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

Date of decision: 15th October, 2018

\+ W.P.(C) 6585/2015 & CM No. 12011/2015

CHIEF ENGINEER, PWD NCT ZONE ..... Petitioner

Through: Mr. Sanjoy Ghose, ASC-GNCTD

with Mr. Rishabh Jetely, Adv.

versus

RUDAL RAI ..... Respondent

Through: Mr. Anuj Aggarwal, Adv. with
Mr. Tenzing Thinlay Lepcha
and Mr. Ashutosh Dixit, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (ORAL)

1. These proceedings emanate out of an industrial dispute, raised by the respondent-workman Rudal Rai, which culminated in an Award dated 11th March, 2015, passed by the learned Industrial Tribunal (hereinafter referred to as the "learned Tribunal").

2. The case, as set out by the respondent-workman in his statement of claim, was that he had been initially engaged, on 15th December, 1985, as a plumber, "on work order", and was working under the direct control and supervision of the Junior Engineer/Assistant Engineer (JE/AE) and Executive Engineer, and that his services had been terminated with effect from 4th July, 1999, without notice or

notice pay, in contravention of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the "ID Act"). He also contended that daily rated workers in the establishment of the petitioner were being paid the minimum of the time scale, along with all allowances, except increment, from the date of their initial employment till regularisation. He relied on a settlement, dated 2nd December, 2002, between the management and the workers union which, according to him, showed that the management was treating the workers employed on work order at par with muster roll workers, and was extending, to them, all the benefits extended to daily rated workers. Reliance was placed, in this regard, on a judgment, dated 20th May, 2010, of a Division Bench of this court in ***D.G. Works, CPWD v. Baldev Singh (LPA 300/2007)*** which, in turn, relied on an earlier decision, also of a Division Bench of this court in ***PWD v. Satya Pal, 132 (2006) DLT 571***. He asserted that there was no contractor between the petitioner and himself, and that he had completed 240 days of work in each year, since his purported employment, by the petitioner, in 1985. He, accordingly, prayed for reinstatement with full back wages and all consequential benefits, with effect from 4th July, 1990, alongwith the minimum of the pay scale of skilled workmen, applying the principle of equal pay for equal work.

3. The petitioner, *per contra*, contended, in its written statement before the learned Tribunal, that there was no relationship of employer and employee, between the respondent and itself. It was contended that the respondent was engaged on purely contractual basis, and was never paid any salary or allowance. The petitioner asserted that the

respondent had been paid on the basis of actual work executed by him, as and when occasion arose. The petitioner also contended that the claim of the respondent, was, in any case, highly belated, as he had approached the Conciliation Officer, challenging his purported termination in 1999, for the first time in 2010.

4. On the basis of the pleadings of the parties, the learned Tribunal framed the following issues as arising for its consideration, *vide* order dated 4th December, 2012 :

> "1. Whether there is relationship of employer and employee between the parties? OPW
>
> 2. Whether claimant is a workman as defined u/s 2(s) of Industrial Disputes Act? OPW
>
> 3. Whether statement of claim is not maintainable on ground of laches/belated stage? OPM
>
> 4. As per terms of reference."

5. The respondent-workman led his own evidence as WW-1 and led the evidence of B.K. Prasad, General Secretary of the CPWD Mazdoor Union as WW-2. The petitioner examined Sh. Anand Singh, working with it as Executive Engineer, as MW-1.

6. The respondent, as WW-1, filed his evidence by way of affidavit, in which he deposed that he had initially been engaged, on 15th December, 1985, as a plumber on work order, and had performed his duties under the direct control and supervision of the JE/AE and Executive Engineer, and that his services had been terminated with

effect from 4th July, 1999. He contended that, though contracting the work of plumber was prohibited by the Ministry of Labour under the Contract Labour (Regulation and Abolition) Act, 1970, he had been working with the petitioner from 15th December, 1985 to 3rd July, 1999 "on works order directly". He further deposed that there was no contractor involved, between him and the petitioner. He further asserted that he had worked for more than 240 days in each of the years from December, 1985 to 3rd July, 1999, and that his services had been illegally terminated by the petitioner, on 4th July, 1999.

7. In his examination-in-chief on 30th August, 2013, the respondent tendered the aforementioned affidavit by way of his evidence, and affirmed the contents thereof. In his cross-examination, the respondent, to a query put to him, stated "that it was correct that (he)" used to perform the work order as given to him", but denied the suggestion that he had been employed on job work. He contended that he was paid salary on monthly basis. He also deposed that daily rated workers were never given any appointment letter, as per the policy of the petitioner-management.

8. B.K. Prasad, WW-2, in his affidavit in evidence, deposed that "daily rated workers have been getting the equal pay for equal work in the minimum of time scale plus all allowances except increment from the date of their initial employment till the regularization." He also proved the settlement, dated 2nd December, 2002, which reflected the agreement, by the authorities of the CPWD, to "examine the demand regarding regularisation of 'daily rated' workers under 'Muster Roll'

'Hand Receipt' and 'Work Order' filling up of all resultant vacancies of workers working in the establishment of CPWD and take action as per rules**".**

9. WW-2 B.K. Prasad also deposed, in his affidavit, that this Court had, in its judgment dated 20th May, 2010, in ***Baldev Singh (supra)***, held that work order employees were daily rated employees and that the said decision "proves that nomenclature mentioned as work order is camouflaged with a view of equal pay for equal work as well as regularisation of their services as per the policy of Director General (Works), CPWD."

10. WW-2 B.K. Prasad was examined on 30th August, 2013. In his examination-in-chief, he tendered his abovementioned affidavit, which was exhibited as Ex. WW-2/A. Nothing substantial turns on his cross-examination.

11. MW-1 Anand Singh, in his evidence by way of affidavit, filed before the learned Tribunal, denied the assertion, of the respondent, that he was in the employment of the petitioner, and asserted that there was no relationship of employer and employee existing between the petitioner and the respondent. He reiterated the assertion, in the written statement, to the effect that the respondent had been engaged as a contractor and that he was working for the petitioner as a contractor, on work order/work agreement basis. He denied any salary or allowance ever having been paid to the respondent and deposed that payment for work done was made on the basis of work executed

against specific work orders, which were recorded in the cash book and against bills raised by the respondent to the petitioner. He exhibited copies of the statements of bills paid by the petitioner to the respondent as MW-1/1 collectively. He also asserted that the claim of the respondent was highly belated. He denied the assertion, of the respondent, that he was a daily rated worker, though he accepted the fact that services had been taken, from the respondent, for the period 15th December, 1985 to 3rd July, 1999. He, however, deposed that such services were taken on the basis of actual work orders which were executed and that payments, thereagainst, were made in cash, which were accepted without demur.

12. He also pointed out that the respondent's attendance had never been recorded, his name was never shown on any record of the petitioner and no provident fund was deducted from the amount paid to him; nor was any such benefit claimed by the respondent.

13. In his examination-in-chief on 10th October, 2014, MW-1 Anand Singh tendered the aforementioned affidavit, which was exhibited, accordingly as Ex. MW-1/A. In his cross examination, MW-1 again asserted that the respondent had executed work on the basis of actual, and distinct, different work orders. He accepted that the circular issued by the petitioner (which was dated 19th August, 1983, and to which reference would be made in greater detail hereinafter) was related to the petitioner.

14. Consequent on conclusion of recording of evidence and after hearing the arguments of learned counsel before it, the learned Tribunal proceeded to adjudicate on the issues framed by it. The findings of the learned Tribunal, on the said issues, merit reproduction *in extenso*, thus :

> "12. **Findings on Issue no.1**
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> Issue No. 1 is : Whether there is relationship of employer and employee between the parties ? OPW
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> 13. It is deposed by MW 1 in his cross-examination that workman has executed the work on the basis of actual work order. Since, admittedly, workman was working with the management, may be on work order, in my considered opinion, management cannot be allowed to deny relationship of employer and employee between it and the workman in view of judgment of Hon'ble High Court in case Director General (Works) CPWD vs. Karam Singh and Ors. W.P.(C) No. 6552/2012 decided on 15.07.2013 (supra). Hence, it is held that relationship of master and servant existed between the workman and the management. Issue no.1 is decided accordingly.
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> 14. **Findings on Issue No.2**
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> 15. Issue no. 2 is : Whether claimant is a workman as defined u/s 2(s) of Industrial Disputes Act? OPW.
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> Section 2(s) of Industrial Disputes Act defines the term "workman". The said section is reproduced as below :-
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> > (s) "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or

retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature.

16. As stated above, admittedly, the workman was working with the management on work order. It is worth noting that he must had been performing the work of either skilled or unskilled nature, which is sufficient to become a 'workman' as defined u/s 2(s) of Industrial Disputes Act. It is, therefore, held that the claimant is a workman as defined under Section 2(s) of Industrial Disputes Act. Issue no. 2 is decided accordingly.

17. **Findings on issue no.3**

Issue no. 3 is : Whether statement of claim is not maintainable on ground of laches/belated stage? OPM

18. In this regard, management has taken preliminary objection in its written statement that the present claim is highly belated and suffered from laches as the workman first time approached the conciliation officer in the year 2010.

19. It is worth noting that it is reasonable to adjudicate the industrial dispute inspite of the delay in raising the matter. Moreover, it is not the case of parties that there is any loss or

unavailability of material evidence due to the delay. Hence in view of observations made by Hon'ble Supreme Court in case Raghubir Singh v. General Manager Haraya Roadways, Hissar 2014 LAB I.C. 4266 (supra), it is held that statement of claim is not barred on ground of laches/belated stage. Issue no. 3 is decided accordingly.

20. In Raghubir Singh v. General Manager Haryana Roadways Hissar (supra), it has also been held by Hon'ble Supreme Court that in case a workman approaches the Labour Court/Industrial Tribunal at a late stage, the benefits be given to him from the date he approaches the court.

21. **Findings on issue no.4**

Issue no.4 is : As per terms of reference. Terms of reference are : "Whether there existed relationship of employer and employee between the management and Sh. Rudal Rai and if so, whether Sh. Rudal Rai s/o Late Sh. Brahm Rai is entitled to be reinstated w.e.f. 04.07.1999 as well as equal pay for equal work etc. w.e.f. 15.12.1985 to 03.07.1999? If yes, what relief he is entitled?

22. As to relationship of employee and employer between the workman and the management, it has already been held vide issue no.1 that relationship of employer and employee existed between the workman and the management.

23. Another aspect, which needs to be considered, is whether the workman is entitled to equal pay for equal work. In this regard, workman has relied upon office order of management dated 21.10.1990 Ex. WW 2/4 and a letter Ex. WW 2/5 of management dated 28.01.1991. Both these documents are regarding implementation of a judgment of Hon'ble Supreme Court in case Surender Singh on the point of equal pay for equal work. In Ex. WW 2/4, it has been noted as under :

> "If a worker works for all the working days in a month availing the admissible rest days, he is entitled to full wages admissible at the minimum stage of the respective scale of pay, including DA/HRA/CCA admissible to his regular counter-part."

> 24. On the basis of above noting made in Ex. WW 2/4, it is held that the workman is entitled to get payment of full wages admissible at the minimum stage of the respective scale of pay, including DA/HRA/CCA admissible to his regular counter-part, on the principle of equal pay for equal work, subject to the condition that he has worked for all the working days in a month availing the admissible rest days. Issue no.4 and terms of reference are decided accordingly.
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> 25. Relief
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> In view of above discussion, it is held that relationship of employer and employee existed between the workman and the management and thus, he was entitled to get payment of full wages admissible at the minimum stage of the respective scale of pay, including DA/HRA/CCA admissible to his regular counter-part, on the principle of equal pay for equal work, subject to the condition that he had worked for all the working days in a month availing the admissible rest days. Admittedly, the workman raised the industrial dispute for the first time in the year 2010 and hence, in view of Raghubir Singh v. General Manager Haryana Roadways Hissar (supra), the workman is entitled to equal pay for equal work only from 08.06.2010 with reinstatement. Award is passed accordingly and reference is answered in these terms.
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> 26. Copy of the award be sent to GNCT of Delhi for publication. File be consigned to Record Room."

15. Aggrieved thereby, the management of the CPWD is before this Court, in the present writ petition.

16. I have heard Mr. Sanjoy Ghose, learned Additional Standing Counsel appearing for the petitioner and Mr. Anuj Aggarwal, learned counsel appearing for the respondent-workman, at length.

17. Mr. Sanjoy Ghose advances the following submissions :

(i) There was no employer employee relationship, whatsoever, between the respondent and the petitioner. He has invited my attention to certain pages, from the petitioner's cash book, which were also exhibited before the Labour Court, in which there are entries reflecting payments being made, from time to time, to the respondent-workman, against specific Running Account (RA) bills, for specific works. For example, (i) on 19th November, 1987, an amount of Rs. 890/- is shown to have been paid to the respondent, against voucher no. CV-25 "on account of a 2nd and final bill for as and when water supply", (ii) on 7th January, 1988, an amount of Rs.850/- is shown to have been paid, to the respondent, against voucher no. CV-37 "on account of 2nd and final bill for when – his external water supply", (iii) on 29th April, 1987, an amount of Rs.650/- is shown to have been paid to the respondent, against voucher CV-116, "on account of first RA Bill for R-0 external water supply, (indirect water supply) and (iv)on 27th March, 1987, an amount of Rs.650/- is shown to have been paid to the respondent, against voucher CV-129 "on account of the 2nd and final bill for external water supply".

18. Mr. Ghose would contend that these payments indicate that the respondent was being paid on work order basis, against particular items of work done by him, and not on the basis of a monthly salary,

as was sought to be contended by the respondent before the learned Tribunal.

19. The reliance, by the respondent, on the settlement, dated 2nd December, 2002, would also, according to Mr. Ghose, be totally misplaced, as the petitioner had not been issued any work order after 4th July, 1999, and the relationship between the petitioner and the respondent, therefore, ceased on the said date. The petitioner could not, therefore, be said to be an employee "working in the establishment" of the respondent, as was required by the said memorandum of understanding dated 2nd December, 2002.

20. Mr. Ghose has drawn my attention to paras 1 and 2 of the "preliminary objections", as contained in the written statement filed by the petitioner before the learned Tribunal, which read thus :

> "Preliminary Objections :
>
> 1. That the claim petition is not maintainable as the workman was not in employment with the management and there was no relationship of employer and employee exist between the Management and the workman. The workman was engaged as a contractor and he was working for PWD as a contractor as per the policy of the Government of NCT of Delhi. His service were hired on contract basis and he was bound by the terms and conditions as contained in the respective work order. The claim is liable to be dismissed on this ground.
>
> 2. That the claim against the answering Management is not maintainable as the Management had never paid any salary or any allowance to workman as monthly salary as an employee against the work done. The payment of the work done to the contractor i.e. workman was made on the basis of

actual work executed against the work order accordingly. The payments were made on the basis of actual work executed and recorded in the measurement book and against the bills raised by the workman to the management. The copy of cash book for payment made by the management to the workman against the work done is enclosed herewith. The claim petition is liable to be dismissed against the answering management on the said ground.

3. That the said claim is highly belated and suffers much delay and laches and thus barred by the law of limitation. The workman first time had challenged and had approached to the Conciliation officer in the year 2010 and before this Hon'ble Tribunal in the year 2012 which is more than 10-12 years in approaching before the Conciliation officer/Hon'ble Tribunal. The workman slept over for his alleged right for more than 12 years and has failed to explain such a long delay in approaching the appropriate Forum. Thus he is not entitled for any relief as the claim is highly belated as is highly time barred and is liable to be rejected on this ground."

21. Mr. Ghose has also seriously pressed the ground of delay, stating that there was no explanation, whatsoever, provided by the respondent, in his statement of claim before the learned Tribunal to explain, why, after cessation of relationship between himself and the petitioner on 4th July, 1999, he chose to approach the Conciliation Officer only on 7th June, 2010. He contends that, in any case, such delay, on the part of the respondent, disentitles him to any relief of reinstatement or back wages.

22. Mr. Ghose has placed reliance on the following decisions :

(i) Rajasthan State Road Transport Corporation, Jaipur v. Shri Phool Chand (Dead) Through L.Rs., 2018 SCC OnLine 1583

(ii) State of Punjab v. Des Bandhu, (2007) 9 SCC 39;

(iii) Chief Engineer (Construction) v. Keshava Rao (D) By Lrs., (2005) 11 SCC 229;

(iv) Bhopal v. Presiding Officer, Labour Court & Anr., 140(2007) DLT 36;

(v) Director General (Works) CPWD; Baldev Singh & Anr. v. Karam Singh And Ors.; Baldev Singh & Ors.; District Collection Officer/SDM, 2013 LawSuit (Del) 2704

(vi) Madhya Pradesh Administration v. Tribhuban, (2007) 9 SCC 748

(vii) Sapan Kumar Pandit v. U.P. State Electricity Board & Ors., (2001) 6 SCC 222

(viii) Prabhakar v. Joint Director, Sericulture Department & Anr., (2015) 15 SCC 1

23. Mr. Ghose has pointed out that there was no pleading, at any stage, by the respondent, to the effect that the work orders, between the petitioner and himself, were sham or bogus, or were camouflaged.

24. Arguing *per contra*, Mr. Anuj Aggarwal, learned counsel for the respondent-workman draws my attention, in the first instance, to a circular dated 18th August, 1993, circulated by the Director of Administration in the CPWD to all its Chief Engineers, under the

subject "recruitment of daily waged workers in violation of ban orders". The said circular may be reproduced *in extenso* thus :

> "No.34/17/93- EC.X New Delhi, Dated
>
> To
>
> All the Chief Engineers.
>
> Subject; Recruitment of daily waged workers in violation of ban orders.
>
> ---
>
> Sir,
>
> Instances have come to the notice of this Directorate that some of the SEs/EEs/AEs of various circles/Division/Sub-Divisions have been engaging daily rated workers on work order basis in spite of absolute ban imposed on engagement of daily rated workers vide this Directorate's OM No. 38/11/84-EC.X dated 19.11.85. Instructions were further reiterated vide this Directorate OM. No. 24/11/89-EC.X dated 19.5.89 and OM No. 5/3/91-EC.X dated 30.7.91. You are, therefore, once again requested to send a list of all such daily rated Muster Roll Workers engaged on hand receipt or work order or any other basis defying the existing Government instructions, ensuring inter-alia termination of the services of all such workers who have not completed 240 days of service in two consecutive years. Your probable demand requiring appointment of such workers may also be intimated to this Directorate.
>
> Since the instructions with regard to absolute ban on engagement of workers on Muster Roll issued on 19.11.85, will also apply to any form of engagement of workers of daily rated including work order, you are, therefore, requested to follow the instructions quoted above and in future no recruitment even on work order be made.
>
> Yours faithfully,
> (S.K. SRIVASTAVA)
> Director of Administration"

25. Mr. Anuj Aggarwal would contend that this circular had been interpreted by a Division Bench of this Court in ***Satya Pal (supra)***, to

the effect that the said circular clearly showed that, prior to 18th September, 1993, persons engaged on work orders in the CPWD were also being treated as daily rated workers. He also draws my attention to paras 9 and 10 of the said decision, which notes the fact that work orders were being used as a camouflage to satisfy the latter of the law contained in Section 2 (oo)(bb) of the ID Act, whereas the workers were actually employed on a continuous basis. He points out that the said decision, ultimately, upheld the Award of the Tribunal, which directed reinstatement of the workman, in that case, with 40% back wages.

26. Mr. Agarwal next places reliance on the Memorandum of Understanding dated 2nd December, 2002 *(supra)*, which was essentially the minutes of the conciliation proceedings held between the CPWD Mazdoor Union and the Management of the CPWD, on the said date, at 11 a.m. Para (v) of the said Memorandum of Understanding, on which considerable reliance is placed by the respondent, reads thus ;

> "v. Regarding Demand No. 5&6, CPWD authorities agreed to examine the demand regarding regularisation of 'daily rated workers under 'Muster Roll', 'Head Receipt' and 'Work Order' filling up of all resultant vacancies of workers working in the establishment of CPWD and take action as per rules."

27. Mr. Aggarwal also relies on what he perceives to be an, admission, in the written statement, filed by the petitioner before the Labour Court, of the factum of employment, by the petitioner, of the

respondent, from 15th December, 1985 to 3rd July, 1999. He points out that the decisions cited by Mr. Ghose related to employment for much shorter periods of time.

28. On the issue of laches, Mr. Aggarwal submits that there are several decisions, by the Supreme Court, to the effect that laches are not a bar, where industrial disputes raised by workmen are concerned, and that, at best, in the case of highly belated claims, the relief could be molded by the court; it would not, however, in his submission, be permissible to throw out a valid claim on the ground of laches alone.

29. Mr. Aggarwal has placed reliance on the following decision :

(i) Ajaib Singh v. Sirhind Cooperative Marketing Cum-Processing Service Society Ltd. & Anr., (1999) 6 SCC 82;

(ii) Raghubir Singh v. General Manager, Haryana Roadways, Hissar, (2014) 10 SCC 301;

(iii) Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors., (2013) 10 SCC 324;

(iv) Shahaji v. Executive Engineer, PWD, (2005) 12 SCC 141;

(v) Jasmer Singh v. State of Haryana, (2015) 4 SCC 458

(vi) Krishan Singh v. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana), (2010) 3 SCC 637;

(vii) The Director General of Works v. Regional Labour Commissioner & Ors., 2013 SCC OnLine Del 1410

30. <u>Analysis</u>

30.1 There can be no cavil with the legal proposition that, in any industrial dispute raised by a workman, challenging his termination or retrenchment, the onus to establish the existence of employer-employee relationship, between the workman and the management, is on the workman. The first question, to be addressed in the present case, is whether the said onus stands discharged by the respondent-workman.

30.2 In the statement of claim, filed by the respondent-workman before the learned Tribunal, it is, no doubt, contended that he was engaged on 15th December, 1985 as plumber, and that he performed his duty under the direct control and supervision of the JE/AE and Executive Engineer. It is further contended that his services were terminated with effect from 4th July, 1999. Mr. Aggarwal has also placed reliance on the recital, in para 1 of the Statement of Claim, to the effect that the respondent had been working with the management, with effect from 15th December, 1985 "on work orders directly".

30.3 These recitals, needless to say, also find parallel place in the affidavit filed by the respondent-workman by way of examination-in-chief before the Labour Court.

30.4 At the same time, the respondent-workman also admits, in para 1 of his Statement of Claim, that he was engaged as a skilled workman "on work order". The reference, to the performance of his duty under

the direct control and supervision, of the JE/AE and the Executive Engineer, again, in my view, cannot be taken as a definitive assertion, by the respondent, to the effect that he was having an employer-employee relationship with the petitioner. I am in agreement with Mr. Ghose, when he submits that even a plumber who is employed on work order basis, would be performing his duty under the direct control and supervision of the senior officials in the CPWD.

30.5 Insofar as the Memorandum of Understanding, dated 2nd December, 2002, is concerned, I am unable to see how it can come to the aid of the respondent-workman. The said Memorandum of Understanding, quite clearly, applies only to workers "working in the establishment of CPWD". There are two reasons why this para would not apply to the respondent. In the first place, the fact that his relationship, with the petitioner, whatever be its nature, had come to an end on 4th July, 1999, was an admitted position even in the Statement of Claim filed by the respondent. He could not, therefore, be treated as "working in the establishment of the CPWD" on 2nd December, 2002, which was the date of the Memorandum of Understanding. That apart, the said para would apply to the respondent only if he could show that he was "working in the establishment of CPWD". If, as the petitioner would assert, the respondent was only a workman on a work order basis, being paid by the respondent on the basis of actual work done, he could not be regarded as a person "working in the establishment of CPWD".

30.6 Adverting now, to the circular dated 18th August, 1993, which was the first document to which Mr. Aggarwal had invited my attention, it is clear that the said circular recognises the direction, of some SEs/EEs/AEs of various circles/Divisions/Sub-Divisions of the CPWD, to engage daily rated workers on working order basis, in spite of the ban, imposed in this regard by the Director General of Works. The circular, in the circumstances, request the Chief Engineers to send "a list of all such daily rated Muster Roll Workers engaged on hand receipt or work order or any other basis defying the existing Government instructions, ensuring inter-alia termination of the services of all such workers who have not completed 240 days of service in two consecutive years". It prohibits engagements, after the issuance, of the said circular, even on work order basis. In conjunction with this circular, one may refer, now, to the judgment of the Division Bench of this Court in ***PWD v. Satya Pal (supra),*** which took the said Circular into account. Para 4 of the said judgment notes two concurrent findings, of the learned Tribunal as well as the learned Single Judge, in the said case thus:

> "(a) The respondent was a daily rated worker and worked for more than 240 days continuously. In fact, he worked continuously for three years from 30-8-1990 to 13-9-1993.
>
> (b) His services were terminated without notice, in violation of Section 25-F of the Act."

30.7 As such, it was an admitted position, in that case, that the workman concerned was a daily rated worker who had worked for more than 240 days continuously, and had worked continuously for three years from 30th August, 1990 to 13th September, 1993. Further, in para 7 of the judgment, the Division Bench noted that the contract, on which the PWD was relying, in the said case, was a work order, issued to the workman from time to time for different periods from 30th August, 1990 to 13th September, 1993. The work order dated 30th August, 1990 indicated that the workman had to work as a driver with the water tanker for the period of three months at the rate of Rs. 40 per day for 8 hours duty and was entitled to Rs. 3120/-. The terms and conditions thereof also indicated that the work order was for a period of three months and a total wages paid in a month shall not exceed Rs. 1040 in any month. It was submitted, by the PWD itself, before this Court, "that such short time work orders were issued throughout the entire period that the respondent workman had worked as a driver from 30th August, 1990 to 13th September, 1993" though "it is possible that there may have been some ordinary breaks of a day or two between this entire period several work orders were indeed issued to the respondent-workman". It was in these circumstances that the Division Bench of this Court held that the work orders which were issued to the workman were only a devise to escape the rigour of Section 2 (oo) (bb) but was, in fact, nothing but employment on continuous basis. Given the fact that work orders had been continuously issued to the workman, for the entire period for his employment, with breaks of a day or two, between work orders, this court opined that the work orders were a camouflage, adopted by the

CPWD, to avoid being saddled with liability under Section 25 F of the ID Act.

30.8 Had such similar evidence been available and forthcoming in the present case, no doubt the respondent would have had a good cause to plead. However, it is seen that, apart from an assertion, in his statement of claim and in his affidavit by way of examination-in-chief, that he was working for the respondent for the period 1985 to 1999, and that he was working under the direct control and supervision of the JE/AE/Executive Engineer, there is little to indicate that the respondent was working on continuous basis with the petitioner, or that continuous work orders spanning the entire length of his employment, with the petitioner, were available. Neither counsel has been able to place, before me any evidence in the form of such continuous work orders, issued by the petitioner to the respondent, akin to those which were available in the case of ***Satya Pal (supra)***. Rather, the cash books, on which reliance was placed by Mr. Ghose and which also constituted part of the evidence before the Labour Court, indicate, *prima facie*, that payments were being made to the respondent against RA bills raised against specific items of work carried out by the respondent.

30.9 In these circumstances, it is not possible for me to accept the contention, of Mr. Aggarwal, that the respondent should be treated as being in the "employment" of the petitioner, so as to make out a case

of employer-employee relationship between the petitioner and respondent.

30.10 It is also seen that the impugned Award, on this aspect of the matter, is completely non-speaking in nature. All that is said, on this aspect, is that "since, admittedly, workman was working in the management, may be on work order, in my considered opinion, management would not be allowed to deny relationship of employer and employee between it and the workman in view of judgment of Hon'ble Delhi High Court in ***DG (Works) CPWD v. Karam Singh, W.P. (C) 6552/2012***.

> "Since, admittedly, workman was working with the management, may be on work order, in my considered opinion, management cannot be allowed to deny relationship of employer and employee between it and the workman in view of judgment of Hon'ble High Court in case Director General (Works). ***CPWD vs. Karam Singh and Ors. W.P. (C) No.6552/2012*** decided on 15.07.2013, (supra)."

30.11 Mr. Ghose has placed, before me, a copy of the said decision of this court in ***Karam Singh (Supra).*** The facts in this case are similar to those which obtained in the case of ***Satya Pal (supra)***. The workman had been engaged for driving water tankers, for the PWD, on work order basis, without stipulation of any specific period, and continued to perform their duties uninterruptedly under the supervision and control of the officials of the PWD, for years at a stretch, till their services were terminated. A reading of para 3 of the judgment reveals that the position, regarding continuous performance

of duties, by the workman, with the CPWD, for the entire period during which they were working under the supervision and control of officers of the CPWD, was undisputed. Another significant distinction between that case and the present is that the stand of the CPWD, in that case was not on the basis of the work orders but that the workman were hired through contractors, and were working as drivers on contract basis. As such, unlike the present case, the case of the CPWD in that instance, appears to have been that there were contractors between the CPWD and the drivers concerned, which casts an entirely different complexion on the issue.

30.12 Be that as it may, I am of the considered opinion that the evidence led by the respondent was not sufficient to make out a case of employer-employee relationship between the respondent and the petitioner. The assertion, by the petitioner, in its counter affidavit, to the effect that the respondent was engaged on specific work orders, for performing specific works which were separate contracts, for which they were paid on the basis of Running Account bills raised by the respondent, stand borne by the evidence. Nothing has been brought to my notice to indicate that the evidence led by the petitioner, in the form of cash books, showing payments made to the respondent on RA bill basis, was ever denied or disputed, by the respondent.

30.13 In view thereof, I am unable to sustain the finding, of the Labour Court, on the very first issue framed by it, to the effect that, there was a relationship of employer and employee between the petitioner and the respondent.

30.14 In that view of the matter, I do not deem it necessary to enter into on any other aspect of the matter, including the aspect of limitation. All other issues would, therefore, remain open.

31. For the aforesaid reasons, I am of the view that the impugned Award of the Labour Court cannot sustain.

32. Accordingly, the impugned Award of the Labour Court is set aside. This writ petition is allowed, accordingly, with no order as to costs.

33. However, it is made clear that if any payments had been made to the respondent, during the pendency of these proceedings, either *suo moto* by the petitioner or according to any order passed by the petitioner, they shall not be recovered by the petitioner. No recovery thereof shall be effected by the petitioner.

34. The writ petition is allowed in the above terms.

C. HARI SHANKAR, J

OCTOBER 15, 2018/kr