

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

Judgment reserved on: 27.10.2017

Judgment pronounced on: 23.11.2017

+ **W.P (C) No. 18567/2004**

KHUBHI RAM

..... Petitioner

Through: Mr.Avadh Kaushik, Adv.
versus

M/S. ASHOK LEYLAND LTD.

..... Respondent

Through: Mr.Arvind Kumar Gupta, Mr.
Amit Mehta and Mr.Prashant
Bhardwaj, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

1. These proceedings emanate from reference No.F.24 (1144)/93-LAB, whereby and whereunder the Government of National Capital Territory of Delhi, through the Secretary (Labour), referred an industrial dispute, raised by the petitioner, for adjudication to the learned Labour Court (II), Karkardooma. The contention of the petitioner was that, though he had served the respondent, as dispatch clerk, satisfactorily from 24th November 1986 to 20th August 1992, his services were abruptly terminated on 20th August 1992, without complying with the mandate of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). He contended that, though he had visited the office of the respondent till 30th August

1992, he was not permitted to work, thereby compelling him to raise the aforementioned industrial dispute.

2. The term of reference as drawn up by the Government while referring the aforementioned industrial dispute for adjudication to the learned Labour Court read thus:

“Whether the services of Shri Khubhi Ram have been terminated by the management illegally and/or unjustifiably and if so, to what relief is he entitled and what direction are necessary in this respect?”

3. Statement of Claim was filed, by the petitioner, before the learned Labour Court, on 04th November 1993. The petitioner sought, therein, to assail his termination, by the respondent, on 20th August 1992, on the ground that it had been effected without complying with Section 25F of the Act. He also submitted that, though he had been employed, with the respondent, since 24th November 1986, as dispatch clerk, on wages of Rs.1100/- per month, the respondent had, illegally, not issued any appointment letter to the petitioner. Similarly, he submitted that no attendance card, leave book, ESI card and Provident Fund Account etc. were maintained by the respondent qua him. It was also contended that the respondent did not even pay him minimum wages and that his abrupt termination was a retaliation to a demand, by him, therefor. Salary, the petitioner contended, was paid to him against vouchers.

4. The Statement of Claim further stated that the petitioner had, on 14th November 1992, issued a demand letter/notice to the

respondent, demanding that he be taken back in service. On finding no response thereto, the petitioner raised an industrial dispute which, as already stated hereinabove was referred by the appropriate Government to the learned Labour Court for adjudication.

5. In support of his case, the petitioner attached with his Statement of Claim, the following documents, by way of his evidence:

1. Photocopy of the letter date. 26.7.90 vide no. 397/20. Govt. of India Dept. of posts for issue of the license for Franklin Machine vide Mfg. No. of the machine K4784/XUN(IV)
2. Photocopy of the letter date. 29.6.92 vide no. Tech/FM/D(C)- 387/92 issued by Govt. of India of posts for license for Franklin Machine as above.
3. Photocopy of document/ Franklin Machine window ticket-vide license no. date. Tech/FMD(C)- 397/92dt.5.6.92to valid up to 4.6.95.
4. Photocopy of dispatch register from 12.1.88 to 3.2.88 in handwriting of the workman Sh. Khubhi Ram in 11 pages.
5. Photocopy of the dispatch register from 12.1.88 to 3.2.88 in handwriting of the workman in 7 pages.
6. Photocopy of dispatch register from 10.2.88 to 26.2.88 in handwriting on workman in 6 pages.
7. Photocopy of the dispatch register from 3.3.88 to 29.3.88 in handwriting of the workman in 9 pages.
8. Photocopy of the dispatch register from 6.4.88 to 29.4.88 in handwriting of workman in 10 pages.
9. Photocopy of dispatch register from 2.5.88 to 26.5.88 in handwriting of the workman 6 pages.
10. Photocopy of dispatch register from 2.6.88 to 27.6.88 in handwriting of workman 4 pages.
11. -do- from 12.7.88 to 13.7.88 – 2 pages.
12. -do- 2.9.88 to -do 3 pages

13. -do- 27.10.88 to 28.10.88 -do 6 ”
14. -do- 22.11.88 to 28.11.88-do 6 ”
15. ” 1.12.88 to 9.12.88” 12 ”
16. ” 14.8.89 to 23.8.89 ” 19
”
17. ” 12.9.89 to 18.9.89 ” 20
”
18. ” 26.10.89 to 31.10.89 ” 13 ”
19. ” 1.11.89 to 28.11.89 ” 13
”
20. ” 30.12.89 ” 4
”
21. ” 6.6.90 to 6.1.91 ” 3
”
22. ” 12.12.91 ” 2
”
23. Photocopy of Annexure ‘C’ (Dept. of parts),
(counterfoil) obtained the signature of workman pages
1 to 7 date. 22.10.91 to 30.1.91.
24. -do- 1.1.91 to 29.11.91 ” 10 pages
25. ” 10.12.91 to 30.12.91 ” 10 ”
26. ” 6.1.92 to 30.1.92 ” 7 ”
27. ” 1.2.92 to 29.2.92 ” 14 ”
28. ” 5.2.92 to 31.3.92 ” 10 ”
29. ” 1.4.92 to 29.4.92 ” 15 ”
30. ” 8.5.92 to 28.5.92 ” 11 ”
31. Photocopy of dispatch register 18.6.92 to 26.6.92 (13
pages) in handwriting of workman and approved by
administrative officer, Sh. N. Venkatraman.
32. ” 1.7.92 to 3.7.92 (6pages) -do-
33. -do- 13.8.92 to 14.8.92(4 pages) ”
34. ” 1.6.92 to 26.6.92 and 3.7.92 approved by
Regional account and regional manager and signed by
the workman.
35. Photocopies of Annexure C (counter folio) 7.7.92 to
29.7.92 12 pages
36. ” 1.8.92 to 14.8.92 -do-
37. ” dispatch register from 19.10.91 to 14.10.92 (postal
expenses with postal stamped) pages 18 prepared by the
workman

38. ” of Annexure-B(to a company each consignment of Franked postal articles tendered for dispatch (date 1.01.0.91 to 14.8.92) prepared by workman and signed by the workman-pages-109.
39. ” medical bill dt. 29.6.88 for 14 days approved by regional accountant and Regional manager on 14.7.88.
40. ” of details of stationery received by workman on behalf of the management from Shyam Stationery dt. 7.10.91.
41. ” of bill approved by Regional Accountant & Regional Manager, dt. 31.9.91 to 4.10.91
42. ” Modi Xerox machine received by workman on behalf of the management signed by divisional manager on 25.2.92.
43. ” dt. 30.6.92 ” (including 4 other pages).
44. Bill machine Modi Xerox on 31.7.92 received by workman approved by division manager with stamp (46pages),
45. Stationery bill dt. 7.10.91 received by workman approved by Regional Account & manger....4p.
46. Photocopy of authority to the workman by divisional manger of payment receiving from Account No. 01 CHC 6004 on 23.7.92, 21.7.92, 28.7.92, 25.7.92, 24.7.92, 1.8.92, and 18.8.92
47. Photocopy of account no. 272 opened on 15.7.88 Canara Bank in B.S.Z Marg, New Delhi in the name of workman at the address on the management.
48. Photocopies of life insurance policies in the name of workman at the address of the management.
49. The life insurance corporation of India, dt. 28.7.89 and installment slips are Annexured herewith.”

6. The respondent filed its Written Statement, refuting the case sought to be set up by the petitioner, and adopting the stance that the petitioner had never been employed with the respondent at all. The alleged relationship of employer and employee, between the petitioner and respondent, was, therefore categorically and unequivocally denied, by the respondent.

7. The petitioner filed his affidavit-in-evidence, in response where to the respondent initially filed an affidavit, in evidence, of one Shave Thakur Singh, Senior Executive and, thereafter, filed another affidavit, dated 17th January 2000, of Atul Andley. Reliance was placed, by the respondent on the latter affidavit, and Atul Andley, appeared as MW-1 on behalf of the respondent.

8. The record of examination, and cross-examination, of the petitioner, and the respondent, merit reproduction, *in extenso*, thus:

(i) WW-1 – the petitioner:

“The affidavit Ex. WW1/A bears my signature which I tendered in evidence along with document Ex. WW1/1 to WW1/62. At present I am unemployed and could not get employment despite my best efforts.

xxxx by Sh. Aravind Gupta, Ld. A.R. of the management.

No appointment letter was issued to me at the time of my appointment. The salary used to be paid to me against vouchers. I have vouchers in my possession but the same I have not filed on record. I am Xth class fail. I applied for the post of dispatch clerk to General Manager Mr. MD Kapoor and that time Shri MD Kapoor used to sit in the office of management at Tej Bhawan near ITO. I do not have the copy of my application addressed to Sh. MD Kapoor for my appointment. It is incorrect that I never applied for any job with the management. It is also incorrect that they had never worked with the

management. It is incorrect that Sh. MD Kapoor was never a General Manager with the management. The registered office of the company of management is Raja Ji Salai Marg, Madras. In Delhi there is Regional Office of Delhi. It is incorrect that General Manager does not sit in the Regional Office and in the hierarchy there is Regional Manager. It is incorrect that the copy of dispatch register Ex WW1/11 to Ex WW 1/54 are not dispatch registers of the management. It is incorrect that these are forged and fabricated document. There is no stamp of the management on the dispatch register because there is no such practice of putting stamp of the company on dispatch register. It is correct that Sh. R. P. Vohra was Regional Manager in the 1986 and 1987.

My family consists of myself, my wife and three sons. My eldest son is 13 years old and the next son is 11 years old and my youngest son is 9 years old. All the three are studying in the MCD School.

My father does agriculture in the village and sends beej etc. to my house. I also take my family expenses for my elder brother. It is incorrect that I have gainfully employed and getting salary by doing service. It is incorrect that I am doing service apart from the document already filed by me on record. I do not have any document to show that I was employed with the management. It is wrong to suggest that I was never in the employment of the management.”

(ii) MW-1 – Sh. Atul Andley:

“I have filed the affidavit dated 17.1.2000. The same is based on information relied from the record. From the record Sh. Khubi Ram was

never in employment with Ashok Leyland Ltd. I have brought original attendance register for the period 1987 to 1993. The affidavit is Ex MW 1/6. The said affidavit has been signed by me at point-A. In addition to this, all the employees were paid salary by cheque and with payslip. Minimum qualification of all the employees is 10th pass as per our company's policy.

xxx on behalf of Management by AR of the Workman.

I am only deposing on the basis of record, and not on personal record. I do not know the concerned workman. I never saw workman in my office. 1st time I saw the workman in Labour Commissioner office. I cannot tell as to whether the management filed any reply before the Conciliation Officer or not. I cannot show the reply filed before the Conciliation Officer today. I do not have any knowledge if the workman namely, Khubi Ram was associated in any capacity with our office or not. Khubi Ram never used to come in the office as per my knowledge. I cannot say whether Ex. WW 1/7 was sent on behalf of the company or not. It is correct that the two notices dated 14.11.1992 and 17.8.1992 were received by the management and reply to those letters were given, but I do not remember the dates of those replies. Ex WW 1/7 was the reply sent by our Advocate. I do not know about the administrative policy for reviewing the records/documents/register once in two years and which are not likely to be referred back are destroyed. I will have to check in my office and if available, I will produce them on the next date of hearing.

Deferred in view of these facts and circumstance, the further cross-examination of the witness is deferred and the witness is directed to produce the above said documents.

(Continued)

There is no policy in writing with regard to weeding of the record which were called for by the workman vide his Application dated 7.7.1997. An affidavit dated 6.8.1998 was filed by selling B. Khaitan, Regional Manager of the company in this regard on the Court file. It is wrong to suggest that the records sought for vide application dated 7.7.1997 was not produced intentionally to deny the claim of the workman. I cannot say why Khubi Ram has filed case against the management. (Objected to). We never keep any casual or temporary employee in the company i.e. Delhi office. It is incorrect to suggest that Sh. Khubi Ram was an employee of the company and he worked in company w.e.f. 24.11.1986 as Dispatch Clerk. It is wrong to suggest that the management terminated the services of Sh. Khubi Ram on 20.8.1992. Vol, as he was not in our employee at any time. I cannot say whether any Labour Inspector had visited the office of the company in the year 1992. It is incorrect to suggest that I am deposing falsely.”

9. Having recorded the evidence of the petitioner and Shri Atul Andlay, MW-1, on behalf of the Management of the respondent, the Labour Court proceeded, *vide* the impugned Award dated 13th November 2003, to, at the outset, frame the following two issues, as arising in the case for its consideration:

- “(i) Whether there exist relationship of servant and master between the parties?
- (ii) To what relief, if any, is the workman entitled in terms of reference?”

10. The learned Labour Court, thereafter, proceeded to decide both the issues, thus framed, against the petitioner. Dealing with Issue No (i), the Labour Court held that the documents relied upon by the petitioner, failed to establish any employer-employee relationship between him and the respondent, as there was no document pertaining to the year 1986, when the petitioner claimed to have been employed by the respondent. The account book and LIC policy filed by the petitioner, too, it was noted, pertained to 15th July 1988, and to the period after 1989, respectively. It was further held that no adverse inference could be drawn, against the respondent, for not producing the record demanded by the petitioner, as it was the stand of the respondent that it had no employer-employee relationship with the petitioner. On the ground, therefore, that the petitioner had failed to prove his engagement, with the respondent, w.e.f. 24th of November 1986, at the rate of Rs. 1100/- per month, the Labour Court decided Issue No (i) against the petitioner, and in favour of the respondent-Management. Having thus decided Issue No (i) against the petitioner, the Labour Court, quite naturally, went on to hold that Issue No (ii) was also, per corollary, required to be decided in favour of the Management as, in the absence of any employer-employee relationship between the petitioner and the respondent, there could,

quite obviously, be no question of termination, of the former by the latter.

11. The present writ petition, at the instance of the petitioner, challenges the aforementioned award, dated 13th November 2003.

12. The petitioner has, in the writ petition, emphasized the following submissions as being, in his estimation, more than sufficient to establish the employer-employee relationship between the respondent and himself:

(i) He had reiterated, in his cross-examination, the fact that no appointment letter had been issued to him, and that salary was being paid to him against vouchers.

(ii) The Dispatch Register was maintained in the petitioner's handwriting, using the Franklin Machine. All pages of the Dispatch Register were exhibited, before the Labour Court.

(iii) The petitioner had been authorized, by RP Vohra, Regional Manager of the respondent-Company, to withdraw money from the bank. The said authority letter, and cheques issued, pursuant to such authority, had been filed by the petitioner and proved before the Labour Court.

(iv) The petitioner had been reimbursed the expenses incurred by him on the conveyance used for carrying out the work of the respondent. Copies of the vouchers approving the said payments, as issued by the sanctioning authority (the Divisional Manager) had been filed and exhibited before the Labour Court.

(v) Satisfactory installation of the photocopy machine purchased by the respondent, had been certified by the petitioner. All papers, relating to the said procurement and installation of the machine, bore the petitioner's signature, and had been exhibited before the Labour Court.

(vi) The LIC policy of the petitioner showed the address of the respondent, and the fact that the petitioner was employed there.

(vii) The petitioner had also received, on behalf of the respondent, stationery, purchased from Shyam Stationers, and certified the same. These documents were also exhibited before the Labour Court.

(viii) The finding, of the learned Labour Court, to the effect that none of the documents filed by the petitioner pertained to 1986, indicated non-application of mind, as the petitioner had, in fact, worked with the respondent from 24th November 1986 to 28th August 1992.

(ix) The stand of the respondent was vacillating in nature. In its response to the demand notice issued by the petitioner, the contention of the respondent was that the petitioner used to supply tea and coffee at the office of the respondent, for which it was paid, and that the petitioner had never been regularly employed by the respondent. As against this, in the written submission filed before the Labour Court, no such stand was taken, though the employer-employee relationship, between the petitioner and respondent, was denied.

(x) The evidence produced by MW-1 Atul Andley was entirely unworthy of credence, in view of his own statement that his deposition was based solely on the basis of the records, and on the fact that he did not find the petitioner's name reflected in the employees' register from the year 1987 to 1993. He also went on to state that he did not know whether the petitioner had been employed by the respondent or not. He was unable to produce the originals of the documents filed by the petitioner, but admitted that he was unaware of any weeding out policy in the respondent-Company.

13. The respondent has filed a counter-affidavit, in response to the writ petition, contending, *inter alia*, that the attendance register maintained by the respondent could be regarded as conclusive proof of the employees employed by it. The absence of the name of the petitioner, therein, indicated that the petitioner had never been employed by the respondent. The allegation that the stand of the respondent was vacillating, was also denied, stating that the reply, by the respondent, to the demand notice of the petitioner, in stating that the petitioner was supplying tea and coffee to the respondent, for which he was paid, only went to support the stand of the respondent, that the petitioner had never been employed by it. In fine, the respondent, predictably, prays for dismissal of the writ petition with costs.

14. I have perused the records the case, including the records of the court below, and heard Mr. Avadh Kaushik and Mr. Arvind Kumar Gupta, learned counsel for the petitioner and respondent respectively. I have also gone through the written submissions filed by them.

15. Mr. Kaushik, appearing for the petitioner, submits that his client had adduced more than sufficient material, before the Labour Court, to establish the fact that he was the respondents' employee. Particular attention was, in this regard, invited to the LIC policy, the bank account of his client, the cheques issued by the respondent, bearing the petitioner's signature on the reverse, and his client's signature on the Dispatch Register, stated to have been maintained, by him, on behalf of the respondent. He also emphasized the fact that MW-1, Atul Andlay, had admitted to having deposed, as he had, only on the basis of his perusal of the records, and not on his personal knowledge, as also the fact that he was ambivalent regarding the employment, or otherwise, of the petitioner with the respondent.

16. *Per contra*, Mr. Gupta, learned counsel for the respondent, submitted that the case of the petitioner deserved to be dismissed even for the sole reason that, despite his repeated assertion, during his cross-examination and thereafter, that he had, in his possession, the vouchers whereagainst salary was, as per the petitioner, disbursed to him, no such vouchers had been produced by him. Mr. Gupta asserts that, had such vouchers been produced, the matter would have rested there; the inability, of the petitioner, to produce the said vouchers,

would, contrariwise, he submits, establish the falsity of the petitioner's case. He stressed the fact that his client had, before the Labour Court, filed the Attendance Register relating to the respondent, which did not bear the name of the petitioner. He refuted the reliability of the Dispatch Registers, also submitting, in this regard, that they had not been put to MW-1. He drew my attention to the apparent dissonance in the handwriting wherein, on the body of the "reimbursement slips" stated to have been issued by the respondent, reimbursing conveyance charges incurred by the petitioner, the name of the petitioner, and the description of the slip had been entered. That apart, Mr. Gupta emphasized the fact that all documents filed by the petitioner were photocopies, and no originals had been tendered in evidence. In these circumstances, Mr. Gupta would assert, no case for interference, by this court, with the impugned Award of the Labour Court, exists.

17. Paras 7 and 8 of the impugned Award, which contain the entire reasoning thereof, the gist whereof already stands extracted in para 9 (*supra*) read as under:

"7. I have considered respective submissions of both the Ld ARs and gone through the record. The workman is relying on the dispatch registers produced by him belonging to the management, which is the evidence to establish his employment with management. It is admitted case of the workman that no appointment letter issued by management to him. The workman also not produced any ESI card, PF or any other documents issued by any Govt. Department in his name. In my considered opinion these documents relied by workman failed to establish any relation between the employment of the workman with the management. Now

coming to the documents Ex. WW 1/56, Account book Ex WW 1/57 to WW 1/65, LIC Policy in which workman has stated his name and address of the management. *There is no document in these documents pertaining to the year 1986. The Account Book is also dated 15th July 1988 and the LIC Policy also shows in the year 1989 thereafter. Hence there is no documents proved by workman to show that in the year 1986 he was employee of the management.* In my considered opinion, in these circumstances, no adverse inference can be drawn against the management for not producing the record which was demanded by workman during the trial because constantly since they are rising of the alleged dispute management stand is that there is no relationship of employee and employer between the parties. The management witness MW1 stated that there is no policy of destruction/weeding out of the record.

8. On the basis of observations and discussions, *the workman failed to establish on record the relationship with the management as claimed in the statement of claim w.e.f. 24th November 1986 and a monthly salary of Rs. 1100/- at the post of dispatch clerk. Hence this issue is decided in favour of the management against the workman.*” (Emphasis supplied)

18. A reading of the above extracted passages from the impugned Award reveals that the Labour Court has proceeded on two premises, viz. that (i) none of the documents produced by the petitioner in evidence related to the year 1986; ergo, the petitioner had failed to demonstrate that he had been employed by the respondent in the said year, and (ii) the respondent could not be faulted for not producing the originals of the documents requisitioned by the petitioner, as the stand, of the respondent, from the beginning, was that the petitioner had never been its employee.

19. These two findings, in the first place, are mutually disconsonant. If the respondent could not be faulted for not having produced the original documents requisitioned by the petitioner *because* its stand was that it had never employed the petitioner in its organization, equally, the petitioner could not be faulted for not producing the appointment letter issued to him in 1986, *because* his stand, from the beginning, had been that no such appointment letter had been issued. The amnesty, from producing the original documents, which the Labour Court extended to the respondent, ought, therefore, to have equally been extended to the petitioner. What's sauce for the goose is, equally, sauce for the gander. Had it been so extended, the first plank of the reasoning of the Labour Court, as contained in the impugned Award, would have fallen to the ground.

20. Secondly, the Labour Court has completely erred in attaching no significance, or importance, whatsoever, to any of the documents produced by the petitioner in his defence, as establishing the fact that he had been working, with the respondent, during the period 1987 to August 1992, merely because he could not produce any document, for the period of just over a month, during which he, as per this version, had worked with the respondent in 1986. It was obviously not open to the Labour Court to close its eyes to all the evidence produced by the petitioner, merely because the said evidence related to the period from 1987 onwards, and there was no evidence of his employment, with the respondent, for the period of one month, from 24th November 1986, to 31st December 1986. Such an approach, as exhibited by the Labour

Court in the impugned Award, amounts to “perversity”, which has been defined in, *inter alia*, ***Damodar Lal v. Sohan Devi*, (2016) 3 SCC 78, *S R Tiwari v. Union of India*, (2013) 6 SCC 602, *Rajinder Kumar Kindra v. Delhi Administration*, (1984) 4 SCC 635, *Kuldeep Singh v. Commissioner of Police*, (1999) 2 SCC 10, *Gamini Bala Koteswara Rao v. State of AP*, (2009) 10 SCC 636, *Babu v. State of Kerala*, (2010) 9 SCC 189 and *Dr. Sunil Kumar Sambhudayal Gupta v. State of Maharashtra*, (2010) 13 SCC 657**, as being attributable “to a judicial/quasi judicial decision if the decision ignores/excludes relevant material, considers irrelevant/inadmissible material, is against the weight of evidence, or so outrageously defies logic as to suffer from irrationality”. Perversity, it is trite, vitiates every decision which it even tinges, and is one of the well-recognized grounds on which a writ court, exercising jurisdiction under Article 226 of the Constitution of India, can interfere with the decision of the Labour Court or Industrial Tribunal. In its apparent obsession, with the submission of the petitioner that he had been employed with the respondent on 24th November, 1986, and its perceived failure, on the petitioner’s part, to produce any proof thereof, the Labour Court has chosen to ignore, entirely, the volume of evidence cited, by the petitioner, to establish his having worked as the respondent’s employee, thereafter. The Labour Court failed to appreciate the simple truism that a runner, who had been seen running the race, must have run it, even if there was no evidence of the firing of the shot that flagged off the race.

21. Having said that, there is considerable substance, in the grievance, of the respondent, as voiced by learned Counsel appearing on its behalf before me as well, that no justification had been provided, by the petitioner, for not producing the “vouchers”, whereagainst it was being sought to be contended that salary was being paid to the petitioner. Learned counsel for the respondent asserts that, had the said “vouchers” been produced, the issue would not brook any further debate; in the absence of such production, however, it is sought to be contended that an adverse inference has necessarily to be drawn against the petitioner, who had repeatedly been stating that he was in possession of the said vouchers.

22. Indeed, the Labour Court seems to have misdirected itself even on the basic issue to be decided. Issue No (i), as correctly framed by the Labour Court, was whether there existed, between the petitioner and respondent, a master-servant, or employer-employee, relationship. While the adducing, by the petitioner, of the order, if any, whereby and whereunder he was employed by the respondent in 1986, could have clinched this issue in his favour, the learned Tribunal significantly erred in presuming that the failure, on the part of the petitioner, to produce any such order, clinched the issue *against* him. The existence of an order of employment/order of appointment is not a necessary *sine qua non* for there to exist an employer-employee, or master-servant, relationship. It is an unfortunate, but well-recognised and often adopted, practice, by exploitative employers, to secure services of workmen without issuing formal appointment orders to

them, obviously with the intention of retaining the hire-and-fire bargaining balance. As such, the issue of existence, or nonexistence, of master-servant relationship, between the petitioner and respondent, could not be conclusively decided solely on the basis of the fact that no proof of actually being taken into employment had been adduced by the former. In fact, to be fair to the respondent, it was correctly accepted, not only in the pleadings, but also orally during arguments before me by Mr Gupta, representing it, that, had the “vouchers”, whereunder the petitioner claimed to have been disbursed his monthly wages, been produced, Issue No. (i) could probably have been decided on that sole ground alone. That he repeatedly failed to do so, despite stating that he was in possession of the said vouchers, is an undeniable fact, and the effect thereof would be an issue to be considered while adjudicating the dispute. (This court expresses no view thereon.) Unfortunately, the impugned Award entirely ignores this aspect of the matter as well. In sum, the Labour Court has proceeded on the sole consideration of non-production, by the petitioner, of proof of *actually having been employed, by the respondent, in November 1986*, as stated by the petitioner, and has held against the petitioner solely on that ground. Resultantly, all other evidence, produced by the petitioner to support his case, as well as by the respondent to oppose it, has been disregarded. As already opined hereinabove, this amounts, clearly, to “perversity”, vitiating the impugned Award.

23. The impugned Award, therefore, has necessarily to be set aside, the Labour Court failing to apply its mind to all the evidence

produced, by the petitioner, in his defence, as establishing the factor of the petitioner having worked with the respondent during the period- November 1986 to August 1992, as well as by the respondent in opposition thereto.

24. As an inevitable consequence, the finding, in the impugned Award, on Issue No (ii), also, would be required to be set aside, as the Labour Court has decided the said issue in favour of the Management, and against the petitioner-workman solely on the basis of its findings regarding Issue No (i).

25. As the Labour Court has proceeded without applying its mind, at all, to the evidence adduced, before it, by the petitioner, as well as the respondent, I have no option but to set aside the impugned Award, dated 13th November 2003, and to remand both the issues, as framed by the Labour Court in the impugned Award, to it for determination *de novo* and, resultantly, to answer the reference, dated 7th July 2004, made to the Labour Court by the Government of the National Capital Territory of Delhi, afresh. In case either side wishes to lead additional evidence, in support of its stand, an appropriate application, therefor, would have to be moved before the Labour Court, and it would be for the Labour Court to decide whether to allow, or disallow, the request, on merits, as deemed appropriate.

26. It is ordered accordingly.

27. In view of the fact that the petitioner claims to have been terminated from service on 20th August 1992, i.e. 15 years ago, the Labour Court is requested to complete the *de novo* proceedings, and pronounce its decision thereon, as expeditiously as possible and, at any rate, within a period of 6 months from the date of receipt of a certified copy of this judgement. Needless to say, it would be open to either side, if aggrieved by such decision, to seek appropriate legal remedies, as available under the law.

28. It is made clear that no opinion has been expressed, by me, on the merits of the dispute between the parties.

29. In the facts and circumstances of the case, there shall be no order as to costs.

C. HARI SHANKAR
(JUDGE)

NOVEMBER 23, 2017
neelam/nitin