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

Date of decision: 25th September, 2020

\+ **W.P.(C) 218/2001**

KRISHAN KUMAR SHARMA ..... Petitioner

Through: Mr. Anuj Aggarwal, Advocate (M:9891403206)

versus

THE P.O. LABOUR COURT NO. VIII and ANR. ..... Respondent

Through: Ms. Raavi Birbal, Advocate for R-2 (M:9818024661)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The hearing has been held through video conferencing.

2. The present petition has been filed challenging the impugned award dated 6th July, 2000, passed by the PO, Labour Court No. VIII, Tis Hazari Courts, New Delhi, by which the Industrial Dispute raised by the Workman against the Management, M/s Otis Elevators Co. (India) Ltd., had been dismissed.

3. The brief facts are that, the workman claims that he was appointed as a fitter in August, 1987 on a monthly salary of Rs.1,260/-. Sometime in 1990, he was terminated, leading to the filing of the present Industrial Dispute. The claim in this dispute was filed on 17th October, 1994, after the conciliation proceedings were concluded. As per the said claim petition, the Workman sought directions to the management for reinstatement on the post of a fitter, with full back wages and continuity of service, along with the other legal facilities and overtime wages. The petition was controverted by the

Management, which submitted that there was no employer-employee relationship between the parties. After evidence being led by the parties, the PO, Labour Court rejected the petition of the Workman.

4. Mr. Anuj Aggarwal, ld. counsel appearing for the Petitioner/Workman, submits that the Management did not give any appointment letter or any other document, including a salary slip or insurance or payment of provident fund document, to the Workman. The Workman merely had various log books in his possession, which he has placed on record, to prove the fact that he was working as a fitter. Mr. Aggarwal submits that the Management's witness who appeared before the Labour Court, had in fact admitted the documents placed by the Workman, including the log books, and thus the employer-employee relationship was properly established.

5. Mr. Aggarwal further submits that this evidence has not been properly interpreted by the Labour Court. It is his further submission that since the Management did not produce the appointment related records and the salary related records of the workman on the ground that there was a fire in their office, an adverse inference would have to be drawn against the Management. He finally relies upon the findings of the Labour Court to argue that the Labour Court has simply refused to accept the log books and also refused to draw an adverse inference, and hence has wrongly rejected the petition of the Workman.

6. On behalf of the Management, Ms. Raavi Birbal, ld. counsel, appears and submits that it is the settled position in law, as per the five Judges Bench of the Supreme Court in ***Syed Yakub v. K.S.Radhakrishnan and ors. (AIR 1964 SC 477)***, that in a writ of certiorari, it is only due to an error of jurisdiction or error of law that the Writ Court can interfere. If there is a

finding of fact on the appreciation of certain evidence, the same cannot be reopened. Unless the Petitioner is able to prove that there has been an error of law, a writ of certiorari ought not to be issued.

7. She also relies upon the judgment of Supreme Court, in ***Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu and ors. ((2004) IILLJ 253 SC),*** to argue that there should be at least some evidence, apart from merely the control and organization test, to establish an employer-employee relationship. She further submits that a mere adverse inference cannot be drawn, and the onus of proof would have to be discharged by the Workman.

8. After hearing the ld. counsel for the parties and perusing the record, it is seen that the only evidence which has been put forward by the Workman, i.e. the log book, even if it is taken on face value, cannot be sufficient to prove that there is an employer-employee relationship. There is no document at all in the form of an appointment letter, termination letter, payment of salaries, insurance or payment of provident fund deposits etc. that has been placed on record. If the Workman was indeed an employee of the Management, there could have been any other form of evidence, for eg., in the form of oral evidence of co-workers. This has also not been led in the present case. In fact, a perusal of the Workman's own evidence shows that there is some ambiguity in the manner in which the Workman himself has deposed. In the cross-examination, on a question as to whether the Workman was working anywhere during the interregnum after he was terminated, he replied by saying that *'I searched for the job. I tried in Otis Elevators'*, which seems quite strange, inasmuch as the employer in the present case is Otis Elevators. He also admits that he was not issued a termination letter. The evidence of the

Workman does not inspire confidence.

9. The law on the scope of interference in a writ petition against the order of a tribunal is well settled. In Syed Yakub (supra) the Supreme Court has categorically held:

> "*7 . The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and*

> *material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, 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. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised.*"

10. In ***Workmen of Nilgiri Coop. Mkt. Society Ltd (supra***), the Supreme Court has clearly held that an adverse inference cannot be drawn against the employer and has also laid down the factors that can be considered for establishing an employer-employee relationship. The relevant extract reads:

> *"38. The control test and the organization test, therefore, are not the only factors which can be said to decisive. With a view of elicit the answer, the court is required to consider several factors which would have a bearing on the result : (a) who is appointing authority; (b) who is the pay master; (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.*

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> *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. Secretary Thodupuzha Taluk Shop and Commercial Establishment Workers' Union and Ors. (1973) ILL J366 Ker, 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 and Ors. v. The First Labour Court of West Bengal and Ors. (1975 Lab. I.C. 202) it has been held:

> *"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 the employers and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere.″

The impugned award clearly analyses the log books and the evidence which have been placed on record. The impugned award has also rightly held that no adverse inference can be drawn in these facts and circumstances.

11. Under these circumstances, no error is found in the impugned award by the PO, Labour Court, Tis Hazari Courts, New Delhi. Accordingly, this petition is dismissed and all pending applications are disposed of.

PRATHIBA M. SINGH, J

SEPTEMBER 25, 2020/*Rahul/Ak*