



IN THE COURT OF SH. VINAY SINGHAL, ADDL.  
DISTRICT & SESSIONS JUDGE, POLC-V: DWARKA  
COURTS: DELHI

NEW DID NO : 1064-16

In the matter of :

**Sh Vikas Kumar Sharma**

S/O Sh. Sh. Shreepal Sharma

R/O 314, Badshahpur Sirholi, Thana Loni,

District Ghaziabad, Uttar Pradesh-201202

(Mobile No.9899704450)

as represented by Chamber No. 478-479,

Western Wing Tis Hazari Courts,

Delhi-110054.

...Claimant

Versus

1. BSH Household Appliances Manufacturing Pvt. Ltd.  
(through its Service Manager)  
B-1/E-9, Mohan Co-op. Industrial Estate,  
New Delhi-110044.
2. BSH Household Appliances Manufacturing Pvt. Ltd.  
(through its Managing Director)  
Head Office : 2<sup>nd</sup> Floor, Arena House,  
Plot No.103, Road No.12,  
MDC, Andheri (East), Mumbai – 400 093.
3. IKYA Human Capital Solution Pvt. Ltd.  
(through its Managing Director)  
Head Office : 4<sup>th</sup> Floor, S.V. Tower No.27,  
80 Ft. Road, 6<sup>th</sup> Block, Koramangla,  
Bangalore – 550 095 (Karnataka).

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4. IKYA Human Capital Solution Pvt. Ltd.  
(through its Assistant General Manager)  
B-1/i-1, 1<sup>st</sup> Floor, Mohan Co-op. Industrial Estate,  
New Delhi-110044.

....Managements

Date of Institution : 25.05.2015  
Date of pronouncement : 11.10.2018

**AWARD**

This is a direct Industrial Dispute filed by the claimant against his alleged termination from the services.

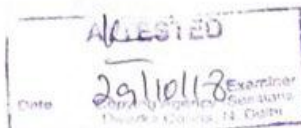
**PART-A**

**REFERENCE/CLAIM**

1. As per the claimant he was initially employed as a Service Technician with M/s RBS Home Appliances Pvt. Ltd. on 08.03.2004.
2. The said M/s RBS Home Appliances Pvt. Ltd. was later on taken over by BSH Home Appliances Pvt. Ltd. which subsequently changed its name to BSH Household Appliances Manufacturing Pvt. Ltd. i.e. management no.1 and 2.
3. It is claimed that the management no.1 and 2 i.e. BSH Household Appliances Manufacturing Pvt. Ltd. was later on

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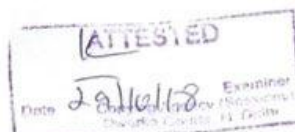


taken over by IKYA Human Capital Solution Pvt. Ltd. i.e. management no.3 and 4, as per his understanding.

4. It is claimed that in the year 2014, the claimant was holding the position of Sr. Service Technician.
5. It is further claimed that in the year 2014 itself, the claimant suffered acute depression and accordingly, remained under treatment with IHBAS during the period 01.02.2014 to 21.03.2014 and accordingly, could not attend the duties during the said period.
6. It is also claimed that on 22.03.2014, the claimant when reported for duty was shocked to know that his services have been terminated w.e.f. 19.01.2014.
7. The claimant made representation against the said termination but of no effect.
8. A demand letter dated 25.08.2014 claiming reinstatement and the allowances was sent by registered post which was duly replied by management no.1 and 2 and management no.3 and 4 vide their reply dated 04.09.2014 and 15.09.2014 respectively.
9. The claimant thereafter approached the Conciliation Officer where the matter could not be settled and accordingly, a certificate dated 12.03.2015 under Section 2A of the Industrial Dispute Act was issued based on which the present Direct Industrial Dispute petition was filed by the claimant.
10. The claimant also claimed that since the date of his termination,

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he is unemployed.

**PART-B**  
**MANAGEMENT NO.1 & 2 STAND/REPLY**

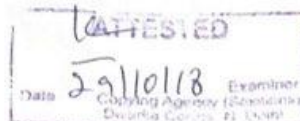
11. The management no.1 and 2 submitted that the claimant was never their employee at any point of time.

**PART-C**  
**MANAGEMENT NO.3 & 4 STAND/REPLY**

12. The management no.3 and 4 submitted that the claimant was inducted by them initially for the period of 01.01.2012 to 31.12.2012 and thereafter the claimant remained absent and was reinducted for the period 01.08.2013 to 31.12.2013 and further reinducted for the period 02.01.2014 to 31.12.2014.
13. It is also claimed that the claimant failed to attend duties w.e.f. 19.01.2014 and despite service of warning letters which were duly served upon the claimant, the claimant failed to join the duties and accordingly, his services were discontinued w.e.f. 19.01.2014 itself.
14. It is also claimed that in any other case the claimant failed to complete 240 days of continuous service in the immediate proceeding year prior to 19.01.2014 and as such, he cannot claim himself to be a "workman" as per the provisions of Industrial Dispute Act.

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PART-D

ISSUES

15. From the pleading of the parties the following issues were framed vide order dated 14.03.2017 :-

- a) *Whether the claim of the workman is liable to be dismissed in view of preliminary objection no.1 taken in the written statement filed on behalf of management nos. 3 & 4 ?*  
OPM
- b) *Whether the workman has completed continuous service of 240 days with the management no.3 & 4 in a preceding year from the alleged date of his illegal termination ?* OPW
- c) *Whether there exists any relationship of employee and employer between the workman and the management nos. 1 & 2 ?* OPW
- d) *Whether the services of the workman were illegally or unjustifiably terminated by the managements ?* OPW
- e) *Relief.*

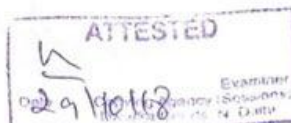
PART-E

CLAIMANT'S EVIDENCE

16. In support of his claim claimant examined himself as WW1 and deposed along the lines of statement of claim and also proved on record the following documents :-

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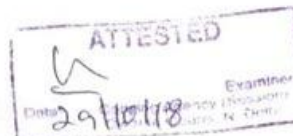




- a) Ex- WW1/1 -Affidavit of evidence.
- b) Ex-WW1/2 -Copies of Offer letter and confirmation letter.
- c) Ex-WW1/3 -Copy of Promotion letter.
- d) Ex-WW1/4 -Copies of Salary slips as well as salary revision slips.
- e) Ex-WW1/5 -Copy of offer letter dated 01.08.2013.
- f) Ex-WW1/6 -Copies of warning letters.
- g) Ex-WW1/7 -Copy of Termination letter.
- h) Ex-WW1/8 -Copy of letter to rejoin the duties after medical leave.
- i) Ex-WW1/9 -Copies of medical record of the claimant.
- j) Ex-WW1/9A-Copies of various ID Cards issued to the claimant.
- k) Ex-WW1/10 -Copies of record of communication via emails.
- l) Ex-WW1/11 -Copy of legal demand notice dated 25.08.2014
- m) Ex-WW1/12 -Copy of reply to the legal demand notice.
- n) Ex-WW1/13 -Copy of reply dated 15.09.2014.
- o) Ex-WW1/14 -Copy of statement of claim filed before Conciliation Officer.
- p) Ex-WW1/15 -Copy of WS filed therein by management no.1 and 2.
- q) Ex-WW1/16 -Copy of failure report.

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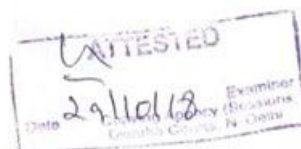
17. The claimant was cross examined by the management no.1 and 2 on 30.07.2018 but not even a single question has been put to him w.r.t. the stand taken by management no.1 and 2 in the WS that he was never an employee of management no.1 and 2.
18. As far as management no.3 and 4 are concerned, during the course of cross examination by them, the claimant deposed that he has got no knowledge w.r.t. the management of respondent no.1 to 4 being different entity and deposed that as per his knowledge his employer is still management/respondent no.1.

**PART-F**  
**MANAGEMENTS' EVIDENCE**

19. As far as management no.1 and 2 are concerned, they examined its official Sh. Darpan Kalra as M1W1.
20. Interestingly, though in the WS the management no.1 and 2 have categorically taken a stand to the effect that the claimant was never their employee at any point of time **BUT** their witness M1W1 Sh. Darpan Kalra by virtue of his affidavit filed in lieu of examination in chief has taken an entirely different stand contrary to the WS.
21. The said M1W1 in his affidavit filed in lieu of examination in chief deposed that claimant was their employee since 2004 but later on he resigned from it and as the management no.1 and 2 entered into a service agreement dated 15.12.2011 with

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management no.3 and 4, the claimant joined the management no.3 and 4 w.e.f. 01.01.2012 and in terms of the said employment agreement between the claimant and management no.3 and 4, the relationship between the claimant and management no.1 and 2 as of employee and employer came to an end.

22. It is further claimed that management no.3 and 4 placed the claimant with management no.1 and 2 w.e.f. 01.01.2012 and as such, in view of the service agreement between management no.1 and 2 on one part and of management no.3 and 4 on another part, the said placement of the claimant with management no.1 and 2 by management no.3 and 4 did/do not constitute any relationship of employee and employer between the claimant and management no.1 and 2.

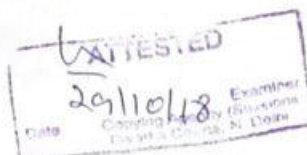
23. HOWEVER, again during the course of cross examination the said M1W1 Sh. Darpan Kalra changed track by deposing that he has got no knowledge as to on which date the claimant joined the management no.1 and 2. He also deposed that he has got no knowledge as to what was the position being held by the claimant with the management no.1 and 2.

24. Management no.3 and 4 examined its official Sh. Ashutosh Bansal as M3W1.

25. The said M3W1 deposed along the lines of the stand taken by management no.3 and 4 in their WS.

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26. During the course of cross examination, the said M3W1 deposed that it terminated the services of the claimant w.e.f. 19.01.2014 but the termination letter itself was issued in the month of April, 2014. But on being confronted with the termination letter Ex.WW1/7, he admitted that the termination letter did not bear any such date of April, 2014.
27. He also admitted that even the warning letters Ex.WW1/6 do not bear any date of issuance. He also admitted that the nature of job on which the claimant was employed was of a permanent nature and also admitted that the persons junior to the claimant are still in employment of the management.

**PART-G**  
**FINDINGS/CONCLUSION**

28. After considering the claim, reply, documents and the evidence led on record, the issue wise decision of the court is as under :-
- ISSUE No.3 : Whether there exists any relationship of employee and employer between the workman and the management nos. 1 & 2 ? OPW*
29. Issue no.3 is being taken up first as the decision of this issue will have a direct bearing upon the outcome of other issues.
30. Infact even before proceeding further this court has to decide the question as to what is the inter-se relationship in between management no.1 and 2 on the one hand and management no.3

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and 4 on the other hand and as a consequence, the impact of said relationship vis-a-vis the claimant.

31. The management no.1 and 2 not only in their WS but also in the proceedings before the Conciliation Officer have denied that the claimant was ever their employee at any point of time.

32. However, as already discussed in Part F above, the management no.1 and 2 through the affidavit filed in lieu of examination in chief of their witness M1W1 Sh. Darpan Kalra have taken a contrary stand to the effect that indeed the claimant was their employee from 2004 till 2011 and resigned from the services somewhere in December, 2011 when the management no.1 and 2 entered into a service agreement dated 15.12.2011 with the management no.3 and 4 for providing manpower to it and accordingly, the claimant after resigning from management no.1 and 2 joined the management no.3 and 4 w.e.f. 01.01.2012 and the management no.3 and 4 in turn placed the claimant with the management no.1 and 2 w.e.f. 01.01.2012 till the date of alleged termination in 2014.

33. In order to support this averment, the management no.1 and 2 have also placed reliance on the said service agreement dated 15.12.2011 entered into by it with management no.3 and 4 as Mark A.

34. Interestingly, though it is claimed by the management no.1 and 2 through its witness M1W1 that the claimant resigned from its

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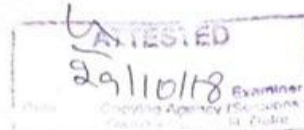
services somewhere in December, 2011 but no such resignation letter of the claimant has been placed on record.

35. In contrast, the claimant has placed reliance on initial appointment letter issued in 2004 Ex.WW1/2, confirmation letter w.r.t. confirmation of his services w.e.f. 01.03.2005, service period letter certifying that he is working with the management no.1 and 2 since January, 2004 to 18.08.2007 and even the promotion letter issued in 2007 as Ex.WW1/3 and also the salary slips for the period June, 2006; September, 2006; April, 2007; June, 2007; November, 2009; December, 2009; February, 2010; April, 2010 and March, 2011 as Ex.WW1/4 which were initially issued by the erstwhile RBS Home Appliances and later on by the present management no.1 and 2 after it has taken over the erstwhile RBS Home Appliances.

36. Now the question which comes to the mind is that a person, who was employed by a particular management and in the present case management no.1 and 2 in the year 2004 initially on probation and later on confirmed in the year 2005 and thereafter promoted also in the year 2007, why would he resign from the services of the said management no.1 and 2, which service was of a permanent nature entailing all the facilities and benefits applicable to a permanent employee as per the confirmation letter dated 01.03.2005, to join another company i.e.

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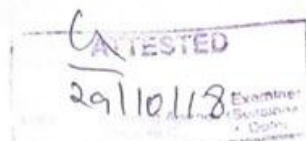
management no.3 and 4 which will not provide him a permanent job but a contract job renewable or terminable at any point of time having no benefits of a permanent employee in 2012 i.e. after putting eight years of service with the management no.1 and 2 as a permanent employee, just to be placed again with the management no.1 and 2 (with which it was earlier associated as a permanent employee, as discussed above) by the said new employer management no.3 and 4.

37. No explanation has been put forward by either management no.1 and 2 or management no.3 and 4 in this respect but they have just placed reliance upon the letter of contractual employment dated 01.01.2012 issued by the management no.3 and 4 to the claimant bearing his signatures in order to aver that by acknowledging the said document by putting signatures, the claimant had accepted contractual employment with the management no.3 and 4 and as such, prevented from claiming himself to be an employee of management no.1 and 2 and in such circumstances, has to be counted only as a contractual employee of the management no.3 and 4.

38. In the absence of any such explanation coming forward from the side of the management no.1 and 2 or management no.3 and 4, the court is left with no other option but to give weight to the

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testimony of the claimant that he was always kept in dark w.r.t. his services ever been transferred from management no.1 and 2 to management no.3 and 4 and he was always kept under the impression that his services having been regularized or confirmed in the year 2005 and he having been also promoted in the year 2007, he is a permanent employee of the management no.1 and 2 and management no.3 and 4 is not a distinct entity but just another arm of the management no.1 and 2 for their own convenience/ management of internal matters.

39. As the court has already made an observation to the effect that firstly the management no.1 and 2 have either taken a wrong stand in the WS of the claimant being not their employee at any point of time or in the evidence by way of affidavit of their witness M1W1 whereby they have claimed that indeed the claimant was their employee from 2004 to 2011 (which stand, in the opinion of the court, has been changed by the management no.1 and 2 in view of the documentary evidence led by the claimant consisting of appointment letter, confirmation letter, promotion letter, salary slips issued by the management no.1 and 2 and its predecessors), one thing is very much clear that management no.1 and 2 have not come to the court with clean hands but rather guilty of suppression of material facts intentionally and as such guilty of perjury.

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ATTESTED  
29/10/18  
Examiner  
Signature  
Date



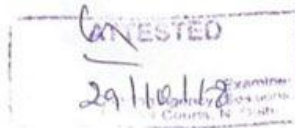


40. Furthermore, taking strength from the Hon'ble Supreme Court judgment in the matter of *Bhilwara Dugdh Vs. Vinod Kumar* cited as *AIR 2011 SC 3546*, the court has no hesitation to hold that the claimant was always kept in dark w.r.t. his so called termination of services with management no.1 and 2 or in other words transfer of services from management no.1 and 2 to management no.3 and 4 by all the four managements as they have resorted to subterfuge and the claimant being not on an equal bargaining position, but rather in the present case being kept in dark always w.r.t. such change of his position by virtue of which his rights were sought to be denied by the management no.1 and 2 despite being the fact that he was confirmed into services by management no.1 and 2 in the year 2005 and infact promoted in the year 2007, by taking away the said rights in the form of so called contractual employment of the claimant with the management no.3 and 4 by virtue of letter dated 01.01.2012 **WHEREAS** the management no.1 and 2 has even failed to prove that the claimant ever resigned from its services in December, 2011 as claimed by M1W1 in his examination in chief and hence, it stand proved that the claimant was and is always the employee of management no.1 and 2 and the so called contractual employment letter dated 01.01.2012 and subsequent so called renewed contractual employment of the

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claimant by management no.3 and 4 are nothing but an eye wash in order to cover their own misdeed and also to deny the rights of the claimant as a permanent employee of the management no.1 and 2 in terms of the original confirmation letter issued in 2005, promotion letter issued in 2007 and his subsequent services with the management no.1 and 2.

41. Hence, in pursuance of the judgment of the Hon'ble Supreme Court as referred above, the court hereby hold that the claimant was the employee of management no.1 and 2 right from 2004 till the date of his alleged termination and was never an employee of management no.3 and 4 as claimed by all the managements.

42. Issue no.3 is accordingly, decided in favour of the claimant.

*ISSUE No.1 : Whether the claim of the workman is liable to be dismissed in view of preliminary objection no.1 taken in the written statement filed on behalf of management nos. 3 & 4 ?*

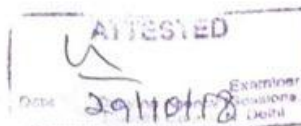
*OPM                      AND*

*ISSUE No.2 : Whether the workman has completed continuous service of 240 days with the management no.3 & 4 in a preceding year from the alleged date of his illegal termination ? OPW*

43. In view of the outcome of issue no.3, there remains no doubt that the management no.1 and 2 fraudulently and mischievously

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have shown the claimant to be an employee of management no.3 and 4 which they are and could not be permitted to do and as such, the dismissal of the services of the claimant by management no.3 and 4 cannot be held to be legal or justified and even the claim of management no.3 and 4 that the claimant has not rendered 240 days of continuous service with it prior to the date of alleged termination on 19.01.2014 also cannot be upheld as even on 19.01.2014 in view of the discussion and outcome of issue no.3, the claimant was an employee of the management no.1 and 2 and not of the management no.3 and 4.

44. Issue no.1 and 2 are accordingly, decided against the managements.

*ISSUE No.4 : Whether the services of the workman were illegally or unjustifiably terminated by the managements ?*

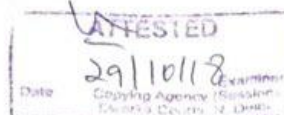
*OPW*

45. In view of the outcome of issue no. 3, 1 and 2, the court hereby comes to the conclusion that the services of the claimant as terminated by management no.3 and 4 was an illegal act on their part as firstly the claimant was never their employee and secondly, the claimant being an employee of management no.1 and 2 and shown as an employee of management no.3 and 4 is a fraudulent act on their part.

46. Issue no.4 is accordingly, decided in favour of the claimant.

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**ISSUE No.5 : RELIEF**

47. In view of the outcome of issue no.1 to 4, the claimant is held entitled to the relief of reinstatement with full backwages along with continuity of services and all other consequential benefits.
48. Ordered accordingly.
49. Let copy of the award be sent to the appropriate Govt for its publication as per rules.
- File be consigned to record room.

Announced in the Open Court  
On 11<sup>th</sup> Oct., 2018

(VINAY SINGHAL)  
ADDL. DISTRICT & SESSIONS JUDGE,  
PRESIDING OFFICER LABOUR COURT-V,  
DWARKA COURTS/DELHI

