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

% **Date of order: 28th February, 2024**

\+ W.P.(C) 2931/2024 and CM APPL No. 12084/2024

SUNIL KUMAR & ORS. ..... Petitioners

Through: Mr.____,Advocate
(Appearance not given)

versus

THE STATE & ORS. ..... Respondents

Through: Mr.Rahul Kumar Verma & Mr.Pankaj Kumar Advocates for R-1 & 2

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) Quash order dated 31/7/2017 passed by Sh.Ajay Gupta POLC-V, Delhi vide which application under section 15 (2) of the payment of wages Act 1936 (herein after referred as PW A) of the petitioners were dismissed and the review petition of the petitioners were also dismissed by the hon'ble court of Sh. Vinay singhal, POLC-V, Delhi on 22/11/2019.*
> *b) direct the respondent No. I & 2 to direct respondent No.3 to release the earned wages/ salary to the petitioners for the period from 1/6/2011 to 30/11/2011 to which they have already*

served the management but their earned wages have not been released amounting to rupees as mentioned in last column of the chart in para no. 1.
Pass any other or further order which this Hon'ble Court may deem fit and proper in facts and circumstances of the case, in the interest of justice."

2. The relevant facts necessary for the adjudication of the instant petition are reproduced herein below:

a) The petitioners herein ("petitioner workmen" hereinafter) joined the service of the respondent no.3 i.e., M/s. JSK Wire Harness ("respondent management" hereinafter) on various posts. For brevity, the necessary details i.e., designation, date of appointment and last drawn salary of various petitioners are reproduced herein below in a tabular form:

S.No.	Name	Designation	Salary PM (Rs.)	Dt. of Appointment	Pending earned wages from 1/6/11 to 30/11/11 i.e. for 6 months
1.	Sunil Kumar	Production Man	7826/-	01.09.92	46956/-
2.	Babu Lal	Solder Man	7826/-	18.10.83	46956/-
3.	Madan	Solder Man	7826/-	03.08.89	46956/-

	Lal				
4.	Sunil Chand	Testing man	7826/-	11.05.92	46956/-
5.	Gopalji	Machine man	7826/-	01.06.88	46956/-
6.	Gobind Singh	Helper	6422/-	11.05.92	38532/-
7.	Sarvan Kumar	HSM	7826/-	02.06.85	46956/-
8.	Sushil Kumar Mishra	Field Man	7826/-	21.04.96	46956/-
9.	Naveen Chand Joshi	Helper	6422/-	01.03.92	38532/-
10.	Pan Singh	Solder Man	7826/-	03.08.88	46956/-
11.	Sukhdev	Testing Man	7826/-	02.02.92	46956/-
12.	Vijay Pal Yadav	Machine Man	7826/-	01.07.86	46956/-
13.	Om Prakash	Sweeper	6422/-	01.04.2004	38532/-

b) As per pleadings of the petitioner workmen, the respondent

management terminated the services of each of the petitioner workmen on 3rd August, 2011. Subsequently, the petitioner workmen filed a complaint alleging illegal termination before the Regional Labour Commissioner.

c) Pursuant to the intervention by the Regional Labour Commissioner, the petitioner workmen were taken back in service by the respondent management. Due to the non-payment of the earnest wages for the period 1st June, 2011 to 30th September, 2011, the petitioner workmen through their Trade Union sent a legal demand notice dated 23rd October, 2011.

d) Thereafter, the petitioner workmen filed applications dated 16th November, 2011, under Section 15(2) of the Payment of Wages Act, 1936, before the learned Labour Court thereby, alleging default in payment by the respondent management *qua* the period 1st June, 2011 to 30th September, 2011.

e) The learned Labour Court upon completion of pleadings, on 31st October, 2012 framed the following issues:

> *"1. Whether the application filed by the workman is not maintainable? OPM*
> *2. Relief."*

f) Thereafter, the learned Labour Court *vide* the impugned order dated 31st July, 2017, passed the order for each of the petitioner workmen separately thereby, observing that the workmen have failed to establish on record that they worked with the management during the

period 1st June, 2011, to 30th September, 2011, and as such the petitioner workmen are not entitled to the earned wages claimed by them in the present applications.

g) Subsequently, the petitioner workmen preferred a review petition before the Labour Court, Rouse Avenue Court, Delhi, against the aforementioned orders, which was dismissed by the learned Labour Court *vide* a common order dated 22nd November, 2019.

h) Therefore, aggrieved by the aforementioned orders, the petitioner workmen have preferred the instant writ petition under Article 226 of the Constitution seeking to set aside the impugned orders dated 31st July, 2017, and 22nd November, 2019.

3. Learned counsel appearing on behalf of the petitioner workmen submitted that the learned Labour Court has erred in passing the impugned orders as the same have been passed without taking into consideration the entire facts and circumstances of the case.

4. It is submitted that the learned Labour Court has erred in law by not adjudicating the present matter in accordance with the provisions of Code of Civil Procedure, 1908, as the present matter being civil in nature, had to be decided on preponderance of probabilities.

5. It is submitted that the petitioner workmen had placed on record the photocopy of the 'attendance card' for the month of November, 2011, which had not been appreciated by the learned Labour Court, leading to passing of the impugned orders.

6. It is submitted that considering the principle of preponderance of

probabilities, the learned Labour Court ought to have deduced from the 'attendance card' of November, 2011, that the petitioner workmen were employed during the period i.e., 1st June, 2011 to 30th September, 2011, for which they seek payment of earnest wages.

7. It is submitted that the learned Labour Court failed to consider the plea taken by the management in its written statement that the petitioner workmen had abandoned the services w.e.f. 1st June, 2011. It is submitted that if the above submission is presumed to be true, how the petitioner workmen could be in the service of the management for the month of November, 2011, for which the attendance card is on record.

8. It is submitted that the 'attendance card' were issued to the petitioner workmen on monthly basis by the respondent management, subject to depositing the attendance card for the previous month before it and hence, it is in such light, that the petitioner workmen have failed to produce on record the attendance card for the period prior to the month of November, 2011.

9. It is submitted that the petitioner workmen have been denied legitimate entitlement of earnest wages for the period 1st June, 2011 to 30th September, 2011, by the respondent management therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner workmen prays that the instant petition may be allowed, and the relief be granted, as prayed.

10. *Per Contra*, learned counsel appearing on behalf of respondents vehemently opposed the instant petition submitting to the effect that the instant petition is misconceived, and the same being devoid of any merit is

liable to be dismissed.

11. It is submitted that as per the settled position of law, an order passed by the Labour Court cannot be interfered with under the writ jurisdiction unless the same suffers from an apparent error of jurisdiction, breach of the principles of natural justice, is vitiated by a manifest or/and an error of law.

12. It is submitted that the impugned orders have been passed by the learned Labour Courts after duly considering the entire facts and circumstances available on record, and there is no illegality or infirmity thereto. Furthermore, it is submitted that the learned Labour Courts have applied its judicial mind and as per the law settled with regard to the present matter, the impugned orders cannot be challenged under the garb of a writ petition.

13. It is submitted that it is a settled position of law that the onus to prove that the petitioner workmen were in the service of the respondent management is upon the claimant, i.e., the party contending the same before the learned Court.

14. It is submitted that the instant petition is a frivolous claim as the petitioner workmen being claimants have failed to establish any shred of evidence to support their claim and establish employment with the respondent management for the period 1st June, 2011, to 30th September, 2011, for which they seek payment of earnest wages.

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

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

17. Before delving into the averments advanced by the learned counsel appearing on behalf of the parties, this Court deems it apposite to briefly reiterate the scope of a Writ Court's jurisdiction under Article 226 of the Constitution of India in interfering with findings of the Labour Court/Tribunal *qua* the following circumstances. *Firstly*, a High Court shall exercise its writ jurisdiction sparingly and shall act in a supervisory capacity and not adjudicate upon matters as an appellate court. *Secondly*, in matters wherein the Labour Court has adjudicated after having gone in the details of both fact and law while carefully adducing the evidence placed on record, the High Court shall not exercise its writ jurisdiction to interfere with the award when *prima facie* the Court can conclude that no error of law has occurred. *Thirdly*, judicial review involves a challenge to the legal validity of the decision. It does not allow the Court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. The reasoning must be cogent and convincing. *Fourthly*, a High Court shall intervene with the order/award passed by a lower court only in cases where there is a gross violation of the rights of the petitioner and the conclusion of the Tribunal/Labour Court is perverse. A mere irregularity which does not substantially affect the cause of the petitioner shall not be a ground for the court to intervene with the order passed by the concerned court. *Fifthly*, if the Court observes that there has been a gross violation of the principles of natural justice. *Lastly*, the punishment imposed can be

challenged on the ground of violation of doctrine of proportionality.

18. The instant petitioner workmen have approached this Court seeking issuance of a writ of certiorari to set aside the findings of the learned Labour Court as passed *vide* the impugned order dated 31st July, 2017, and 22nd November, 2019. The petitioner workmen have further sought for issuance of a writ of mandamus to direct the respondent to release the salary of the petitioner for the period 1st June, 2011 to 30th November, 2011.

19. In order to adjudicate the present case, this Court deems it imperative to analyze the findings of the impugned order dated 31st July, 2017, and ascertain the reasoning afforded by the learned Labour Court. Since the findings of the learned Labour Court are an exact replica in each of the cases, the relevant paragraphs of one of the impugned orders are reproduced herein below for reference:

> *"…**ISSUE No.1: Whether the application filed by the workman is not maintainable? OPM***
> *7) Onus to prove this issue was on the management. However, management has simply stated in its WS that the present application is not maintainable but it has not specified the reason for non-maintainability of the present application. Thus, it is evident that management has failed to establish on record, the grounds of non-maintainability of this application. This issue is decided accordingly.*
> ***ISSUE No. 2: Relief.***
> *8) In the present claim, workman has claimed that he has not been given salary for the period 01.06.2011 to 30.09.2011 and to prove this issue, workman has brought on record demand notice, its postal receipts and ESI card. The management has claimed that the workman did not work with it during the period 01 .06.2011 to 30.09.2011 and thus, he is not entitled to*

earned wages claimed by him. Thus, in these circumstances, the workman was under an obligation to establish on record that he worked during said period of four months (01.06.2011 to 30.11.2011) with the management to claim earned wages for said period. The workman has admitted in the cross-examination that the management had provided the attendance card to its workers. Thus, in these circumstances, the workman ought to have brought on record his attendance card pertaining to the relevant period. The workman has not placed on record any document to show that he had worked during that period with the management. The workman has placed on record only a photocopy of his attendance card, which is not relevant to the claim made in the present application as it only pertains to the month of November 2011 while the workman has claimed the salary for the months w.e.f. June to September 2011.

9) Keeping in view the above discussions, the court is of the opinion that the workman has failed to establish on record that the workman worked with the management w.e.f. 01 .06.2011 to 30.09.2016 and as such workman is not entitled to the earned wages claimed by him in the present application. Accordingly, present application of workman is dismissed. File be consigned to Record Room after due compliance..."

20. The petitioner workmen have also impugned the order dated 22nd November, 2019, hence, this Court further deems it imperative to analyze the finding of the said impugned order and ascertain the reasoning afforded by the learned Labour Court. The relevant paragraphs are reproduced herein below:

"..In this background, feeling aggrieved by the said judgment/order, the present application has been filed submitting that the Ld. Predecessor was wrong in not appreciating the documents w.r.t. presumed employment of the

applicant/claimant with the non applicant/ management for the said period of 01 .06.2011 to 30.09.2011.
The court has given due consideration to the submissions made by virtue of the present application and is of the opinion that the present application is not at all maintainable in view of the fact that while deciding a petition under the Payment of Wages Act the presiding court cannot go into the question of relationship of employer and employee between the parties if the management/non applicant has denied the said relationship and in such a situation the said relationship of employer and employee between the parties has to be determined by court having competent jurisdiction in this respect as also held by Hon'ble Allahabad High Court in the matter of ***Mis E. Hill and Company Vs. City Magistrate*** *cited as* ***1980 (40) FLR 363.***
In these circumstances, the court do not find any infirmity in the impugned judgment/order…"

21. Upon perusal of the aforementioned orders, it can be summarily stated that the learned Labour Courts have considered the entirety of the matter as well as the evidence on record and reached to the conclusion that the petitioner workmen have failed to establish on record that they worked with the management during the period 1st June, 2011, to 30th September, 2011, and as such the petitioner workmen are not entitled to the earned wages as claimed by them in the above said applications.

22. The learned Courts below further stated that the attendance card for the month of November, 2011, produced by the petitioner workmen is irrelevant since the wages sought are for a period prior to the month of November, 2011.

23. At this Juncture, it is apposite for this Court to understand the

jurisprudence behind the principles establishing an employer–employee relationship and upon whom the onus to prove the same lies. The Hon'ble Supreme Court in this regard in the judgment titled ***Kanpur Electricity Supply Co. Ltd. v. Shamim Mirza,*** **(2009) 1 SCC 20**, observed the following:

> *"**20.** It is trite that the burden to prove that a claimant was in the employment of a particular management, primarily lies on the person who claims to be so but the degree of proof, so required, varies from case to case. It is neither feasible nor advisable to lay down an abstract rule to determine the employer-employee relationship. It is essentially a question of fact to be determined by having regard to the cumulative effect of the entire material placed before the adjudicatory forum by the claimant and the management."*

24. Furthermore, the Coordinate Bench of this Court in ***Babu Ram v. Govt. (NCT of Delhi),*** **2018 SCC OnLine Del 7243,** observed the following:

> *"**8.** It is 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. In this regard, the **Hon'ble Supreme Court** in the case of Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of T.N., (2004) 3 SCC 514 has approved the judgment of Kerala and Calcutta High Court, where the plea of the workman that he was employee of the company was denied by the company and it was held that it was not for the company to prove that he was not an employee. Para 48 to 50 of the said judgment reads as under:—*
>
> > *"48. In N.C. John v. Secy., Thodupuzha Taluk Shop and Commercial Establishment Workers' Union, (1973 Lab IC 398) the Kerala High Court held:*

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. The First Labour Court of W.B. (1976 Lab IC 202 (Cal)) it has been held:

Where as 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."

x x x

12. *A Single Bench of this Court has held in Automobile Association of Upper India v. PO Labour Court, 2006 LLR 851 that appointment of workman can be proved by producing the appointment letter, written agreement, attendance register, salary register, leave record of ESI or provident fund etc. by the workman. The workman can also call the record from the management. Para 14 and 15 of the said judgment read as under:—*

"14. Engagement and appointment in service can be established directly by the existence and production of an appointment letter, a written agreement or by circumstantial evidence of incidental and ancillary records which would be in the nature of attendance register, salary registers, leave record, deposit of provident fund contribution and employees state insurance

contributions etc. The same can be produced and proved by the workman or he can call upon and caused the same to be produced and proved by calling for witnesses who are required to produce and prove these records. The workman can even make an appropriate application calling upon the management to call such records in respect of his employment to be produced. In these circumstances, if the management then fails to produce such records, an adverse inference is liable to be drawn against the management and in favour of the workman.

15. In the instant case, the workman filed an affidavit by way of evidence on the 29th April, 1993 and closed his evidence. Thus, the only evidence in support of the plea of employment was the self serving affidavit filed by the workman and nothing beyond that to support his claimed plea of service of seven years. In view of the principles laid down by the Supreme Court in Range Officer v. S.T. Hadimani, II (2002) SLT 154 such affidavit by itself is wholly insufficient to discharge the burden of proof on the workman."

25. Upon perusal of the aforementioned judgments, it can be summarily stated that the burden of conclusively establishing that a claimant was employed with a particular management, primarily rests upon the claimant, but the degree of proof which is required to be established, varies on a case to case basis.

26. It has been further held that a claimant can prove his appointment to service either directly by adducing evidence in the form of an appointment letter or an agreement in writing in such regard and/or by adducing circumstantial evidence in the form of attendance register, salary registers, leave record, PF contribution and ESI contributions.

27. Considering the facts of the present case, the settled principles of law and the evidence adduced by the parties, this Court is of the considered view that the position with regard to the burden of proving the relationship of employee-employer is no longer *res integra*, the said burden primarily rests upon the person who asserts its existence.

28. Tersely stated, the onus to establish the relationship of employee-employer between the management and the workman is on the claimant i.e., the person who sets up a plea of existence of such relationship between the parties.

29. This Court is further of the view that as per the settled position of law, the claimant must prove the existence of the employee-employer by way of, either direct evidence (producing a letter of appointment or a written agreement between the workman and the management) and/or *via* circumstantial evidence of incidental/ancillary nature (attendance register, salary register, leave records, deposit of PF contribution, ESI, entry card, etc), failing which the claim may not be entertained by the Court.

30. Adverting to the facts of the present petition, the petitioner workmen have not been able to furnish any direct or indirect evidence in order to support their claim seeking wages for the period 1st June, 2011, to 30th September, 2011, rather reliance has been placed upon the 'attendance card' for the month of November, 2011, for which no such claim is sought.

31. Therefore, in light of the petitioner workmen failing to produce any supporting evidence, this Court is not inclined to grant the relief as prayed.

32. At last, it is imperative for this Court to address one of the contentions

vehemently argued by the learned counsel for the petitioner workmen. During the course of proceedings, the learned counsel vehemently contended that the production of attendance card for the month of November, 2011, must have been taken into consideration and applying the principles of preponderance of probabilities, it should have been presumed that they worked during the contested period.

33. With regard to the above, this Court is of the view that it would be wrong to presume the contested position since the petitioner workmen have failed to provide any other record to establish their employment with the respondent management.

34. On being taken through the findings of the learned Labour Courts, it is crystal clear that the learned Courts below had sufficient basis for recording its findings, and upon perusal of the same, the findings recorded by the learned Court below are found satisfactory.

35. Therefore, this Court discerns no material to establish the propositions put forth by the petitioner workmen to characterise the orders passed by the learned Labour Courts as perverse and the reasoning provided by the learned Courts below are well justified and legally tenable.

36. In view of the above discussion of facts and law, this Court finds no infirmity in the impugned orders dated 31st July, 2017, and 22nd November, 2019, passed by the learned Presiding Officer, Labour Court-V, Karkardooma, Delhi and Presiding Officer, Labour Court-V, Rouse Avenue Court Complex, New Delhi, respectively.

37. Based on the aforementioned arguments, this writ petition is

accordingly dismissed.

38. Pending applications, if any, also stand disposed of.

39. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 28, 2024
SV/DA/RYP

Click here to check corrigendum, if any