



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

% Reserved on: 19.03.2026
Pronounced on: 05.05.2026
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+ **W.P.(C) 11246/2019**

MANOJ KUMAR

.....Petitioner

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

versus

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 07.02.2019 passed in LIR No. 2105/2016 (Old I.D. No. 607/14) by the learned Presiding Officer, Labour Court-IX, Dwarka Courts, New Delhi, whereby the claim of the petitioner-workman, whereby the claim petition filed by the petitioner/workman has been dismissed.

2. The case of the petitioner/workman, as set up before the learned Labour Court, was that he had been in the employment of the respondent-management since 16.10.1998 and was working as a *Stitching Master*, drawing last wages of Rs. 4,500/- per month. It was alleged that his services



were terminated illegally on 15.05.2010 without compliance of statutory requirements such as the management did not give him any notice and retrenchment compensation.

3. The case of the respondent-management was that there existed no relationship of employer and employee between the parties and that the petitioner was never in its employment.

4. Before this Court, learned counsel for the petitioner/workman contended that the learned Labour Court has erred in holding that the petitioner failed to establish the relationship of employer and employee. It was submitted that the petitioner had, in fact, placed on record documentary material in support of his case in the form of a copy of the list of 62 employees whose ESI Smart Forms submitted with ESI on 05.11.2009 (Mark 'B'). It was urged that the learned Labour Court has failed to appreciate the said material and has wrongly proceeded on the premise that no document was filed by the petitioner.

5. *Per contra*, learned counsel for the respondent-management supported the impugned Award and submitted that the findings recorded by the Labour Court are based on proper appreciation of evidence and do not warrant interference in exercise of jurisdiction under Article 226 of the Constitution of India. It was contended that the petitioner had failed to discharge the burden of proving the existence of employer-employee relationship and that the claim petition was rightly dismissed. In this regard, reliance has been placed on the decision in Syed Yakoob v. K.S. Radhakrishnan & Ors¹

¹ (1964) 5 SCR 64.



6. I have heard learned counsel for the parties and perused the material 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 Yakoob(*supra*).

8. 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 and contemporaneous documents, the onus shifts upon the management to rebut the same by producing relevant records in its possession.

9. In this context, it is apposite to refer to the decision of the Hon'ble Supreme Court in Bharat Heavy Electricals Limited v. Mahendra Prasad Jakhmola & Ors², wherein it has been held that factors such as appointment, payment of wages and control and supervision are relevant in determining the existence of an employer-employee relationship. The expression "control and supervision" has been explained in the following terms:

"22. The expression "control and supervision" were further explained with reference to an earlier judgment of this Court as follows: (Bengal

² (2019) 13 SCC 82



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].”

10. A perusal of the record shows that the petitioner, in support of his case, led evidence by way of affidavit filed no documentary material except a copy of the list of 62 employees whose ESI Smart Forms submitted with ESI on 05.11.2009 and conciliation record forming part of the reference. Concededly, the said list does not include the name of Workman.

11. Applying the aforesaid principles to the facts of the present case, it is evident that the workman has failed to discharge the said burden.

12. Accordingly, the impugned Award is upheld and the appeal is dismissed.

**MANOJ KUMAR OHRI
(JUDGE)**

MAY 05, 2026/kb