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

% ***Reserved on:19th March, 2025.***
Pronounced on: 28th April, 2025.

+ **W.P.(C) 6484/2024**

HANDICRAFTS AND HANDLOOMS EXPORT CORPORATION OF INDIA LIMITED .....Petitioner

Through: Ms. Yoothica Pallavi, Adv. Mr. Himanshu Sehrawat Adv., along with Ms Monika Madan - Official for HHEC. Ms. Akash Sharma, Adv.

versus

SH REHMAT KHAN & ORS. .....Defendants

Through: Mr. Deepanshu Rana, Mr. Vishal Chauhan, Adv. for all respondent nos.1-18.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. The petition has been filed by the petitioner/Handicrafts and Handlooms Export Corporation of India Limited ('***HHEC'***), which is a public sector undertaking challenging an *ex parte* award dated 18th April 2023, passed by the Presiding Officer, CGIT-cum-Labour Court–II, New Delhi in Industrial Dispute Case No.21/2017 ('***impugned award***').

2. By the impugned award, petitioner was directed to pay the respondent/workman a lump sum amount of *Rs.5 Lacs* with 6% interest per annum from the date of the award to the final payment. The dispute was referred by the Government of India under Section 10(1)(D) and Section 10(2)(A) of the Industrial Dispute Act, 1947 (‘***ID Act’***) framing the issue in the following manner:

> “*Whether the workman i.e. Sh. Rehmat Khan son of Mr. Mohd. Shaffi and 17 others whose details are enclosed herewith in Annexure HHEC are entitled for reinstatement against the management of the Handicrafts and Handlooms Export Corporation of India as Tailor with all consequential benefits? If not, then, what even the workmen are entitled to*?”

3. Reference was answered in favour of workmen/claimants concluding that they were illegally terminated by the HHEC w.e.f. 01st September 1991. Impugned award held that 31 years have passed since it was directed that an amount of compensation, instead of reinstatement of back wages, be awarded.

4. Accordingly, the said Award was for a lump sum payment of *Rs.5 Lacs* to each of the claimants/workmen within 60 days from the publication of the Award, failing which the amount as directed would carry interest @ 6% per annum from the date of award till the final payment was made.

<u>Factual background</u>

5. Petitioner is a Government of India company within the meaning of Section 617 of the Companies Act, 1956 having its registered office at Tolstoy Marg, New Delhi, and is under the administrative control of the Ministry of Textiles. Petitioner is engaged in the business of handicrafts and handlooms.

6. Respondent Nos.1-18 were working in the establishment of the petitioner as tailors. While the workmen claimed that they were permanent employees, petitioner claimed that they have been engaged through respondent no.19 (*M/s Clothes Channel*) a third-party contractor.

7. Petitioner claimed that it had entered into a '*Contract of Service*' with respondent no.19 for manufacturing garments, and to carry out the work within the premises, on the basis of two agreements i.e. 26th February 1990 and 03rd April 1991.

8. Petitioner claims that the said agreements specifically provided that petitioner shall not be liable for persons engaged by respondent no.19 and for any act of omission of such persons and no claim shall lie against the petitioner. Respondents claimed that petitioner was not paying the minimum wages as notified and they had raised their demands consistently.

9. Petitioner, however, had made a statement that they were not employees but employees of the contractor, which was refuted by the workmen stating that there was no employer-employee relationship in the contract. Contract, if any, between petitioner and respondent no.19 was a sham and intended to camouflage the legal rights of the workmen.

10. It was contended that petitioner stopped giving work to the workmen w.e.f. 01st September 1991 and terminated their services without notice or without following the procedure. On 04th March 1991, workmen served a demand notice on petitioner which was not responded to. Dispute was raised before the Labour Commissioner, Ghaziabad and effort for conciliation failed. Hence, the industrial dispute was raised.

11. Petitioner challenged the said award before the High Court of Allahabad which by order dated 22nd August 2016, held that the Labour Court, Ghaziabad did not have jurisdiction and set aside the impugned award. Reference was again made to the Tribunal for adjudication and the impugned award was eventually passed.

12. While the petitioner claimed that by the Allahabad High Court's order of 22nd August 2016, there were clear findings on merits, on the claims made by the workmen, respondents submitted that once the Court had dismissed the award originally based on the issue of jurisdiction, the determination on merits is not conclusive.

13. The Allahabad High Court had effectively held that no letter of appointment was ever brought on record and there was no evidence with regard to the date of engagement of the workmen and no valid contract was entered into between the petitioner and respondents leading to employer-employee relationship. Petitioner claimed that the judgment dated 22nd August 2016, had not been challenged by the workmen and, therefore, the findings attain finality.

14. In the second set of proceedings before the Labour Court which led to the impugned award, evidence was filed by respondents/workmen and petitioner.

15. On 18th January 2019 and 04th May 2022, respondent no.1 as witness no.1 (**WW-1)** and workman/witness no.2 (**WW-2**) were cross-examined by petitioner. Petitioner submitted that subsequently there were changes in the counsel for petitioner due to which the proceedings could not be attended by petitioner's representative or counsel. The Presiding Officer without issuing any notice to the petitioner proceeded *ex parte* and passed the impugned award in favour of the workmen.

16. Thereafter, an Execution Petition was filed by the workmen being Execution Petition No.29/2024 before the ADJ, Patiala House and only after receiving notice of the Execution Petition, petitioner came to know about the impugned award.

Submissions on behalf of petitioner

17. Counsel for petitioner effectively contended, *inter alia*, as under:

(i) Agreement of 26th February 1990 executed between petitioner (*as licensor*) and *M/s Clothes Channel*/respondent no.19 (*as licensee/contractor*) noted that petitioner was desirous of setting up a tailoring unit in their premises at *Sector-2, Noida,* and wanted to entrust the work of manufacturing garments to the licensee. Petitioner's counsel pointed out to Clause 9, 11 &13 (a) of the said

contract. These clauses effectively provided that the respondent no.19 (*licensee/contractor*) would be responsible for observation of all statutory conditions and acts for commission and omission of the persons engaged by them. Liability of petitioner was excluded, and all claims against petitioner would first be paid out by respondent no.19/licensee, with a right of petitioner to recover the same from the security and then claim the balance. The persons engaged by the respondent no.19/licensee would not be entitled to any benefits or privileges available to the employees of licensor, and they would not have any claim whatsoever against the licensor/petitioner except to the extent of payment of the bills. The respondent no.19/contractor had to employ their own labour force for the purposes of carrying out the job, and it would not create any relationship of employer-employee between the licensor and licensee. The subsequent agreement executed on 03rd April 1991, also contained similar clauses. Following clauses are extracted as under:

> "***9.*** *That the Licencee shall be responsible for due observation of all statutory conditions or requirements under the various laws applicable to the persons engaged by them. The LICENCEE shall be responsible for the acts of commission and/or omission of the persons engaged by them and for any loss or damage caused by them to the property of the LICENSOR.*

The LICENSOR shall not in any manner be responsible for any acts of commission and/or omission of the persons engaged by the Licencee and No claims whatsoever in any respect shall lie against the licensor. If there is any such claim against the Licensor, the Licencee shall pay the same on the first demand of the Licensor. The amount of the claims may be recovered out of the security to be deposited by the Licencee with the licensor and the Licensor shall also have the right to recover the same from the bills to be submitted by the Licencee.

11. *That the Licencee or the persons engage by them shall not be entitled to any benefits privileges or advantages etc. available to the employee of Licensor. The Licencee will have no claim whatsoever against the Licensor except to the extent of payment of their bills for fabrication of the garments according to the terms of the agreement.*

13(a)*. That the LICENCEE/CONTRACTOR shall employ their own labour force for the purpose of carrying out the jobs entrusted to them and the agreement shall not create any relationship as employer and employee between the LICENSOR AND THE LICENCEE. The LICENCEE will be the first judge as to the number of persons to be engaged for work entrusted to them and the LICENCEE alone will be entitled to dictate to such persons the manner of executing the work without any interference from the LICENSOR. The LICENSOR shall not have any connection, connect or control whatsoever with the persons engaged by the LICENCEE nor will it exercise any supervision or control over the manner by which anything is to be done by the persons engaged by the LICENCEE. The LICENSOR will have nothing to do with the conditions or employment*

or engagement of or manner of mode of the same. The LICENSOR will not have any control in the matter of their discharge, dismissal, termination, re-employment either, nor any such claim shall lie against the LICENSOR."

(ii) Statement of Claim was preferred by the said respondent nos.1-18 on 06th July 2017, effectively claiming legal facilities. Respondents/workmen claimed that they had initially been working with petitioner at the existing office near *ITO, New Delhi,* when they joined the services but were later posted at *Noida,* where their services were terminated by petitioner. The petitioner had not provided any documents appointing the respondents and had never provided them with any legal facilities. To this, a reply had been preferred by petitioner, contending, *inter alia*, that the claim was hit by *res judicata*, and the matter had been decided on merits by the Allahabad High Court and had attained a finality. There were liability exclusion clauses in the contract with *M/s Clothes Channel*/respondent no.19, which was registered under the Employees Provident Fund Act and Miscellaneous Provisions Act, 1952 ('***EPFA'***) and Employees' State Insurance Act, 1948 ('***ESIC'***), was paying contribution towards the said workmen, and making deductions from the wages. The workmen had not provided any proof of their employment with HHEC, and the burden was on workmen. Petitioner had never terminated their services, since they were never employees of the petitioner.

(iii) The impugned award in reference to issue no.2 had noted that, neither the copy of agreement nor documents relating to payments made by petitioner to the contractor towards the wage of workmen had been placed on record. To the contrary, documents filed by workmen with bank passbooks and attendance register, would stand to prove that they were, from the time of engagement till termination, under the supervision and control of the officers and had discharged duties continuously for more than 240 days a year. To this, counsel for petitioner only doubted the evidence by way of affidavit filed by the petitioner, which stated in *paragraph 6* that the agreement dated 26th February 1990 had been executed between petitioner and *M/s Clothes Channel* and was appended as Annexure A/1. The question of no evidence being available before the Labour Court was, therefore, incorrect. As regards the bank passbooks, it was contended that they are from 2011 onwards and not from 1977 till 1991, the period for which they were claiming their wages and benefits of employment. As regards the attendance registers, it was also contended that they were of 2011 and they were not of the petitioner. Petitioner's counsel drew attention to the cross-examination of WW-1, *Sh. Rehmat Khan,* who stated that he did not have authorization to depose on behalf of the workmen. Further, he stated that he had not filed any document to prove that the petitioner had inducted him to work, since no appointment letter had been issued, and the same was the

situation with the other workmen as well. It was stated that they did not have any document since the petitioner had provided none despite their demands. WW-1 further stated that there was no advertisement or notification for the job published by petitioner and that there was nothing they could place on record showing that they had made a demand for providing appointment letter, salary document etc. Reference was made to the cross-examination of WW-2, *Sh. Bindan Singh* who also confirmed that no appointment letter was issued to him and there was no document to prove the alleged termination as well.

(iv) Substantially, reliance was placed on the Allahabad High Court order, where the Court noted that there was no specific plea as to exactly when these workmen were appointment and that it was admitted that no appointment letter was ever issued. In *paragraphs 14* and *15* of the said decision, the Allahabad High Court held that the Tribunal constituted under the ID Act did not have jurisdiction to adjudicate the dispute and observed that since a period of 26 years had expired, the industrial adjudicator should proceed with all expedition.

(v) Petitioner relied upon the following decisions for essentially asserting that since the employer-employee relationship has been asserted by the workmen, burden would be upon them to prove the same. However, in the facts and circumstances, the workmen did

not have any documents as categorically and candidly stated by them since the organization has apparently refused to provide them any. However, they had made their assertion in the affidavits or evidence and quite the contrary the petitioner did not produce any evidence to controvert the same nor did the respondent no.19 (*M/s. Clothes Channel*) appeared in the proceedings nor was any witness summoned by the petitioner in order to state that the money was indeed being paid by the *M/s. Clothes Channel* and the supervision and control was in favour of the *M/s. Clothes Channel.*

(vi) Counsel for petitioner placed reliance on the decision of the Coordinate Bench of this Court in ***Sunil Kumar v. State*** 2024 SCC OnLine Del 2111, states that the burden of proving an employer-employee relationship lies on the person asserting it, and such a relationship must be established through concrete evidence or records, as it is a question of fact determined by the cumulative effect of all material placed before the adjudicatory forum.

> *23. At this juncture, it is apposite for this Court to understand the jurisprudence behind the principles establishing an employer-employee relationship and upon whom the onus to prove the same lies. The Hon'ble Supreme Court in this regard in the judgment titled Kanpur Electricity Supply Co. Ltd. v. Shamim Mirza, (2009) 1 SCC 20, observed the following:*
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> > *"20. It is trite that the burden to prove that a claimant was in the employment of a particular management, primarily lies on the person who*

claims to be so but the degree of proof, so required, varies from case to case. It is neither feasible nor advisable to lay down an abstract rule to determine the employer-employee relationship. It is essentially a question of fact to be determined by having regard to the cumulative effect of the entire material placed before the adjudicatory forum by the claimant and the management."

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

"8. It is well settled principle of law that the person, who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. In this regard, the Hon'ble Supreme Court in the case of Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of T.N., (2004) 3 SCC 514 has approved the judgment of Kerala and Calcutta High Court, where the plea of the workman that he was employee of the company was denied by the company and it was held that it was not for the company to prove that he was not an employee. Para 48 to 50 of the said judgment reads as under:—

"48. In N.C. John v. Secy., Thodupuzha Taluk Shop and Commercial Establishment Workers' Union, (1973 Lab IC 398) the Kerala High Court held:

The burden of proof being on the workmen to establish the employer-employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer-employee relationship.

49. In Swapan Das Gupta v. First Labour Court of W.B. (1976 Lab IC 202 (Cal)) it has been held:

Where as person asserts that he was a workman of the company and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

50. The question whether the relationship between the parties is one of employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse."

x x x

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

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

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

15. In the instant case, the workman filed an affidavit by way of evidence on the 29th April, 1993 and closed his evidence. Thus, the only evidence in support of the plea of employment was the self serving affidavit filed by the workman and nothing beyond that to support his claimed plea of service of seven years. In view of the principles laid down by the Supreme Court in Range Officer v. S.T. Hadimani, (2002) 2 SLT 154 such affidavit by itself is wholly insufficient to discharge the burden of proof on the workman."

(vii) In ***Babu Ram v. Govt. (NCT of Delhi)*** 2018 SCC OnLine Del 7243, this Court stated that the burden of proving the existence of an employer-employee relationship lies on the person asserting it, and mere self-serving statements (like affidavits) are not sufficient without concrete evidence. Relevant paragraphs are extracted as under:

8. It is well settled principle of law that the person, who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. In this regard, the Hon'ble Supreme Court in the case

of Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of T.N., (2004) 3 SCC 514 has approved the judgment of Kerala and Calcutta High Court, where the plea of the workman that he was employee of the company was denied by the company and it was held that it was not for the company to prove that he was not an employee.

10. The Hon'ble Supreme Court in Shankar Chakravarti (supra) has further held that obligation to lead evidence to establish the allegation made by a party is on the party making the allegation. The test would be who would fail if no evidence is led. It must seek an opportunity to lead evidence and lead evidence. In this regard Para 32 of the said judgment is also relevant to mention here, which reads as under:—

> *"32. If such be the duties' and functions of the Industrial Tribunal or the Labour Court, any party appearing before it must make claim or demur the claim of the other side and when there is a burden upon it to prove or establish the fact so as to invite a decision in its favour, if it has to lead evidence. The quasi-judicial tribunal is not required to advise the party either about its rights or what it should do or omit to do. Obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be who would fail if no evidence is led. It must seek an opportunity to lead evidence and lead evidence. A contention to substantiate which evidence is necessary has to be pleaded. If there is no pleading raising a contention there is no question of substantiating such a nonexisting contention by evidence. It is well settled that allegation which is not pleaded, even if there is evidence in support of it, cannot be examined because the other side has no notice of it and if*

entertained it would tantamount to granting an unfair advantage to the first mentioned party. We are not unmindful of the fact that pleadings before such bodies have not to be read strictly, but it is equally true that the pleadings must be such as to give sufficient notice to the other party of the case it is called upon to meet. This view expressed in Tin Printers (Private) Ltd. v. Industrial Tribunal commends to us. The rules of fair play demand that where a party seeks to establish a contention which if proved would be sufficient to deny relief to the opposite side, such a contention has to be specifically pleaded and then proved. But if there is no pleading there is no question of proving something which is not pleaded. This is very elementary."

(viii) The Supreme Court in ***Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of T.N.,*** (2004) 3 SCC 514, held that burden of proving the existence of an employer-employee relationship lies on the person asserting it, and such a determination is a pure question of fact, not to be interfered with by High Courts unless the finding is clearly erroneous or perverse. Relevant paragraphs are extracted as under:

"Burden of proof

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. Secy., Thodupuzha Taluk Shop and Commercial Establishment Workers' Union [1973 Lab IC 398 : (1973) 1 LLJ 366 (Ker)] the Kerala High Court held : (LAB IC p. 402, para 9)

> *The burden of proof being on the workmen to establish the employer-employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer-employee relationship.*

49. In Swapan Das Gupta v. First Labour Court of W.B. [1976 Lab IC 202 (Cal)] it has been held : (LAB IC para 10)

> *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 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."

(emphasis added)

(ix) In ***Range Forest Officer v. S.T. Hadimani*** (2002) 3 SCC 25, the Supreme Court held that the burden of proving 240 days of continuous work in the year preceding termination lies on the workman, and a mere affidavit without supporting evidence is not sufficient to establish this claim. Relevant paragraph is extracted as under:

> "*3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the*

decision of this Court in State of Gujarat v. Pratamsingh Narsinh Parmar [(2001) 9 SCC 713 : 2002 SCC (L&S) 269 : JT (2001) 3 SC 326] . In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr Hegde appearing for the Department states that the State is really interested in getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today."

Submissions on behalf of the respondent

18. Counsel for respondent submitted *inter alia* as under:

(i) Respondent/workman had joined petition on various dates between 1977 and 1990, prior to the agreement between petitioner and *M/s Clothes Channel/* respondent no.19 coming into existence. They had worked under direct control and supervision

of petitioner in the premises at *Noida* and got their salary from petitioner.

(ii) Respondent/workman had proved their employer-employee relationship by way of an attendance register, and salary drawn. Further, the Labour Inspector had visited the premises of the petitioner on 21st December 1990 and submitted a report, which clearly showed that the appointment of the workman was with the petitioner.

(iii) There was no evidence to indicate that the workman had affiliation with *M/s Clothes Channel*/ respondent no.19 or received the salary from them. The agreement between petitioner and *M/s Clothes Channel*/respondent no.19 was only a sham or camouflage, as the agreement came much later than the appointment of the workman.

(iv) The indicia to assess whether an employer-employee relationship includes the proof of payment of salary directly to the workman, control and supervision on the work, rule for selection and appointment of employees, and the power to take disciplinary action regarding conduct and discipline. Respondent/workman had carried out their duties within the premises of the petitioner and were, therefore, operating under its control and supervision; the salaries were disbursed by the petitioner, and they were terminated by the petitioner, albeit without following the due procedure.

(v) Petitioner did not take an action during the *ex parte* proceedings and has now filed the present petition to delay the execution petition. The workmen have been pursuing their rights for 34 years and are yet to receive justice.

(vi) The Labour Inspector was never cross-examined (though the petitioner's counsel stated that the Labour Inspector was not a witness. The affidavit was of respondent no.1 and the onus was on the workmen to have called him as a witness).

(vii) Counsel for respondent relied on ***Ajay Singh v. Khacheru & Ors.*** 2025:INSC:9, wherein it was reiterated that while exercising jurisdiction under Article 226 of the Constitution of India the High Court cannot reappreciate evidence unless the authority has exceeded the jurisdiction or acted perversely. The following paragraphs are relevant in this regard:

> "*17. It is a well-established principle that the High Court, while exercising its jurisdiction under Article 226 of the Constitution of India, cannot reappreciate the evidence and arrive at a finding of facts unless the authorities below had either exceeded its jurisdiction or acted perversely.*
> *18. On the said settled proposition of law, we must make reference to the judgment of this Court in* ***Chandavarkar Sita Ratna Rao v. Ashalata S. Guram*** *(1986) 4 SCC 447. The relevant portion thereof reads as under:*
>
> > ***"****16. ... It is well settled that the High Court can set aside or ignore the findings of fact of an*

appropriate court if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the courts below have come or in other words a finding which was perverse in law. This principle is well settled. In D.N. Banerji v. P.R. Mukherjee [(1952) 2 SCC 619] it was laid down by this court that unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention it was not for the High Court under Articles 226 and 227 of the Constitution to interfere. If there is evidence on record on which a finding can be arrived at and if the court has not misdirected itself either on law or on fact, then in exercise of the power under Article 226 or Article 227 of the Constitution, the High Court should refrain from interfering with such findings made by the appropriate authorities. ...''

(emphasis supplied)

19. The above said proposition of law was reiterated in ***Shamshad Ahmad v. Tilak Raj Bajaj*** *(2008) 9 SCC 1, wherein it was observed that:*

*"**38.** Though powers of a High Court under Articles 226 and 227 are very wide and extensive over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a court of appeal or a court of error. It can neither review nor reappreciate, nor reweigh the evidence upon which determination of a subordinate court or inferior tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior court or tribunal. The powers are required to be exercised most*

sparingly and only in appropriate cases in order to keep the subordinate courts and inferior tribunals within the limits of law."

20. Observations similar in nature were made in ***Krishnanand v. Director of Consolidation*** *(2015) 1 SCC 553****,*** *wherein it was held that:*

"12. The High Court has committed an error in reversing the findings of fact arrived at by the authorities below in coming to the conclusion that there was a partition. No doubt, the High Court did so in exercise of its jurisdiction under Article 226 of the Constitution. It is a settled law that such a jurisdiction cannot be exercised for reappreciating the evidence and arrival of findings of facts unless the authority which passed the impugned order does not have jurisdiction to render the finding or has acted in excess of its jurisdiction or the finding is patently perverse. ..."

(*emphasis added*)

(viii) Further ***Balwant Rai Saluja v. Air India Ltd***. (2013) 15 SCC 85 was relied upon where it is reiterated that the principle to examine whether the contract between principal employer and contractor is a sham and camouflage is to be tested on two principles which are evident from extract under:

"*22. In International Airport Authority of India v. International Air Cargo Workers' Union [(2009) 13 SCC 374: (2010) 1 SCC (L&S) 257], this Court echoed the same view and observed as follows: (SCC p. 388, paras 38-39)*

"38. The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding

out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

……

68. Another important angle is examined by me in relation to the nature of test to be used to determine employment relations between the parties. Classically jurists like Salmond and others while developing the jurisprudence relating to Torts have laid down the test to determine the relationships between "master and servant". In such situations the predominant test deployed was the test of control and supervision. It is

needless to state that post-constitutional jurisprudence in India must no longer be allowing practice of the traditional master and servant relationship but should be facilitating employer-employee relationships mediated by constitutional jurisprudence which is relevant to the area of labour law jurisprudence in our country in the interest of maintaining industrial peace and harmony which is in larger public interest.

69. Further there has been considerable discussion in the area of determining the relevant test relating to the jurisprudence of employer-employee relationship. Sometimes, we have fallen back on the old principles of master and servant and quite often when we find that these were not capable of delivering justice to the workers keeping with the principles contained in our Directive Principles of State Policy as enshrined in Part IV of the Constitution, this Court has taken note of this difficult situation and has devised new tests to meet the challenges of the new times.

70. That is why the legal principle has been enunciated by this Court right from Hussainbhai [Hussainbhai v. Alath Factory Thezhilali Union, (1978) 4 SCC 257 : 1978 SCC (L&S) 506] , M.M.R. Khan [M.M.R. Khan v. Union of India, 1990 Supp SCC 191 : 1990 SCC (L&S) 632 : (1991) 16 ATC 541] and Parimal Chandra Raha [Parimal Chandra Raha v. LIC, 1995 Supp (2) SCC 611 : 1995 SCC (L&S) 983 : (1995) 30 ATC 282] to Harjinder Singh v. Punjab State Warehousing Corpn. [Harjinder Singh v. Punjab State Warehousing Corpn., (2010) 3 SCC 192 : (2010) 1 SCC (L&S) 1146] establishing the trend of healthy constitutional jurisprudence and its application to labour law keeping in mind the basic feature of the Constitution, namely, to render social justice to the weaker sections of the society as has been held by this Court in Kesavananda Bharati v. State of

Kerala [(1973) 4 SCC 225] . The concept of social justice has been vividly explained in Harjinder Singh [Harjinder Singh v. Punjab State Warehousing Corpn., (2010) 3 SCC 192 : (2010) 1 SCC (L&S) 1146] , the relevant paragraph of which is extracted hereunder: (SCC pp. 209-10, para 30)

> *"30. Of late, there has been a visible shift in the courts' approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalisation and liberalisation are fast becoming the raison d'être of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganised workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman/employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrongdoer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood."*

71. Courts in this country have been faced with the problem to resolve the dilemma as to who is really an independent contractor and who is not? In the light of

the Constitution Bench decision in SAIL case [SAIL v. National Union Waterfront Workers, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121] on the subject, the crucial test is to determine whether the nature of the contractual relationship between the parties that is juristically introduced is a genuine one or a sham contract. It must be noted that employers and their organisations and indeed all parties to labour litigation keep close watch on the evolving jurisprudence and tailor legal agreement and paper contracts accordingly to suit the purpose of finding the cheapest and most exploitable labour with honourable exceptions as we have seen in the case of the railway management. This craze for facilitating "flexible labour" which is another phrase for "hire and fire" deserves no constitutional sympathy."

(*emphasis added*)

(ix) Reliance has also been placed on ***Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of T.N***. (2004) 3 SCC 514, wherein the Supreme Court emphasized that the determination of an employer-employee relationship is a question of fact, requiring consideration of all circumstances, with no single conclusive test, and that courts should defer to findings of industrial adjudicators unless they are manifestly erroneous or perverse. Relevant paragraphs are extracted as under:

"***Determination of relationship***

32. Determination of the vexed questions as to whether a contract is a contract of service or contract for service and whether the employees concerned are employees of the contractors has never been an easy task. No decision

of this Court has laid down any hard-and-fast rule nor is it possible to do so. The question in each case has to be answered having regard to the fact involved therein. No single test — be it control test, be it organisation or any other test — has been held to be the determinative factor for determining the jural relationship of employer and employee.

……

Tests

34. This Court beginning from Shivnandan Sharma v. Punjab National Bank Ltd. [(1955) 1 LLJ 688 : AIR 1955 SC 404] and Dharangadhra Chemical Works Ltd. v. State of Saurashtra [(1957) 1 LLJ 477 : AIR 1957 SC 264] observed that supervision and control test is the prima facie test for determining the relationship of employment. The nature or extent of control required to establish such relationship would vary from business to business and, thus, cannot be given a precise definition. The nature of business for the said purpose is also a relevant factor. Instances are galore there where having regard to conflict in decisions in relation to similar set of facts, Parliament has to intervene as, for example, in the case of workers rolling bidis.

……

50. The question whether the relationship between the parties is one of employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse.

……

Employment and non-employment

65. Employment and non-employment indisputably is a matter which is specified in the Second and Third Schedules of the Industrial Disputes Act. The concept of employment involves three ingredients, which are : (i) employer — one who employs i.e. engages the services of other persons; (ii) employee — one who works for another for hire; and (iii) contract of employment — the contract of service between the employer and the employee whereunder the employee agrees to serve the employer subject to his control and supervision. On the other hand, non-employment being negative of the expression "employment" would ordinarily mean a dispute when the workman is out of service. When non-employment is referable to an employment which at one point of time was existing would be a matter required to be dealt with differently than a situation where non-employment would mean a contemplated employment.

……

Camouflage

68. Whether a contract is a sham or camouflage is not a question of law which can be arrived at having regard to the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. It is for the industrial adjudicator to decide the said question keeping in view the evidences brought on record.

……

86. In Bharat Heavy Electricals Ltd. v. State of U.P. [(2003) 6 SCC 528] the workmen concerned were engaged as gardeners to sweep, clean, maintain and look after the lawns and parks inside factory premises and campus of the residential colony of the appellant

through the agencies of Respondents 3 to 5; therein their services were terminated pursuant whereto an industrial dispute was raised before the Tribunal, the employer did not produce any records. Having applied the control test and in view of the fact that the records of the workmen concerned had not been produced, this Court did not interfere with the award of the Tribunal and the judgment of the High Court.

89. In Dharangadhra Chemical Works Ltd. v. State of Saurashtra [(1957) 1 LLJ 477 : AIR 1957 SC 264] this Court upon noticing several authorities held : (AIR p. 268, paras 14-16)

> *"14. The principle which emerges from these authorities is that the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work, or to borrow the words of Lord Uthwatt at p. 23 in Mersey Docks and Harbour Board v. Coggins & Griffiths (Liverpool) Ltd. [1947 AC 1 : (1946) 2 All ER 345 : 115 LJKB 465 : 175 LT 270] (AC at p. 23), 'the proper test is whether or not the hirer had authority to control the manner of execution of the act in question'.*
>
> *15. The nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition. As has been noted above, recent pronouncements of the Court of Appeal in England*

have even expressed the view that it is not necessary for holding that a person is an employee, that the employer should be proved to have exercised control over his work, that the test of control was not one of universal application and that there were many contracts in which the master could not control the manner in which the work was done (vide observations of Somervell, L.J., in Cassidy v. Ministry of Health [(1951) 1 All ER 574 : (1951) 2 KB 343 : (1951) 1 TLR 539 (CA)] and Denning, L.J., in Stevenson, Jordan and Harrison Ltd. v. MacDonald and Evans [(1952) 1 TLR 101 : 69 RPC 10 (CA)]).

16. The correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer or to use the words of Fletcher Moulton, L.J., at p. 549 in Simmons v. Health Laundry Co. [(1910) 1 KB 543 : 79 LJKB 395 : 102 LT 210 : 26 TLR 326 (CA)] (KB at pp. 549, 550):

'In my opinion it is impossible to lay down any rule of law distinguishing the one from the other. It is a question of fact to be decided by all the circumstances of the case. The greater the amount of direct control exercised over the person rendering the services by the person contracting for them the stronger the grounds for holding it to be a contract of service, and similarly the greater the degree of independence of such control the greater the probability that the services rendered

are of the nature of professional services and that the contract is not one of service.' "

92. On the aforementioned backdrop of legal principles, we may now consider the Constitution Bench judgment of this Court in Steel Authority of India Ltd. [(2001) 7 SCC 1 : 2001 SCC (L&S) 1121] The principal question which arose for consideration therein was as to whether having regard to the provisions contained in Section 10 of the Contract Labour (Regulation and Abolition) Act, the workmen employed by the contractors in the event of abolition of contract labour were entitled to be automatically absorbed in the services of the principal employer. While answering the question in the negative the Court reversed the earlier decision of this Court in Air India Statutory Corpn. v. United Labour Union [(1997) 9 SCC 377 : 1997 SCC (L&S) 1344] . This Court referring to a large number of decisions and tracing the history of the Contract Labour (Regulation and Abolition) Act, noticed that the Industrial Tribunal although prior to coming into force could issue directions for such regularization but such directions could not be issued after coming into force of the Act. In view of the Constitution Bench decision in Gammon India Ltd. v. Union of India [(1974) 1 SCC 596 : 1974 SCC (L&S) 252] the Court held that although the principle that a beneficial legislation needs to be construed liberally in favour of the class for whose favour it is intended, the same would not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. Upon analysing the case-

law, the categories of cases were subdivided into three stating : (SCC p. 56, para 107)

> *"107. An analysis of the cases, discussed above, shows that they fall in three classes : (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer."*
>
> (*emphasis added*)

Analysis

19. The challenge by the petitioner is to Award dated 18th April 2023 passed by the Presiding Officer, CGIT-cum-Labour Court – II, New Delhi. The reference by the Government of India, Ministry of Labour and Employment, was to the following effect:

> "*Whether the workman i.e. Sh. Rehmat Khan son of Mr. Mohd. Shaffi and 17 others whose details are enclosed herewith in Annexure HHEC are entitled for reinstatement against the management of the Handicrafts and Handlooms Export Corporation of India as Tailor with all consequential benefits? If not, then, what even the workmen are entitled to*?"

20. As per the clear statement, the workmen had joined the management/petitioner on different dates in the year 1979 onwards on the post of '*Tailor*', and the last drawn salary was in the sum of *Rs.1,500/-* per month. The grievance related to not being paid minimum wages despite petitioner being an undertaking of the Government of India. As per the respondent/workmen, when they raised an issue regarding this and sought proper facilities in accordance with law, the management terminated their services w.e.f. 01st September 1991.

21. It is to be noted that the petitioner did not appear during the proceedings after cross-examining two witnesses of the claimants, and, therefore, the cross-examination of the witnesses was marked '*nil'* by petitioner (*respondent no.1 before the Labour Court*). The evidence was, therefore, closed. *M/s Clothes Channel*/ private contractor (respondent no.2 before the Labour Court), did not appear and was proceeded *ex parte* by order dated 18th January 2019.

22. In this context, therefore, the assertion of claimants/respondents/workmen that they had been engaged at various times from 1979 onwards has not been rebutted in any substantial or effective manner by the petitioner. When questioned regarding any document that the workers had for their appointment, they mentioned in the cross-examination that no appointment letter was issued. In fact, it was categorically stated that none of the workmen had been issued any appointment letter. It was further stated that their status as direct employees had been stated in the statement of claim, but they had no appointment letters in their possession.

23. WW1 (*Sh. Rehmat Khan*) stated that he joined the organization in 1982 and was getting *Rs.1,500/-* per month. They used to get salary in cash after signing the salary register. In contrast, the assertion of the management was only that they were engaged through respondent No.2 (*M/s. Clothes Channel*) in 1990 through an agreement of 26th February 1990 and a subsequent agreement of 03rd April 1991.

24. The fact that a contractual arrangement was introduced in 1990/1991 does not shed light on the status of the workmen prior to 1990. The workmen have been quite candid in stating that they were working, were paid salary in cash by signing in the attendance register, and had not been issued appointment letters, but were indeed paid. No evidence was produced by the management to controvert this assertion. No copy of the attendance register was filed as part of the evidence by the management. A copy of an attendance register was physically handed over to this Court during arguments; however, that could not

be determinative of the issue since it bore no date, although it did show that the workmen were duly signing in the attendance register.

25. WW2 (*Sh. Bindan Singh*) was also cross-examined by the management/petitioner. He stated clearly that he was getting his salary from petitioner and not from *M/s Clothes Channel*, and that he was working for petitioner under their supervision and control. The impugned award notes this and states that the documents filed by the workmen, including their bank passbooks and attendance registers, prove that from the date of their engagement till date of termination, they were working under the establishment of petitioner under the supervision and control of its officers. This aspect does not require interference or reassessment, considering that evidence has already been led before the Industrial Tribunal and there is no reason to reappreciate the same, in judicial review.

26. A new issue which arises is the imposition of a contract in 1990, on the basis of which the petitioner seeks to wash its hands off the employment status of the respondents/workmen. Considering that the petitioner had chosen not to cross-examine the other 16 respondents/workers who had given their evidence by way of affidavit (*and the evidence had to be closed*), nor did they bring forward any evidence to support their assertion that the attendance registers for all those years did not contain the signatures of said workmen, or produce any evidence to refute the attendance register which had been examined by the Labour Court. Further, there was no cross-examination done by the petitioner of WW-1/*Sh. Rehmat Khan* in this regard despite the opportunity being given,

and WW-1 was not confronted in any manner during cross-examination by the management. As per the submissions, made by the counsel for respondents/workmen, the Labour Inspector had visited the premises of the petitioner and had concluded that they had indeed been working regularly for the petitioner.

27. What is also evident and informs the decision of the Court is that no reply was given by the management to demand notice dated 04th March 1991. This has been stated in the evidence of *Sh. Rehmat Khan*. However, even on this aspect, the petitioner/management did not cross-examine WW-1 in any manner or produce any evidence to the contrary to show that they had replied to the 1991 notice.

28. It seems, therefore, that the petitioner deliberately chose the strategy of contractual appointment and shifted all the respondents/workmen to *M/s. Clothes Channel* posing as an agency. There is, however, no evidence on record to show that *M/s. Clothes Channel* was indeed paying the respondents/workmen. This is evidence that was within the control of petitioner and, therefore, ought to have been brought on record. *M/s. Clothes Channel*, as respondent no.2 in the Labour Court, did not appear and was proceeded *ex parte*, which does not help the case of the petitioner.

29. Considering that *M/s. Clothes Channel*/respondent no.19 was the contracted agency, there was no reason why evidence and documents would not be brought forward by petitioner or *M/s. Clothes Channel* to counter the

assertion of the workmen. As a result, the Court has no hesitation in approving the findings arrived at by the Industrial Tribunal in this regard.

30. The Courts have held time and again that mere existence of a contractor does not preclude a direct employer-employee relationship, if control and supervision lie with the principal employer. Also, since no evidence was brought on behalf of the petitioner or by *M/s Clothes Channel* (respondent no.19) to establish that the workmen were working under the direction supervision of *M/s. Clothes Channel*, it would have to be safely presumed that the workmen were employed with the petitioner and continued to be so. Reference in this regard is made to decision in ***International Airport Authority of India v. International Air Cargo Workers' Union*** (2009) 13 SCC 374, where the Court has held as under:

> "*38. The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.*
> *39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be*

> *assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor*."
>
> (*emphasis added*)

31. It was also instructive to note the Supreme Court's reiteration that, in exercise of writ jurisdiction, the Court cannot sit in appeal over the findings and Award of the Industrial Tribunal and, therefore, cannot reappreciate evidence. In this regard, the following relevant passages from the decision are extracted 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.*

> *49. In this case, the grounds on which the Union sought relief of absorption and the grounds on which the Tribunal ultimately granted relief are completely different. Having regard to the several decisions in the earlier rounds of litigation, which had attained finality, it is doubtful whether the Tribunal could have considered these issues at all. Even assuming that the Tribunal could have considered the said grounds as having arisen for decision, the question is whether there was any basis or material for its finding and assumptions. Let us examine the findings.*"
>
> (*emphasis added*)

32. It is also being asserted that denial of relief to workmen on hyper-technical grounds undermines constitutional values. The Supreme Court in ***Harjinder Singh v. Punjab State Warehousing Corporation*** (2010) 3 SCC 192, has noted as under:

> "*30. Of late, there has been a visible shift in the courts' approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalisation and liberalisation are fast becoming the raison d'être of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganised workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by-lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman/employee was contrary to some or the other statute or that reinstatement of the workman will put*

> *unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood. 31. It need no emphasis that if a man is deprived of his livelihood, he is deprived of all his fundamental and constitutional rights and for him the goal of social and economic justice, equality of status and of opportunity, the freedoms enshrined in the Constitution remain illusory. Therefore, the approach of the courts must be compatible with the constitutional philosophy of which the directive principles of State policy constitute an integral part and justice due to the workman should not be denied by entertaining the specious and untenable grounds put forward by the employer—public or private.*"
>
> (*emphasis added*)

33. In ***General Manager, (OSD), Bengal Nagpur Cotton Mills v. Bharat Lal*** (2011) 1 SCC 635, the Supreme Court stated that to determine whether a contract is genuine or a sham, the Court must lift the veil and look at the real relationship. Relevant paragraph is extracted as under:

> "*10. It is now well settled that if the industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. Two of the well-recognised tests to find out whether the contract labourers are the direct*

> *employees of the principal employer are: (i) whether the principal employer pays the salary instead of the contractor; and (ii) whether the principal employer controls and supervises the work of the employee. In this case, the Industrial Court answered both questions in the affirmative and as a consequence held that the first respondent is a direct employee of the appellant.*"
> (*emphasis added*)

34. Substantial determination of the vexed question as to whether a contract is a "*contract of service*" or "*contract for service*" and whether the employees concerned are employees of contractors, was done elaborately in ***Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of T.N.*** (2004) 3 SCC 514. In this regard, the following paragraphs from the judgment will be instructed:

> "*32. Determination of the vexed questions as to whether a contract is a contract of service or contract for service and whether the employees concerned are employees of the contractors has never been an easy task. No decision of this Court has laid down any hard-and-fast rule nor is it possible to do so. The question in each case has to be answered having regard to the fact involved therein. No single test — be it control test, be it organisation or any other test — has been held to be the determinative factor for determining the jural relationship of employer and employee.*
> *33. There are cases arising on the borderline between what is clearly an employer-employee relation and what is clearly an independent entrepreneurial dealing.*
> *……*
> *37. The control test and the organisation test, therefore, are not the only factors which can be said to be decisive. With a view to elicit the answer, the court is required to consider several factors which would have a bearing on*

the result : (a) who is the appointing authority; (b) who is the paymaster; (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.

38. With a view to find out reasonable solution in a problematic case of this nature, what is needed is an integrated approach meaning thereby integration of the relevant tests wherefor it may be necessary to examine as to whether the workman concerned was fully integrated into the employer's concern meaning thereby independent of the concern although attached therewith to some extent.

……

50. The question whether the relationship between the parties is one of employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse.

……

68. Whether a contract is a sham or camouflage is not a question of law which can be arrived at having regard to the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. It is for the industrial adjudicator to decide the said question keeping in view the evidences brought on record.

……

94. There cannot be any doubt whatsoever that where a person is engaged through an intermediary or otherwise for getting a job done, a question may arise as the appointment of an intermediary was merely sham and nominal and rather than camouflage where a definite plea is raised in the Industrial Tribunal or the Labour

> *Court, as the case may be, and in that event, it would be entitled to pierce the veil and arrive at a finding that the justification relating to appointment of a contractor is sham or nominal and in effect and substance there exists a direct relationship of employer and employee between the principal employer and the workman. The decision of this Court in Hussainbhai v. Alath Factory Thezhilali Union [(1978) 4 SCC 257 : 1978 SCC (L&S) 506] will fall in that category.*"
>
> (*emphasis added*)

35. For the most astute observation, in respect of this issue, the Supreme Court in ***Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of T.N.*** (*supra*) has rightly relied upon the opinion of Krishna Iyer, J. in ***Hussainbhai v. Alath Factory Thezhilali Union***, (1978) 4 SCC 257 where, in Justice Iyer's inimitable language and articulation, it was stated as under:

> "*4. This argument is impeccable in laissez faire economics "red in tooth and claw" and under the Contract Act rooted in English Common Law. But the human gap of a century yawns between this strict doctrine and industrial jurisprudence. The source and strength of the industrial branch of Third World Jurisprudence is social justice proclaimed in the Preamble to the Constitution. This Court in Ganesh Beedi case [(1974) 4 SCC 43 : 1974 SCC (L&S) 204 : (1974) 1 LLJ 367] has raised on British and American rulings to hold that mere contracts are not decisive and the complex of considerations relevant to the relationship is different. Indian Justice, beyond Atlantic liberalism, has a rule of law which runs to the aid of the Rule of life. And life, in conditions of poverty aplenty, is livelihood, and livelihood is work with wages. Raw societal realities, not fine-spun legal niceties, not*

competitive market economics but complex protective principles, shape the law when the weaker, working class sector needs succour for livelihood through labour. The conceptual confusion between the classical law of contracts and the special branch of law sensitive to exploitative situations accounts for the submission that the High Court is in error in its holding against the petitioner.

5. The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like may be resorted to when labour legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43-A of the Constitution. The court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearances.

6. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of

detachment from the Management cannot snap the real life-bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off."

(*emphasis added*)

36. What is more important to note that the Industrial Tribunal possibly took the best and most proportionate decision, noting that the workmen have been fighting for more than 31 years, and, therefore, only directed an amount of *Rs.5 Lacs* as compensation instead for a direction for reinstatement and back wages. The said compensation was directed to be paid within 60 days from the publication of the Award, which is dated 18th April 2023, and thereafter, an interest @ 6% for any delay till final payment was made.

37. The workmen have been fighting a battle with the petitioner since 1991, since they were terminated, and have been agitating this issue since. In the first round, they had raised a claim before the Labour Court, which returned a finding, against which the petitioner moved to Allahabad High Court, which then held that petitioner/corporation was an establishment of the Government of India and that it could not be the appropriate government to refer the dispute. The matter was referred back to the appropriate industrial adjudicator.

38. The assertion by the petitioner that there were findings by the Allahabad High Court in favour of the petitioner and against the workmen may not be relevant and cannot operate as *res judicata*, since the matter had already been remanded back to a different competent Industrial Tribunal. The Award by the Industrial Tribunal, which is impugned herein, is a fresh Award and the Allahabad High Court's observations will not be relevant in this regard.

Petitioner has been dragging the matter unnecessarily and depriving the workmen of only Rs.5 Lacs of compensation.

39. The petitioner did not use the opportunity to rebut the statements of the workmen in relation to their employment status, including the aspect of supervision and control and the mode of payment to the workmen, as also the length of their engagement with the petitioner. Not a shred of any evidence was advanced except for the agreements with *M/s Clothes Channel*. How the agreements were practicalized in operations remains in the vacuum, invisible and in complete darkness.

40. The workmen's claim for minimum wages ends only in a lump sum compensation of *Rs.5 Lacs* after 31 years, yet the petitioners purse strings are strained despite having lost their chance to place the best case before the Tribunal. Petitioner being an arm of the state is hiding behind an absentee private agency instead of being considerate, reasonable, rational, and just.

41. Having failed to counter the assertions of the workmen, the Tribunal has rightly, therefore, considered the evidence before it and decided in favour of the workmen.

42. Therefore, the petition is dismissed.

43. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

APRIL 28, 2025/MK/tk