2025:DHC:10933

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

Reserved on: 26.08.2025
Pronounced on:05.12.2025

\+ W.P.(C) 3743/2013
M/S INDRAPRASTHA GAS LIMITED .....Petitioner
Through: Mr Raj Birabl, Sr. Advocate along with Ms. Raavi Birbal, Adv.

versus

AMBRISH KUMAR .....Respondent
Through: Mr. Durgesh Kr. Pandey & Ms. Ritika Davis Franklin, Advs.

CORAM:
HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

RENU BHATNAGAR, J.

1. The challenge in the present writ petition is to the Award dated 05.02.2011 passed by the learned Labour Court, Karkardooma Court , New Delhi (hereinafter referred to as, 'Labour Court') in the Industrial Dispute ('ID') No. 107/2006 titled ***Sh. Ambrish Kumar versus Indraprastha Gas Ltd,*** whereby the learned Labour Court granted relief to the respondent reinstating him with continuity of service and full back wages from the date of termination till reinstatement, along with all consequential benefits. The learned Labour Court, on basis of the finding that the operating agreement between the Principal

employer/ Indraprastha Gas Ltd (hereinafter referred to as, 'IGL')/petitioner and M/S Pratap Enterprises (hereinafter referred to as, 'Contractor') was a sham and bogus agreement, just to camouflage/deny the claimant the benefits of a regular employment, has held that the respondent was illegally terminated by the petitioner.

2. The impugned Award has been passed in a direct Claim filed by the respondent/workman under Section 10(4A) of the Industrial Dispute Act, 1947 (hereinafter referred to as 'ID Act') before the learned Labour Court whereby the respondent had claimed that he was employed with the petitioner/IGL as Driveway Sales Man ('DSM') since 26.07.2001 on a salary of Rs. 3980/- per month and his services were terminated by the petitioner on 27.09.2005 illegally. That the petitioner/IGL had failed to pay the salary of September 2005, bonus and other basic service benefits such as leave, overtime despite demands. It was further stated that the Respondent along with other workmen had raised an Industrial Dispute being ID No. 99/2003 for regularising of his services with the management/petitioner and another dispute being ID No. 66/2003 regarding the general demand which are pending before the Industrial Tribunal. It was further stated that the respondent was terminated illegally by the petitioner/management on 27.09.2005 under Section 2(oo) read with Section 25F of the ID Act.

3. On the other hand, the petitioner/Management, in its written statement filed before the Labour Court, denied the existence of any employer-employee relationship between IGL/petitioner and the

respondent alleging that the respondent was employed by M/S Pratap Enterprises, a third party contractor, engaged by the IGL under a valid contract. The petitioner further claimed to have obtained registration as a principal employer under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, and stated that the Contractor had a valid licence in accordance with the said Act. It is stated that the respondent was engaged and working under the direct supervision and control of the Contractor and the respondent used to receive his salary from the Contractor who used to provide statutory benefits to the respondent such as leave, attendance etc. and the respondent was under the Contractor's disciplinary control and supervision. It was further contended that all statutory benefits such as provident fund and ESI contributions, were provided by the contractor who used to deduct the same and deposit in its own account with the respective department. As per the information received from the Contractor, the respondent was duly paid his salary until the month he worked for the contractor along with bonus. It is stated that the contractor is not made a party to this dispute, for the reasons best known to the respondent/workman.

4. In rejoinder filed by the respondent before the learned Labour Court, the respondent reaffirmed his submissions and denied any knowledge regarding the Contractor.

5. After considering the pleadings of the parties, the learned Labour Court framed the following issues:

(i) "*Whether there is relationship of employer and employee between the parties?*

(ii) Whether the workman is entitled to reinstatement with consequential benefits including full back wages?

(iii) Relief."

6. Thereafter, the respondent was examined as WW1 and has produced documents which were exhibited as EX WW1/A, i.e, original identity card; EX WW1/B, i.e, the salary sheet along with Diwali Gift of contingent staff for the month of October 2001 mentioning his name in the list; EX WW1/C, i.e, the report by P. K. Narayan dated 03.04.2001;EX WW1/D, i.e, the record of daily shift/DSM wise sales for the month of May 2001; EX WW1/E, i.e, the Ex-gratia payment to all IGL Employees/ contingent/ DSMs/ Technical/Guards dated 24.10.2002;EX WW1/F-1 to WW1/F-12, i.e, Original cash deposits receipt by the workman/respondent of the daily sales dated 03.10.2003; EX WW1/G, i.e, the Original duty roster for the month of February, 2004; EX WW1/H, i.e, Original of DSM Sales Record for the month of September 2005; EX WW1/I i.e., the carbon copy of Demand Notice sent by Vyopar Tatha Udyog Karamchari Singh dated 14.10.2005 and EX. WW1/J and EX WW1/K, i.e., Original Regd. A. D. Postal Receipt and U P.C. receipt.

7. On behalf of the petitioner/management, Sh. Vishal Bhatia was examined as MWI and he had produced documents which were exhibited as EX. MW1/1, i.e, the contract agreement; EX MW1/2, i.e,

copy of the registration certificate which shows that the management IGL is registered under the Contract Labour (Regulation and Abolition) Act, 1970 as principal Employer; EX MW1/3, i.e, copy of the license issued by the Assistant Labour Commissioner (Central) which shows that the Contractor is having a valid license for providing contractual services to the management; EX MW1/4, i.e, the copy of wages record which shows that the workman/respondent was working under direct supervision and control of the Contractor and EX MW1/5, i.e, attendance record of the workman/respondent which was being maintained by the Contractor; and EX MW1/6, i.e, copies of PF and ESI records which were being maintained by the Contractor.

8. Another witness, Sh. Jagdish Singh Rawat, LDC from the ESIC, Branch Office, was examined as MW-2 and he had produced documents which were exhibited as EX MW2/1, i.e., declaration form of insurance no. 67007783 of employer code no. IO- 55507-101 which belong to the workman/respondent; EX MW2/2, i.e. Form-6 for the period w.e.f. 01.04.2004 to 30.09.2004.

9. Petitioner/management also examined another witness, Sh. Neeraj Singh Madhukar, SSA from the office of EPFO, who was examined as MW-3. The witness had produced documents which were exhibited as EX MW3/1, i.e, Form-6A of the Contractor having Code No. DL-25698 w.e.f. 01.04.2004 to 31.03.2005.

10. Considering the evidence, the learned Labour Court, while

deciding the issue No. 1, relied upon condition no. 5(b) and 9 of the Operating Agreement EX.MW1/1, wherein the petitioner/management was having power to instruct the Contractor to remove or replace any personnel deployed by the Contractor, whom the management/petitioner considers incompetent or unsuitable and held that the operating Agreement appointing the Contractor was a sham and bogus agreement and that the petitioner/management was having full control over the deployment of personnel by the said Contractor and that the agreement Ex. MW1/1 is a sham and bogus agreement. Further, there existed a relationship of employer and employee between the workman/respondent and the petitioner/management

11. So far as issue No. 2 is concerned, the Labour Court on the basis of the findings on issue No. 1 regarding the Agreement being sham and bogus document, held that the respondent was an employee of the management/petitioner and termination of his services were illegal, without compliance of Section 25 F of the ID Act.

12. Ms. Raavi Birbal, the learned counsel appearing on behalf of the petitioner has questioned the correctness of the view as expressed in the Impugned Award dated 05.02.2011, asserting that the learned Court gravely erred in granting reinstatement with back wages stating that the impugned award passed by the Labour Court is perverse, arbitrary and liable to be set aside.

13. The core submission advanced by the learned counsel for the petitioner is that the very foundation of the respondent/workman's

claim, namely the assertion that he was employed by the petitioner, was never established. The petitioner had consistently maintained that the respondent was not its employee, but rather an employee of M/s Pratap Enterprises, a contractor duly engaged by IGL. It is urged that the respondent neither impleaded the contractor as a party, nor produced any appointment letter, salary slip or muster roll. In cross-examination, the respondent admitted that he did not possess any such documents.

14. The learned counsel for the petitioner submits that the present workman/respondent had previously filed a claim for regularisation bearing ID No. 99/2003 and the said case was decided by the co-ordinate bench of this Court in W.P. (C) 6657/2012 titled as ***Vinay Sharma & Ors v. Indraprastha Gas Ltd & Anr.,*** 2014 SCC OnLine Delhi 383, wherein the co-ordinate Bench of this court has upheld the decision of the Industrial Tribunal denying the claim of regularisation to the respondent and other workmen holding that the status of the workman/respondent was of a contract labour having been engaged through the contractor. It is further stated that the said order has attained finality. It is also stated that the similar documents which are filed by the workmen in the present case were filed and considered in the said ID No. 99/2003 and the reference was answered against the workman.

15. In support of her arguments, she relies upon the said judgment of ***Vinay Sharma & Ors*** (supra).

16. Learned counsel further made submission regarding the settled position of law that the onus to establish an employer–employee relationship lies on the person asserting its existence. Reliance is made to ***Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu*** (2004) 3 SCC 514, where the Apex Court held that the proof of relationship of employer-employee rests upon the workman. Further, reliance is placed on ***Bank of Baroda v. Ghemarbhai Harjibhai Rabari*** (2005) 10 SCC 79 and ***Automobile Association of Upper India v. PO Labour Court***, 2006 LLR 851, to reinforce that the workman must prove his appointment through cogent documentary evidence, which the respondent herein failed to do.

17. It is further submitted that the petitioner successfully established that the respondent was in fact an employee of the contractor. The management exhibited the contract agreement, wage registers, PF and ESI records of the Contractor showing the names of the respondent/workman, and also summoned witnesses from the PF and ESI departments, all of which confirmed that the respondent's statutory benefits and wages were paid by M/s Pratap Enterprises. These documents were ignored by the Learned Labour Court.

18. It is further submitted by the learned counsel that the respondent also failed to prove that he had worked for 240 days in the year preceding the alleged termination, which is a statutory precondition for alleging illegal retrenchment. Reliance in this regard is placed on ***Range Forest Officer v. S.T. Hadimani*** (2002) 3 SCC 25 and ***Surendra Nagar District Panchayat v. Jethabhai Pitamberbhai***

(2005) SCC (L&S) 1167, wherein the Supreme Court has held that the burden of proving continuous service lies on the workman and mere filing of a self-serving affidavit is insufficient. In the present case, the respondent did not produce any wage slips, attendance records or other documentary evidence to prove completion of 240 days of service with the petitioner/management.

19. Learned counsel further submits that the labour Court travelled beyond the pleadings by examining the issue of whether the contract was sham or camouflage, despite there being no such pleading by the respondent/workman. She places reliance on the judgment of this Court passed in W.P.(C) 14191/2004 titled ***Chhathoo Lal v. Management of Goramal Hariram Ltd.*** delivered on 05.12.2006, ***Gopal v. B.S.N.L***,(2014) SCC OnLine Del 3456; in W.P.(C) 9438-42/2004 titled ***Ashok Kumar and Ors. v. the State*** delivered on 20.12.2006 to argue that the Learned Court cannot go beyond the pleadings and must confine itself to the issues raised before itself.

20. It is further submitted by the learned counsel for the petitioner that IGL being a government undertaking, has an established recruitment procedure involving advertisement of vacancies, issuance of appointment letters, interviews, probation and confirmation and none of these procedures were followed in his case. Hence, it is urged that the respondent could not have been treated as an employee of IGL.

21. On the other hand, Mr. Durgesh Kr. Pandey, learned counsel

appearing for the respondent/workman submits that the respondent was employed with the petitioner/management since 26.08.2001 at a salary of ₹3,980/- per month. He continuously worked under the direct control and supervision of the petitioner as a DSM, performing duties such as filling CNG gas at the stations of the petitioner. It is urged that during his service, the respondent discharged his duties diligently and to the complete satisfaction of the management.

22. It is contended that during the course of his employment, the management malafidely reduced the salary of the respondent from ₹3,980/- to ₹3,029/- without any notice or opportunity of hearing. Further, the management failed to extend even the basic facilities such as leave and overtime. Despite this, the respondent continued to work sincerely.

23. Learned counsel submits that the termination of the respondent's services on 07.09.2005 was illegal. On the said date, the respondent was called to the head office where he was directed to sign blank papers. Upon his refusal, he was orally told that his services were no longer required. It is argued that such termination was effected without holding any enquiry, without issuing any notice, and without complying with the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947. Hence, it is a case of illegal retrenchment.

24. It is further submitted that the respondent had duly discharged the *prima facie* burden of proof regarding the existence of an

employer–employee relationship by producing and exhibiting relevant documents such as his original identity card, salary sheet, the Diwali gift record of October 2001 wherein his name was clearly mentioned, and the copy of ex-gratia payment made on 24.10.2002 to IGL employees/contingent staff/DSMs. These documents *prima facie* established that the respondent was employed by the petitioner.

25. Referring to the judgment in ***Dir., Fishers Terminal Division Vs. Bhikubhai Meghajibhai Chavda***, (2010) (1) SCC 47, ***R. M. Yelatti Vs. The Asst. Executive Engineer***, (2006) (1) SCC 106 passed by the Apex Court and the case of ***Goverdhan Vs. Chief Municipal Officer*** in Misc Petition No. 6329 of 2022 decided on 17.10.2024 by Madhya Pradesh High Court. Learned counsel for the respondent has argued that once this prima facie burden was discharged, it was for the petitioner to produce evidence to show that the respondent was not in its employment. It is submitted that the petitioner failed to produce any records prior to 2003 to demonstrate that the respondent was engaged through a contractor or that his services were ever transferred to a contractor. The reliance of the petitioner on the Operating Agreement dated July 2003 is misplaced, as the respondent had already been employed with IGL since 2001, and no explanation has been provided as to how or when his services came to be transferred to the contractor.

26. He has cited the case of ***International Airport Authority of India Vs. International Air Cargo Workers Union & Anr***. (2009) 13 SCC 374 to argue that in exercising the writ jurisdiction, this Court

does not function as an appellate forum to re-appreciate evidence or reassess the factual findings returned by the Industrial Tribunal. The factual determinations of a specialised fact-finding body are ordinarily accorded finality and are not to be disturbed merely because the sufficiency or credibility of the material relied upon may be questioned, or because an alternative view is possible. However, it is equally submitted that where the Tribunal's findings are founded on no evidence, or on irrelevant or extraneous material, interference by the High Court is permissible.

27. Learned counsel contends that the reliance of the petitioner on the judgment in ***Vinay Sharma*** (supra) is misconceived. The said proceedings were not contested by the present respondent as he was not represented therein, nor was any affidavit filed by him. It is submitted that the workmen union which had filed the claim in that case had no authority to represent the respondent. Accordingly, the said judgment does not operate as res judicata against the present respondent.

28. Learned counsel lastly submitted that the Labour Court rightly held that the termination of the respondent amounted to retrenchment under Section 2(oo) of the ID Act and that the petitioner had not complied with Section 25F of the ID act. The Learned Court, therefore, correctly directed reinstatement with continuity of service and full back wages.

29. Per contra, learned counsel for the petitioner/management has

argued that by producing the copy of its agreement with the contractor, the records of PF, ESI contribution of the contractor showing the deductions of ESI and PF by the contractor, attendance records of the contractor showing the attendance of workman, management has proved that workman was employed by the contractor and have no connection with the management who has no control over the appointment or termination etc. of the workman. Moreover a single document of 2001 (Diwali gift record of October, 2001), ex-gratia payment by management to its employees are not the authentic document and even those documents nowhere shows that workman was their employee.

30. I have heard and considered the submissions advanced by learned counsel for the parties.

31. It is a well-settled principle of law that the initial burden of proving the existence of an employer–employee relationship lies upon the person who asserts such a relationship. When a claimant alleges that he is an employee of a particular establishment and the management denies this assertion, the obligation to produce cogent, credible, and convincing evidence to substantiate the claim rests squarely on the claimant. Only upon discharge of this initial burden, does the onus shift to the management to rebut the evidence and disprove the claim.

32. The Hon'ble Supreme Court in **'Workmen of Nilgiri Coop. Mkt. Society Ltd.***(supra)* held as under : -

> *"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 [1973 Lab. I.C. 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."*
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> *49. In Swapan Das Gupta v. The First Labour Court of West Bengal [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."*

33. Although, I agree with the contention of the learned counsel for the respondent that the question of relationship between the parties is question of fact and ordinarily the High Courts, while exercising its powers, do not interfere in those findings, however, as it held in the case ***Workmen of Nilgiri Coop. Mkt. Society Ltd.***(supra), if the finding are erroneous, the same can always be interfered by the High Courts. The relevant portion is reproduced as under-

> *50. The question whether the relationship between the parties is one of the 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."*

34. Similar observation is being made in the judgement of ***International Airport Authority of India*** (supra), wherein the Apex court has held as under

> *"47. It is true that in exercising the writ jurisdiction, the High Court cannot sit in appeal over the findings and award of the Industrial Tribunal and therefore, cannot reappreciate evidence. The findings of fact recorded by a fact-finding authority should ordinarily be considered as final. The findings of the Tribunal should not be interfered with in writ jurisdiction merely on the ground that the material on which the Tribunal had acted was insufficient or not credible.*
>
> *48. It is also true that as long as the findings of fact are based on some materials which are relevant, findings may not be interfered with merely because another view is also possible. But where the Tribunal records findings on no evidence or irrelevant evidence, it is certainly open to the High Court to interfere with the award of the Industrial Tribunal."*

35. In the present case, the respondent-workman has asserted before the learned labour court that he was an employee of the petitioner-management. To substantiate this claim, he primarily relied upon certain documents such as his original identity card, a salary sheet, a record of Diwali gifts for the year 2001, and a copy of an ex-gratia payment dated 24.10.2002 made to IGL employees/contingent staff/DSMs. The petitioner-management has categorically denied the authenticity of these documents, noting that they neither bear the official seal or stamp of the management nor the signatures of any authorized officer. However, these documents, as rightly argued by the learned counsel for the petitioner, upon examination, are insufficient to establish the existence of an employer–employee relationship. Accordingly, such documents cannot be treated as conclusive proof of employment and so the labour court has incorrecting relied upon them, leading to an erroneous finding.

36. As is indicated, before the learned labour court, during cross-examination, the respondent-workman admitted that he was not in possession of any appointment letter issued by the petitioner-management, nor was he aware of the recruitment process followed by the petitioner. He also conceded that he came to know about the vacancy through another employee and that he used to receive his salary in cash, without any deductions for PF or ESI. Relevant portion is reproduced as under-

> *".....According to me I was appointed with management no.1 on 26.08.2000. I*

> *had submitted my biodata to the management at the time of management. I have not brought the copy of the said biodata. The application for appointment was filled by me and submitted to Shri. S.K. Sinha. I am not in possession of any such application. I do not have any appointment letter issued by Management/ IGL. I was informed about the vacancy through another boys working with Management. I am not aware of any procedure of appointment with Management/IGL. It is correct that I do not have any termination letter given by Management/IGL. My PF and ESI has not been deposited. I have not given any written complaint against the Management. I used to mark my attendance in the duty roaster, at CNG pump where I used to work. The proof is not with me, it is with the management."*

37. Based on above statement of respondent workman, the learned counsel for the petitioner has rightly argued so, that the above statement goes to prove the stand of the petitioner management that being a government corporation, the management cannot appoint any individual without issuing proper appointment letters and maintaining salary records. The existence of documents such as an appointment letter, monthly pay slips, or evidence of statutory deductions like PF or ESI are the best indicators of an employment relationship. In their absence, the claimed relationship cannot be presumed.

38. As the respondent-workman has failed to produce any such documentary evidence, the finding of the learned labour court that there existed a relationship is perverse and incorrect. Per contra, the petitioner management had produced before the learned labour court the documents of the contractor like wage records, attendance records, PF & ESI records, wherein the name of the respondent-workman is reflected, to negate the claim of the workman-respondent. They had also produced the copy of their licence to engage the contractor and also the contract with contractor M/s Pratap Enterprises. On the basis of these documents, the learned counsel for petitioner has also argued that being the government organisation they cannot pay the salary in cash and statement of workman to this effect goes to reinforce the stand of the management that the respondent was not an employee of the management. Further, he has no appointment letter, without which his claim cannot be substantiated.

39. Moreover, given that the petitioner-management is a government organization, all appointments must be made in strict compliance with the recruitment rules, which require due process including the advertisement of vacancies, conduct of interviews, issuance of appointment letters, probation, and confirmation. None of these procedures were shown to have been followed in the present case. The respondent has also failed to produce any substantive evidence to meet the minimum threshold required to prove such a relationship.

40. A plain reading of the impugned award further reveals that the

respondent-workman never pleaded that the contract between the petitioner and the contractor was sham or camouflage designed to evade the management's obligations as an employer. Nevertheless, the Learned labour court proceeded to record a finding to that effect, which was clearly beyond the scope of the pleadings. In his statement claim which was directly filed by the respondent-workman, he has nowhere pleaded to be employed through a contractor, the plea of the respondent-workman being employed through contractor was raised by the management petitioner only, in its defence before the learned labour court.

41. This court in the case of **Gopal v. Bharat Sanchar Nigam Limited**, 2014 SCC OnLine Del 3456, emphasizing that a government organization cannot make appointments without issuing appointment letters and following the prescribed recruitment process has held as under-

> *"35. The appellant has next relied upon General Manager, Oil and Natural Gas Commission, Silchar v. Oil and Natural Gas Commission Contractual Workers Union (supra) in which the workers were held to be the employees of ONGC as the wages were being paid by ONGC; there was no contractor appointed by ONGC; ONGC used to supervise and allot works to individual workers; ONGC took disciplinary action and called for explanation from the workers and therefore, it was held that there was*

relationship of master and servant. In the present case, the appellant could not produce any evidence whatsoever to prove the relationship of employer and employee either with the respondent or within the contractor and therefore, this judgment would not help the appellant.

36. We agree with the respondent that the respondent being a government organization cannot make any appointment without issuing appointment letter and without following the due process of law and therefore, the appellants' contention that they were appointed without issuance of any appointment letter does not appear to be true. We also agree with the respondent that irregular appointees have no right to post as held in Umarani v. Registrar, Cooperative, (2004) 7 SCC 112, Accounts Officer (A&I) v. K.V. Ramana,(2007) 2 SCC 324 and Indian Drugs & Pharmaceuticals v. Workman, Indian Drugs,(2007) 1 SCC 408."

42. In view of the foregoing discussion, it is evident that the Learned labour court erred in assuming jurisdiction while holding that the contract in question was sham and camouflage, since the statement of claim filed by the workman did not contain any such plea. The labour court also failed to properly appreciate the evidence produced by the management, which included the contract agreement, wage registers, PF and ESI records, and the testimony of witnesses

summoned from the PF and ESI departments. The said material unequivocally established that the statutory benefits and wages of the respondent-workman were paid by M/s Pratap Enterprises, the contractor.

43. With regard to the contention of the respondent-workman that the management had failed to explain the manner or date on which his services came to be transferred to the contractor, this issue already stands settled by the co-ordinate bench of this Court in the case of ***Vinay Sharma*** (supra).

44. The submission of the counsel for the respondent that the said judgment is not binding on the respondent-workman, since the said proceedings were not contested by the respondent as he was not represented therein, nor was any affidavit filed by him. It is submitted that the workmen-union, which had filed the claim in that case had no authority to represent the respondent. Accordingly, the said judgment does not operate as res judicata against the respondent.

45. The submissions of the counsel for the respondent has no substance since in the statement of claim filed by the workman before the learned labour court in this case, he himself has admitted to have filed the said case ID 99/2003 titled as '***Workmen as represented by Vyopar Tatha Udyog Karamchari Sangh v. M/s Indraprastha Gas Limited'*** for regularization of his services. Even otherwise, a similar issue was raised by the workmen in that case and was finally decided by the co-ordinate bench of this court, holding that the said case is

applicable to all the workmen who were represented through union.

46. In the case of ***Vinay Sharma*** (supra), the coordinate bench had dealt with all the submissions as put forth by the respondent in this case and came to the conclusion that the workmen were not the employees of the petitioner-management and they were engaged through contractor. The said decision was rendered by the court after considering the submission of the counsel for management regarding the applicability of the triple test i.e. (i) who pays the salary; (ii) who has power to remove/dismiss from service or initiate disciplinary action against the workman concerned; (iii) who has discretion and control over the employees.

47. In that decision, it was held that the non-production of pre-2003 documents by the management before the learned labour court does not support the workmen's claim, since the alleged transition from direct employment to contractual engagement was never challenged by the workmen at any earlier stage. The relevant portion is reproduced herein below-

> *"**21.Insofar as the submission of Mr. Krishnan, learned counsel for the petitioners that failure on the part of the respondent No. 1 to produce record pertaining to pre-2003 period to demonstrate that they have been engaged by the management is concerned, the non-production is inconsequential inasmuch as pursuant to the operating agreements, the change effected has not been***

challenged by the claimants at any point of time. As stated above, the petitioners should have challenged their transfer or their engagements through the contractors and the same should have been a subject matter of reference for adjudication. In the absence of any challenge, it must be presumed that their status was of a contract labour having been engaged through contractors. *The reliance placed by Mr. Krishnan on the judgment of the Supreme Court in Bharat Heavy Electricals Ltd.'s case (supra) would not be applicable to the facts of this case. The petitioners could not able to establish the tests prescribed, for the Court to hold that they are the employees of the respondent No. 1. Having said that, it is also necessary to get the relief of regularization, the petitioners were required to prove that their exists posts commensurating their qualifications, vacancies with the respondent No. 1 and that they have been engaged through the process followed by the respondent No. 1 for making regular appointments. Mr. Rai is correct inasmuch as to get the relief of regularization, the aforesaid pertinent aspects need to be pleaded and established by the petitioners. In any case, in terms of the judgment of the Supreme Court in Uma Devi's case (supra), the Court/Tribunal could not have given a direction to regularize the petitioners. The consideration has to be*

> *through a process of open selection in terms of the Recruitment Rules. I find that for the reasons stated by the Tribunal and in view of the aforesaid reasons, more particularly, in para 28, the Tribunal has rightly answered the reference denying the claim of regularization of the petitioners. Insofar as the submission of Mr. Rai with regard to the scope of judicial review, more particularly, on the findings of fact, I need not go into that issue keeping in view my conclusion above."*
>
> *(emphasis supplied)*

48. In the said case of ***Vinay Sharma*** (supra), the coordinate bench court had considered all the documents as put forth by the respondent herein before the learned labour court to claim the relationship. The said documents were also considered in the aforementioned case by the Learned Industrial Tribunal, which rejected those documents And did not find them sufficient to prove the employer-employee relationship between the workman and IGL/management. The said decision of learned Industrial Tribunal was upheld by the co-ordinate bench of this court in ***Vinay Sharma*** (supra).

49. Accordingly, in view of the findings of the co-ordinate bench of this court in the case of ***Vinay Sharma***(supra), the issue has attained finality that the workman is not the direct employee of the management and is an employee of the contractor and submission of the counsel for petitioner-management to this effect finds force with me.

50. Although the Industrial Disputes Act is a beneficial legislation and must be interpreted liberally to advance the welfare of the class for which it is enacted, such liberal interpretation cannot justify the grant of relief in cases where the claimant has failed to establish the essential foundational facts through credible evidence. The benevolent object of the statute cannot be invoked to overlook the absence of proof or to confer relief unsupported by the record.

51. In light of the foregoing discussion, this Court finds that the impugned award passed by the Learned Tribunal cannot be sustained. The findings recorded therein are contrary to the evidence and beyond the pleadings.

52. Consequently, in view of the above discussion the impugned award dated 05.02.2011 passed by the Learned Labour Court is set aside.

53. This Court also note the respondent workman has received wages under section 17B of the ID Act, which is treated as compensation, the respondent is therefore, not liable to return the same. A similar view has also been taken by the Division Bench of this Court in case of ***Gopal*** (supra).

54. The present petition, along with pending application, if any stands disposed of accordingly.

RENU BHATNAGAR, J

DECEMBER 5, 2025
p/kz