly passed after considering the testimony and documents of both sides. The petitioner has failed to substantiate his plea of direct employment with Respondent No. 1, and no material has been shown to demonstrate that the learned Labour Court overlooked admissible evidence or relied upon inadmissible material so as to warrant interference in writ jurisdiction of this Court.

62. Accordingly, the finding of the learned Labour Court on the





2025:DHC:11872



absence of an employer-employee relationship warrants no interference.

63. The writ petition is accordingly dismissed.

RENU BHATNAGAR, J

DECEMBER 24, 2025/ka

