



2026:DHC:3960



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

% Reserved on: 19.03.2026  
Pronounced on: 05.05.2026  
Uploaded on: 06.05.2026

+ **W.P.(C) 11245/2019**

SHRI RAM NAYAN

.....Petitioner

Through: Mr. Abhishek Singh, Ms. Priyanka  
and Mr. Karan Chaudhary, Advocates

versus

STATE (GOVT. OF NCT OF DELHI) AND ORS.

.....Respondent

Through: Ms Avni Singh Panel Counsel  
GNCTD for Respondent GNCTD  
Mr. Rajiv Arora, Advocate for  
respondent nos. 2 & 3

**CORAM:  
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT**

1. The present writ petition is directed against the Award dated 12.02.2019 passed in LIR No. 2389/2016 by the learned Presiding Officer, Labour Court, Dwarka Courts, New Delhi, whereby the statement of claim filed by the petitioner-workman came to be dismissed on the ground that the



petitioner failed to establish the existence of an employer-employee relationship with the respondent-management.

2. In the claim application, it was averred that the workman had been in the employment of the management since 11.06.1995 and was working as a “Checker”, drawing last wages of Rs. 4,500/- per month. It was further claimed that despite rendering continuous service, the management failed to provide statutory and legal benefits to the workman, including bonus, leave benefits, overtime dues and other service benefits. It was alleged that when the workman demanded his legitimate dues along with such benefits, the management, on 15.05.2010, terminated his services illegally and unjustifiably without issuing any notice or paying retrenchment compensation. It was further averred that at the time of joining, the management had obtained the signatures of the workman on blank papers. The workman also claimed that he was employed with M/s Madhu Chawla Design Trend (P) Ltd., having its establishment at C-50, Okhla Industrial Area, Phase-II, New Delhi.

3. The management denied any employer-employee relationship with the petitioner and asserted that he was never employed by it. It was stated that the petitioner might have been engaged through a contractor, M/s A.K. Enterprises. It was further pleaded that ESI and PF contributions, if any, were deposited by the management under its own code on behalf of the contractor’s workers. The management also denied the petitioner’s alleged appointment, period of service, wages and termination, and contended that the documents relied upon, including the ESI Card and gate passes, were false and fabricated.



4. Before this Court, learned counsel for the petitioner contended that the learned Labour Court failed to appreciate the material evidence placed on record. It was submitted that the petitioner had filed supporting documents along with his claim, including his ESI Card, gate passes and documents forming part of the conciliation record, period of service and wages, which clearly establish his employment with the respondent-management.

5. *Per contra*, learned counsel for the management supports the impugned Award and submits that the findings of fact recorded by the learned Labour Court ought not to be interfered with in exercise of jurisdiction under Article 226 of the Constitution of India.

6. I have heard learned counsels for the parties and perused the material placed on record.

7. It is well settled that the scope of interference under Article 226 of the Constitution of India is limited. The High Court does not act as an appellate authority to reappreciate evidence. However, where the findings returned by the Labour Court are shown to be perverse or based on a misreading of evidence, this Court would be justified in exercising its writ jurisdiction, as held in *Syed Yakooob v. K.S. Radhakrishnan & Ors*<sup>1</sup>.

8. A perusal of the record would show that the petitioner, in support of his case, led evidence by way of affidavit and relied upon documentary material including his ESI Card, gate passes as well as the conciliation record forming part of the reference. The reference order issued by the appropriate Government, based on conciliation proceedings, records the existence of an industrial dispute between the management and the workmen

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<sup>1</sup> (1964) 5 SCR 64.



named therein. Annexure 'A' to the said reference contains the name of the petitioner at Serial No. 18 along with his designation as "Checker", date of appointment as 11.06.1995, date of termination as 15.05.2010 and last drawn wages of Rs.4,500/- per month, thereby constituting a contemporaneous official record reflecting his engagement with the respondent-management. The ESI Card, being a statutory document, and the gate passes placed on record further lend support to the petitioner's claim of having worked in the establishment of the respondent-management.

9. Despite the aforesaid material, the Labour Court failed to properly appreciate the evidence on record and erroneously concluded that the petitioner had failed to establish the existence of an employer-employee relationship.

10. The defence of the management, as reflected in its written statement, was that the petitioner was not its employee and might have been deployed through a contractor, namely M/s A.K. Enterprises. The relevant extract from the written statement is reproduced herein below:

*"2....That without prejudice what has been stated above, it is submitted that the claimant might have been deployed by contractor M/s A.K. Enterprises, D-48, Harsh Vihar, Hari Nagar-III, Badarpur, New Delhi-110044, in the establishment of the management, with whom management had the contract for manpower supply and claimant must have been one of those who might have been employed by said contractor M/s A.K. Enterprises. Since, duty is cast upon the principal employer, i.e., answering management for compliance of statutory provisions of deduction of ESI and PF and as said contractor M/s A.K. Enterprises did not have its own ESI & PF code numbers, the same was deposited by the management on behalf of the employee of M/s A.K. Enterprises, who was working in the establishment of the management, under its own ESI & PF Code and the amounts so deposited by the management towards ESI & PF on behalf of employees of the contractor, used to be deducted by the answering management from the bills raised by contractor M/s A.K. Enterprises for the manpower supply."*



From the aforesaid extract, it is evident that the plea that the petitioner “might have been deployed” through a contractor is vague and uncertain. Notably, the management has admitted that ESI and PF contributions in respect of the petitioner were deposited under its own code, albeit allegedly on behalf of the contractor. However, no agreement, record, or testimony of the alleged contractor has been brought on record to substantiate the said plea. The contractor has neither been examined nor summoned. The defence of the management, as reflected in its written statement, that the petitioner was engaged through a contractor, remains unsubstantiated, inasmuch as no documentary evidence, agreement or testimony of the alleged contractor has been brought on record. It is well settled that while the initial burden to establish the existence of an employer-employee relationship lies upon the workman, such burden is not required to be discharged to the extent of proving the case beyond doubt. Once the workman places on record *prima facie* material, including statutory documents such as the ESI Card and other contemporaneous records indicating his engagement, the onus shifts upon the management to rebut the same by producing relevant records in its possession. A mere denial, in the absence of any supporting evidence is insufficient to dislodge the case set up by the workman. In *Bharat Heavy Electricals Limited v. Mahendra Prasad Jakhmola & Ors*<sup>2</sup>, the Hon’ble Supreme Court reiterated that the test of “control and supervision” along with factors such as payment of wages, appointment and disciplinary control are relevant in determining the existence of an employer-employee relationship. The relevant extracts are herein below:

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<sup>2</sup> (2019) 13 SCC 82



“22. The expression “control and supervision” were further explained with reference to an earlier judgment of this Court as follows: (Bengal Nagpur Cotton Mills case [Bengal Nagpur Cotton Mills v. Bharat Lal, (2011) 1 SCC 635 : (2011) 1 SCC (L&S) 16] , SCC pp. 638-39, para 12)

“12. The expression “control and supervision” in the context of contract labour was explained by this Court in *International Airport Authority of India v. International Air Cargo Workers' Union* [*International Airport Authority of India v. International Air Cargo Workers' Union*, (2009) 13 SCC 374 : (2010) 1 SCC (L&S) 257] thus: (SCC p. 388, paras 38-39)

‘38. ... 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...’

23. From this judgment in *Bengal Nagpur Cotton Mills case* [Bengal Nagpur Cotton Mills v. Bharat Lal, (2011) 1 SCC 635 : (2011) 1 SCC (L&S) 16] , it is clear that Test No. 1 is not met on the facts of this case as the contractor pays the workmen their wages. Secondly, the principal employer cannot be said to control and supervise the work of the employee merely because he directs the workmen of the contractor “what to do” after the contractor assigns/allots the employee to the principal employer. This is precisely what para 12 of *Bengal Nagpur Cotton Mills case* [Bengal Nagpur Cotton Mills v. Bharat Lal, (2011) 1 SCC 635 : (2011) 1 SCC (L&S) 16] explains as being supervision and control of the principal employer that is secondary in nature, as such control is



*exercised only after such workman has been assigned to the principal employer to do a particular work.*

*24. We may hasten to add that this view of the law has been reiterated in Balwant Rai Saluja v. Air India Ltd. [Balwant Rai Saluja v. Air India Ltd., (2014) 9 SCC 407 : (2014) 2 SCC (L&S) 804] , as follows: (SCC pp. 437-38, para 65)*

*“65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:*

- (i) who appoints the workers;*
- (ii) who pays the salary/remuneration;*
- (iii) who has the authority to dismiss;*
- (iv) who can take disciplinary action;*
- (v) whether there is continuity of service; and*
- (vi) extent of control and supervision i.e. whether there exists complete control and supervision.*

*As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case [Bengal Nagpur Cotton Mills v. Bharat Lal, (2011) 1 SCC 635 : (2011) 1 SCC (L&S) 16] , International Airport Authority of India case [International Airport Authority of India v. International Air Cargo Workers' Union, (2009) 13 SCC 374 : (2010) 1 SCC (L&S) 257] and Nalco case [NALCO Ltd. v. Ananta Kishore Rout, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353] .”*

The admission of the management regarding deposit of statutory contributions under its own code further reinforces this position. The management has failed to establish the existence of any such contractor or contractual framework. In the absence of any material to show that wages were paid or employment regulated through a contractor, the defence sought to be raised by the management cannot be accepted. The documentary evidence on record establishes that the workman was working under the control and supervision of the respondent-management. The management has failed to discharge the burden of proving otherwise.



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11. In view of the aforesaid, this Court is of the considered opinion that the finding returned by the learned Labour Court, to the effect that the petitioner failed to establish employer-employee relationship, is perverse and contrary to the material available on record.

12. Accordingly, the petition is allowed in the above terms and the impugned Award dated 12.02.2019 is set aside.

13. In view of the peculiar facts and circumstances of the present case, the prolonged litigation spanning several years and the impracticability of reinstatement at this stage, this Court is of the considered opinion that the ends of justice would be adequately met by awarding lump-sum compensation in lieu of reinstatement and back wages. Consequently, the respondent-management is directed to pay a sum of Rs. 5,00,000/- (Rupees Five Lakhs only) in four weeks whereafter, an interest @12% would be leviable.

14. Accordingly, the appeal is disposed of.

**MANOJ KUMAR OHRI  
(JUDGE)**

**MAY 05, 2026**

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