HIGH COURT OF DELHI

Date of Decision: 4th April, 2024

BENCH : HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

W.P.(C) 2901/2007

ANOKHE LAL …PETITIONER

VERSUS

GOVT. OF NCT OF DELHI & ANR …RESPONDENTS

Legislation and Rules:

Articles 226 and 227 of the Constitution of India

Industrial Disputes Act, 1947

Subject: Petition challenging the award of the Labour Court regarding termination of services, focusing on the petitioner's status as a 'workman' under the Industrial Disputes Act.

Headnotes:

Petition for Quashing Award and Directing Consequential Benefits – Dismissed – Workman Status Not Proven – Petitioner sought quashing of the award passed by the Labour Court and consequential benefits. Court found that petitioner failed to prove his status as a 'workman' under the Industrial Disputes Act, 1947, and his claim of illegal termination. Discrepancies in petitioner's testimonies regarding his role and the circumstances of termination led to the conclusion that the claim was unsubstantiated. Tribunal's findings, not being arbitrary or unreasonable, were upheld by the High Court. [Paras 1-56]

Role of Petitioner as Workman – Analysis and Conclusion – Examination of the petitioner's role revealed contradictions in his claims. Petitioner failed to establish through consistent testimony or credible evidence that he was employed in a capacity other than a 'deliveryman', as alleged by him. Tribunal's observation of petitioner's varying claims and unreliable testimonies underpinned its conclusion that he was not a workman under the Act. [Paras 27-31, 43-45]

Termination of Services – Legal Scrutiny – Petitioner's account of his termination lacked consistency and reliability, leading to the Tribunal's dismissal of his claim of illegal termination. The High Court, reviewing the Tribunal's approach and findings, agreed that the petitioner had not substantiated his claims of wrongful termination. [Paras 46-51]

Judicial Review under Article 226 – Limited Interference – High Court exercised restraint in its review under Article 226 of the Constitution, respecting the findings of the Tribunal where no perversity or arbitrariness was evident. The Court emphasized its role in judicial review as not to re-appreciate or re-assess the evidence but to ensure legal propriety and adherence to principles of natural justice. [Paras 39-41, 54]

Decision – Dismissal of Writ Petition – In light of the above findings and discussions, the writ petition was dismissed for lack of merit. The impugned award was upheld, confirming the Tribunal's conclusions. [Para 55]

Referred Cases:

- Bank of Baroda v. Ghemarbhai Harjibhai Rabari, (2005) 10 SCC 792
- Chandavarkar Sita Ratna Rao v. Ashalata S. Guram (1986) 4 SCC 447

Representing Advocates:

Mr. Arun Kumar for petitioner

Mr. Atul K. Bandhu for respondents

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:
"*a) quash the award dated 31.05.2006 passed Industrial Dispute no. 709/99 by Sh.S.S.Handa, Learned Presiding Officer Labour Court V, Karkardooma;*
b) direct the respondent No.2 to give all the consequential benefits to the petitioner to which he is entitled subsequent to holding of his termination as illegal"

2. The facts leading to the filing of the instant petition are as follows:

a. It has been stated by the petitioner that he was working with a gas agency, i.e., M/s Gauri Enterprises, respondent no. 2 herein, since the year 1988 as a „storekeeper/delivery man" on a last drawn salary of Rs.2,100/- per month.

b. The petitioner alleges that without assigning any reason, the respondent no. 2 illegally terminated his services on 31st March, 1999 subsequent to which he raised the (**a**) dispute before the Labour Department through a Union. The conciliation proceedings were initiated by the Labour Department. The grievances of the petitioner were not resolved and the conciliation proceedings failed.

c. Thereafter, the petitioner"s grievance was referred to the learned Industrial Tribunal vide reference dated 7th October, 1999 wherein, the terms of reference was to adjudicate upon whether the services of the petitioner were terminated illegally.

d. The parties then filed their respective pleadings in ID No. 709/1999 before the learned Tribunal and the said industrial dispute, vide award dated 31st May, 2006, was ruled against the petitioner. Being aggrieved by the impugned award dated 31st May, 2006, the petitioner has approached this Court seeking setting aside of the same.

3. Learned counsel appearing on behalf of the petitioner submitted that the learned Tribunal has passed the impugned award arbitrarily and without taking into consideration the entire facts and circumstances available on its record.

4. It is submitted that vide the impugned award the learned Tribunal has decided that the petitioner‟s claim lack merit and the same is against the settled position of law as per which services of a workman cannot be terminated illegally.

5. It is submitted that the petitioner had filed his statement of claim wherein he averred that since his services were terminated illegally, he is entitle**(d)** to be reinstated with continuity of service with full back wages.

6. It is submitted that the respondent no. 2 contested the above said claim stating that the petitioner was recruited as a delivery man for supplying the LPG cylinders on a day-to-day basis and that the petitioner was not a permanent employee of the respondent no. 2, rather, a contractual employee.

7. It is submitted that the learned Tribunal wrongly passed the impugned award holding that the petitioner failed to establish that he was a workman within the definition of the Industrial Disputes Act, 1947 (hereinafter “the Act”). It is further submitted that the petitioner is workman of the respondent.

8. It is submitted that learned Tribunal failed to appreciate that the petitioner exclusively worked for almost 11 years with the respondent no. 2 i.e., from the year 1988 to 1999 and the same had been admitted by the respondent no. 2.

9. It is submitted that the findings of the learned Tribunal are against the settled principles of law. Although, the learned Tribunal has observed that the petitioner was paid for the deliveries done by him despite which it was held that the petitioner was not an employee of the respondent no. 2, however, the workers who are paid on piece-rate basis are covered within the definition of „workman‟ under the Act.

10. It is submitted that the learned Tribunal failed to appreciate that there was sufficient material on record before it to show that a relationship of employer and employee existed between the respondent no. 2 and the petitioner, and thus, the observation made by the learned Tribunal that the petitioner was not qualified to be employed by the respondent is wholly incorrect.

11. It is submitted that the learned Tribunal failed to appreciate that there was sufficient material on record to prove that the respondent no. 2 exercised control over the performance of the work to the extent of prescribing the manner in which it was to be executed by the petitioner and the same is

evident in view of the respondent no. 2‟s own document dated 18th April, 1997 (Ex MW 1/11). The said document, which is titled as „instructions to delivery men‟ not only states the instructions and directions as per which the work was to be done by delivery men, but it also states that if instructions are not followed, strict action would be taken against the concerned delivery men.

12. It is submitted that the learned Industrial Tribunal though arrived at a finding that the petitioner was a delivery man, however, it failed to consider the employer-employee relationship between the petitioner and the respondent no.2 and that the petitioner did fall within the definition of a „workman‟ under Section 2 (s) of the Act.

13. Therefore, in view of the foregoing submissions, it is submitted that the impugned award may be set aside and the petition may be allowed.

14. *Per Contra*, the learned counsel appearing on behalf of the respondent no. 2 vehemently opposed the instant petition submitting to the effect that the same is liable to be dismissed being devoid of any merit.

15. It is submitted that the impugned award has been passed after taking into consideration the entire facts and circumstances and there is no infirmity of any kind thereto.

16. It is submitted that the petitioner has failed to adduce relevant documents in his evidence to prove that he was ever employed as a storekeeper by the respondent no. 2 and the petitioner was working with the respondent no. 2 to merely supply cylinders to the customers on a day-to-day basis.

17. It is further submitted that the respondent never employed the petitioner as a storekeeper rather engaged him only as a delivery man, which face has deliberately been concealed by him.

18. It is submitted that the learned Tribunal rightly concluded that the petitioner couldn‟t prove that he worked as a „storekeeper‟ as alleged by him and hence, control and supervision of him does not arise.

19. It is submitted that the petitioner has himself admitted that he was working as a deliveryman and was being paid commission for delivering the cylinders on day-to-day basis and the petitioner has failed to show any document before the learned Tribunal to suggest otherwise. It is further submitted that the learned Tribunal has rightly pointed out that the testimony rendered by the petitioner has contradictions and thus, his deposition was found to be unreliable.

20. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed being devoid of any merit.

21. Heard the learned counsel appearing on behalf of the parties and perused the record.

22. It is the case of the petitioner that he was terminated illegally by the respondent no. 2 and the learned Tribunal wrongly dismissed his claim by holding that he is not a „workman" within the Act and erred in concluding that there is no employer-employee relationship between the respondent no. 2 and the petitioner. The petitioner submits that the learned Tribunal failed to appreciate that there was sufficient material on record to prove that the respondent no. 2 exercised control over the performance of the work to the extent of prescribing the manner in which it was to be executed and the same is evident in view of the respondent no. 2"s own document dated 18th April, 1997.

23. In rival submissions, the respondent no. 2 refuted the petitioner"s contentions submitting to the effect that the petitioner merely worked as a delivery man and his duty was to deliver cylinder to the customers, therefore, there was no direct control or supervision of the respondent no. 2 over the petitioner hence, the instant petition is liable to be dismissed being bereft of any merit.

24. The issue before this Court is to adjudicate upon whether the learned Tribunal rightly concluded that the petitioner is not a „workman" within the definition of the Act due to the inconsistencies in his statement.

25. The learned Tribunal held that the petitioner failed to establish that he is a „workman" and further failed to prove that his services were terminated illegally by the respondent no. 2. The relevant paragraphs of the impugned award are as under:

"*…5. Upon the pleadings of parties following issues for trial were framed:*

1. Whether the management is not an 'Industry' as defined U/s 2(d) of the I.D. Act? 0PM

2. As per terms of reference.

***

9. AR for the workman simply stated that it was superfluous to put submission upon this issue as the same was not pressed by AR for the management during the course of arguments. However on my due consideration I find that the management was a licensee of I.O.C. I.O.C. gave the LPG connections to qualified persons. The management supplied LPG filled gas cylinders to the I.O.C. Customers

on payment. It was an activity which was earned on systematically. It was business or trade in regular form and in my considered opinion definitely fell within the definition of 'Industry' as enshrined U/s 2(j) I.D. Act, 1947. Issue is answered accordingly.

10. ***ISSUE NO.2:***

As recorded above the claimant herein has claimed to be a workman being a 'Storekeeper cum deliveryman' of the management. The burden of proof that the claimant fell within the definition of workman as enshrined U/s 2(s) I.D. Act coupled with attending provisions lay upon the workman.

11. *Mr. Jagdish Sethi AR for the workman relying upon the pleadings on record, deposition of WW-1 the workman, documents Ex.WW1/1 to Ex.WW1/14 and Ex.WWI/M-1, M-2, Ex.MWI/W-1 and Ex.MW1/11 submitted that it stands established on record that the claimant was employed as a 'Store keeper" with the management. He further contended that since his services were terminated illegally in violation of Section 25-F I.D. Act as a consequence thereof he was entitled to reinstatement. AR for the management Mr. Deepak Arora has refuted the contentions raised by AR for the claimant. He submitted that the evidence led by the claimant in no case establishes that he was the employee/workman of the management. He submitted that the very basis of the case of the claimant as propounded in his statement of claim is contradicted and thus demolished by his deposition ofWW-1 recorded on 16.3.04 and 7.2.96. And that he failed to pass the test of being workman as per his own admission and documents on record. Reference was made to Ex.WW1/M-1 to M-3 and Ex.MW1/1 to 16/. Referring to the deposition of the claimant he further contended that as per own admission of the claimant he performed day to day job as a deliveryman uptill 21.3.99.*

12. *From the pleadings and the contentions raised it was obvious that the primary test for the claimant was: Whether he qualified to be a workman as enshrined U/s 2(s) I.D. Act.*

14. *As recorded above relationship of workman is not only creation of any appointment letter. This can be inferred from the circumstances*

as well. In the given case the workman relied upon ex facie interpolated appointment letter Ex.WW. MW-1 categorically testified that it was forged and fabricated letter. By analyzing the contents of Ex.MW1/8 I find it to be manipulated document. To the own admission of the claimant as stated in demand letter Ex.WW1/1 the first ever document wherein he claimed as 'Deliveryman'. In the statement of claim as well he pleaded that initially he was appointed as 'Deliveryman'. Even in his cross examination as WW-1 he admitted that he was appointed as 'Deliveryman'. But in Ex.WW1/8 the date of appointment Is mentioned as 1988 but contrary to above his designation is mentioned: 'supplied (store)'. This contradicted his own claim and deposition. The writer of document has not been produced/summoned and from Ex.WW1/8 it was not decipherable who had issued the same nor the workman testified his name and designation. Contrary to this the management has filed Ex.WW1/M-1: Service Recordantecedents. It bears the signatures of the claimant. As per its contents correct particulars of the claimant are given inclusive of date of birth and he is shown to be a 'Deliveryman' on contract basis. Amazingly the claimant has changed version of his designation from time to time; in Ex.WW1/1 as Deliveryman; in Statement of claim as Store Keeper cum Deliveryman; in rejoinder he improved upon it saying initially he was Deliveryman and thereafter was appointed as Storekeeper. In his affidavit Ex.WW1/A he testified to be employed with the management since 1988 as a 'Storekeeper". But in his cross as WW-1 admitted that till 21.3.99 he continued as a 'Deliveryman'. He thus lied blatantly about his designation. He also demolished the very basis of his case as laid in claim viz a viz his deposition and cross. The claimant in his cross examination has admitted that he had gone on leave for fifteen days to meet his sick brother and since his brother expired he had over stayed for 15 more days and this is why the management (respondent) had terminated his services. The claimant in his statement of claim had stated that the respondent had terminated him on 21.3.99 in annoyance when the claimant asked for legal benefits like appointment letter, attendance card, casual leave, leave with wages and leave book etc.(Emphasis supplied). Thus it is very clear that the claimant has deliberately and willfully made a patently false statement in his statement of claim. The claimant has also stated that in his evidence that he had got the leave sanctioned orally from the father of owner of

the respondent agency and also stated that no application in writing was given. That there are further discrepancies in the statements of the claimant. The claim has stated that 'My brother had expired and I got the information in the night and in the morning I had gone to my home town after taking leave." This means that the claimant received the news of his brother's death and then took leave. I another place the claimant has stated that he had gone on 15 days leave with permission and then he got to know about his brothers death and that's why he overstayed for further 15days. This means that the claimant had gone on leave then he got to know about his brothers death and overstayed for further 15 days. The two statements are obviously contradicted and not only demolished the case of the claimant but also rendered his deposition unreliable.

15. Contrary to this documents Ex.MW1/1 to Ex.MW1/8 duly signed by the claimant show that he was working as a 'Deliveryman'. The designation of the workman is clearly mentioned therein as 'Deliveryman. It is further shown by these documents that he received commission on the gas cylinders delivered from the gas agency of the management. Ex.WW1/m2 further shows that the nature of work undertaken by him was 'delivery of gas cylinders by his cycle rickshaw No.DEL 8829.' In his cross dated 7.2.06 he admitted that the auto rickshaw belonged to him. From Ex.WWl/M-2: a document in his own writing: it is further evidence that he was performing the job of a 'Deliveryman' on day to day basis because he was paid only for the deliveries effected. Reference Ex.MW1/1 to Ex.MW1/8. As per his deposition he left for his village overstayed and was not taken into job by the management. In fact he discontinued to work with the management w.e.f. 21.3.99. There were number of complaints by the consumers against him as is indicated by Ex.MW1/11 to 16. The customers vide these complaints made from time to time till 1.2.99 also supported the factum of his being a 'Deliveryman'. Contrary to this the workman has not placed on record even a single document showing that he was paid wages on monthly basis by the management. The documents Ex.WW1/9, 10, 11,,12, 13 much emphasized by the AR for the workman do not establish the workman being in the employment of the management. These are at the best indicative of claimant performing the job of a 'Deliveryman' with the management. I had no

dispute on any subject with the management. The management also did not have any ill will towards me. It is correct that as per Ex.WW1/1 I had stated that I was working as a deliveryman with the management. I continued to work as a 'Deliveryman w.e.f. 21.3.99…."

26. Perusal of the above extracted paragraphs of the impugned award state that the issue before the learned Tribunal was to adjudicate whether the petitioner herein was terminated illegally or not.

27. In furtherance to the above, the learned Tribunal relied upon the evidence and deposition of several witnesses and it observed that in order to decide the issue, the primary test was to examine whether the petitioner was qualified to be a workman under Section 2 (s) of the Act being „storekeepercum-deliveryman" as alleged by him.

28. The learned Tribunal in paragraph 14 of the impugned award observed that the petitioner relied upon an „interpolated appointment letter" Ex. WW1/8 and the MW-1, i.e., the management witness, testified it to be a forged and fabricated letter. Upon analysing the same, the learned Tribunal was of the considered view that the said letter was a manipulated document. Whilst making the aforesaid observation, the learned Tribunal further noted that there were various contradictions that arose in the statement of claim, documents relied upon and the examination of the petitioner.

29. It was observed by the learned Tribunal that the petitioner in his statement of claim had pleaded that he was appointed as a „deliveryman". In Ex. WW1/1, i.e., the demand letter, the petitioner has stated himself to be a „deliveryman". Even during his cross examination as WW-1, the petitioner again admitted that he was a „deliveryman". However, in the interpolated appointment letter which is Ex. WW1/8, the designation of the petitioner is stated to be „supplier (store)". Furthermore, the petitioner was unable to testify the name and designation of the person who had issued the said purported appointment letter.

30. As far as the contentions of the respondent no. 2 are concerned, the learned Tribunal observed that contrary to the petitioner"s averments, the management relied upon Ex. WW1/M-1, i.e., „service records – antecedents" and the same bears the signatures of the petitioner whose designation is shown to be „deliveryman". Considering the above, the learned Tribunal was of the opinion that the petitioner contradicted his own claim and deposition with regard to his designation and therefore, the evidences, being unreliable, does not make out the case in his favour.

31. Furthermore, with regard to the issue of alleged illegal termination, the petitioner herein deposed in his cross examination that *„he had gone on leave for fifteen days to meet his sick brother and since his brother expired he had over stayed for 15 more days and that is why the management (respondent) had terminated his services.*" The learned Tribunal observed that contrary to the above stated deposition, the petitioner had submitted in his statement of claim that *„the respondent had terminated him on 21.3.99 in annoyance when the claimant had asked for legal benefits like appointment letter, attendance card, casual leave, leave with wages and leave book etc.*"

32. Taking into account the discrepancies of the petitioner"s stand in his statement of claim and his deposition, the learned Tribunal observed that the petitioner has contradicted his claim and rendered his deposition unreliable.

33. At this juncture, this Court deems it appropriate to set out the relevant laws. The definition of „*workman*" in Section 2(s) of the Act reads as follows:

> "…***2. Definitions***.—*In this Act, unless there is anything repugnant in the subject or context,— *** (s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person— (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or (ii) who is employed in the police service or as an officer or other employee of a prison; or (iii) who is employed mainly in a managerial or administrative capacity; or*
> *(iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature…*"

34. As per the provisions of the Act, any person who is a workman employed in an industry can raise an industrial dispute. A workman includes any person (including an apprentice) employed in an industry to do manual,

unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. It excludes those employed in the Army, Navy, Air Force and in the police service, in managerial or administrative capacity.

35. The term „industry" has been defined under Section 2 (j) of the Act and the same refers to any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen.

36. Although the definition of a workman is clear in the Statute and there is no *iota* of doubt with regard to the same, however, in order to decide an industrial dispute, the foremost test is to determine whether the claimant before the Labour Court/Industrial Tribunal is a workman or not.

37. In respect of the above, the settled position of law is that the burden of proof of employment lies on the person who claims to be a workman. The same has also been held by the Hon"ble Supreme Court in the judgment titled ***Bank of Baroda v. Ghemarbhai Harjibhai Rabari,*** **(2005) 10 SCC 792**, relevant paragraphs of the same are as under:

"..***6.*** *Before the Division Bench of the High Court the Bank had relied on a judgment of this Court in the case of Range Forest Officer v. S.T. Hadimani [(2002) 3 SCC 25 : 2002 SCC (L&S) 367] which judgment was distinguished by the High Court in the impugned order by holding that unlike in that case, in the present case the employee had by cogent evidence established that he had worked as a driver of the car of the Bank for the period from July 1994 to October 1995. Even the judgment of this Court in the case of Punjab National Bank v. Ghulam Dastagir [(1978) 2 SCC 358 : 1978 SCC (L&S) 353] was distinguished by the High Court since the ratio laid down in the said case would not apply in view of the established facts of this case. Mr S.S. Javali, learned Senior Counsel appearing for the appellant Bank, contended that the Bank has a procedure for employing its workmen and the respondent workman having admittedly, not been appointed as per the said procedure and having not produced any letter of appointment, the Tribunal and the courts below seriously erred in accepting the oral version of the workman. He also contended that the burden of proof that the workman was employed by the Bank being on him, the same has not been discharged, therefore, the Labour Court and the High Court erred in wrongly shifting the onus on the appellant Bank to disprove a case not established by the workman. He also placed reliance on a judgment of*

this Court in the case of M.P. Electricity Board v. Hariram [(2004) 8 SCC 246 : 2004 SCC (L&S) 1092] .

7. Dr. Rajeev Dhavan, learned Senior Counsel appearing for the respondent workman, supported the findings of the Tribunal as well as the Labour Court and contended that the workman to the extent possible had produced the material that was available with him and even that material has not been rebutted in any manner by the appellant Bank. He further contended that it has even failed to establish that there was a scheme by which the executive concerned was to employ his own driver. He submitted that in the instant case the vouchers, Exhibits 14 to 16 clearly showed that the payment made to the workman was by the Bank, hence, these findings being findings of fact, this Court should not interfere with the conclusions arrived at by the Labour Court and the High Court.

8. While there is no doubt in law that the burden of proof that a claimant was in the employment of a management, primarily lies on the workman who claims to be a workman, the degree of such proof so required, would vary from case to case. In the instant case, the workman has established the fact which, of course, has not been denied by the Bank, that he did work as a driver of the car belonging to the Bank during the relevant period which comes to more than 240 days of work. He has produced 3 vouchers which showed that he had been paid certain sums of money towards his wages and the said amount has been debited to the account of the Bank. As against this, as found by the fora below, no evidence whatsoever has been adduced by the Bank to rebut even this piece of evidence produced by the workman. It remained contented by filing a written statement wherein it denied the claim of the workman and took up a plea that the employment of such drivers was under a scheme by which they are, in reality, the employee of the executive concerned and not that of the Bank; none was examined to prove the scheme. No evidence was led to establish that the vouchers produced by the workman were either not genuine or did not pertain to the wages paid to the workman. No explanation by way of evidence was produced to show for what purpose the workman's signatures were taken in the register maintained by the Bank. In this factual background, the question of the workman further proving his case does not arise because there was no challenge at all to his evidence by way of rebuttal by the Bank.

9. *As held by the High Court and referred to hereinabove, neither the judgment of this Court in the case of Punjab National Bank [(1978) 2 SCC 358 : 1978 SCC (L&S) 353] nor in Range Forest Officer [(2002) 3 SCC 25 : 2002 SCC (L&S) 367] would assist the appellant in this case because of the proved facts of this case. Even the case of M.P. Electricity Board [(2004) 8 SCC 246 : 2004 SCC (L&S) 1092] relied upon by the learned counsel for the appellant, does not help the appellant. The said judgment only lays down that the initial burden of establishing the factum of the workman having continuously worked 240 days in a year, rests with the workman (see para 10). In this case that factum having been established, even that case, as stated, would not assist the appellant in challenging the orders of the courts below…*"

38. Perusal of the above judgment states that the burden of proof lies on the person who asserts the status of a workman under Section 2 (s) of the Act and the same has to be established by adducing evidence. Tersely stated, the employee who claims to be a workman within the Act has the onus to satisfy the Court whether he falls within the ambit of definition of workman. 39. At this stage, this Court deems it imperative to state its powers under Article 226 of the Constitution of India while interfering with the facts adjudicated upon by the Courts or the Tribunals, and while discussing the same, this Court has referred to the decision of the Hon‟ble Supreme Court in ***Chandavarkar Sita Ratna Rao v. Ashalata S. Guram*** **(1986) 4 SCC 447**, wherein the following was observed:

"*…17. In case of finding of facts, the Court should not interfere in exercise of its jurisdiction under Article 227 of the Constitution. Reference may be made to the observations of this Court in Bathutmal Raichand Oswal v. Laxmibai R. Tarta [(1975) 1 SCC 858 : AIR 1975 SC 1297] where this Court observed that the High Court could not in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. The High Court was not competent to correct errors of facts by examining the evidence and reappreciating. Speaking for the Court, Bhagwati, J. as the learned Chief Justice then was, observed at AIR p. 1301 of the Report as follows: (SCC p. 864, para 7)*

„7. The special civil application preferred by the appellant was admittedly an application under Article 227 and it is, therefore, material only to consider the scope and ambit of the jurisdiction of

the High Court under that article. Did the High Court have jurisdiction in an application under Article 227 to disturb the findings of fact reached by the District Court? It is well settled by the decision of this Court in Waryam Singh v. Amarnath [AIR 1954 SC 215]
(AIR p. 217, para 14) that the

"power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee [AIR 1951 Cal 193] , to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors". This statement of law was quoted with approval in the subsequent decision of this Court in Nagendra Nath Bora v. Commr. of Hills Division [AIR 1958 SC 398] and it was pointed out by Sinha, J., as he then was, speaking on behalf of the Court in that case: (AIR p. 413, para 30) "30. … It is, thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority...""

40. The afore cited judgment states that under Article 226, the High Court may issue a writ for correcting errors of jurisdiction committed by inferior Courts or Tribunals and such errors would mean where orders are passed by Courts below or Tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

41. Furthermore, Article 226 does not allow the High Court to examine the evidence with a view to form its own view with regard to the substantial merits of the case. The Courts shall intervene only in cases where there is a gross violation of the rights of the petitioner and the finding of the authority concerned is perverse. A mere irregularity which does not substantially affect the cause of the petitioner shall not be a ground for the Court to intervene.

42. Now adverting to the facts of the instant petition.

43. This Court has perused the Lower Court Record, wherein, as per the affidavit of the petitioner, Ex. WW1/A, it is inferred that the petitioner testified himself to be employed with the respondent no. 2 as a „storekeeper" since the year 1988, whereas, contrary to the said statement, the petitioner distinguished the same by admitting in his cross examination that till 21st March, 1999, worked as „deliveryman".

44. Moreover, as per Ex. MW1/1 to Ex. MW1/8, the designation of the petitioner is stated to be „deliveryman" and his duty was to deliver the cylinder by driving a vehicle bearing no. DEL8829. Ex. MW1/4 is a notification issued by the respondent no. 2 in the year 1997, whereby, certain directions were issued to the deliveryman and in the said document, the petitioner has marked his signature at „point A" which shows that the petitioner was aware about his designation.

45. Ex. MW1/12 is a complaint made in the year 1997 by a customer wherein the petitioner"s name has been mentioned with his designation as a „deliveryman". Therefore, the designation of the petitioner as a „storekeeper" as claimed by him, cannot be deciphered due to the discrepancies in his statement as well as due to the lack of documentary evidence. However, the evidence relied upon by the respondent no. 2 substantiate the management"s stance and brings out the inconsistency in the case of the petitioner.

46. As far as the contention of the petitioner with regard to the illegal termination is concerned, in this case also, the petitioner has been unable to make out his case. The relevant extracts of the testimony of the petitioner and his statement of claim is reproduced as herein below:

Statement of WW-1/petitioner in cross examination:

"*…I had gone on leave I for fifteen days ard my brother expired there and I had fover stayed for 15 days that is why the rnanagenent had terminated my services e It is wrong to suggest that the said gas agency is for a temporary period. I had gone directly to the mgt, to join duties after exhausting my leaves. I had got the leave sanctioned orally from the father of owner of said gas agency. However no, application in writing was given. My brother had expired and I got the information in tia e night and in the morning I had gone to rrr/ honie town after taking leave. My brother had expired before 2ist March 1999. However I cannot recollect the exact date. (Vol, that may be in the last week of February'" or in t he March first v;eek as I had returned on 21st March*

1999 and before going to'my homw town my said brother had expired). I had got the information abrut the death of my brother at about 12 night and in themorning ai:out 8.00 I left for my hometown…"

Averment of the petitioner in his statement of claim:

"*..3, That it is submitted that the workman was not being, provided the legal benefits as envisaged under various labour laws such as appointment letter, attendance card, casual leave, leave with wages, leave book and was being demanded verbally by the workman from time to time such the management got annoyed and terminated the services of the workman without assigning any reason or justification on 21. S. 1999…*"

47. Perusal of the above extracted portion shows that initially the petitioner averred that he was illegally terminated after he raised his demand to seek legal benefits such as appointment letter, attendance card, casual leave, leave with wages, leave book etc. It was initially submitted by the petitioner that the management terminated his services on account of getting annoyed by the petitioner‟s demands. However, upon perusal of the petitioner‟s testimony in his cross examination, it is inferred that his services were terminated since he over stayed by 15 days at his hometown. The petitioner has also stated in his evidence that his leave was sanctioned orally from the father of owner of the respondent agency and no application in writing was given.

48. In view of the aforesaid discussion this Court finds it pertinent to note that there is sheer discrepancy in the statements of the petitioner. In his cross examination, at one place the petitioner has stated that *„My brother had expired and I got the information in the night and in the morning I had gone to my home town after taking leave*‟. The same implies that the petitioner received the news of his brother‟s death and then took leave. At another place in the cross examination itself, the petitioner has stated that he had gone on 15 days leave with the permission and then he got to know about his brother‟s death and that‟s why he overstayed for further 15 days.

49. With regard to the contradictions in evidence, this Court is of the view that an oral testimony which is unreliable in light of the inconsistencies needs to be cautiously examined by the Court to sift out the truth and discard the lies. Such sort of testimony needs to be considered as evidence only after putting the testimony to the test of contradictions, omissions and corroborations. The

said examination is done in order to check the veracity of the testimony so as to treat its successful portion as evidence and to leave the other part aside.

50. Taking the above observation into account, it is clear that the petitioner had attempted to mislead the learned Tribunal and considering the discrepancies in the petitioner‟s testimony, the grounds for illegal termination could not be established by the petitioner.

51. This Court is of the considered view that the petitioner has failed to make out a case to show that the learned Tribunal has acted in an arbitrary manner. The petitioner had sufficient opportunities to establish that he was a workman and that his services were terminated illegally and the same is apparent from the impugned orders. However, the petitioner contradicted his case by deposing inconsistent statements with respect to his designation and illegal termination.

52. Since the onus of proof lies on the petitioner to establish that he is a workman as per the Act and in light of the fact that the petitioner failed to prove the same, this Court is of the view that the learned Tribunal has rightly adjudicated the dispute and thus does not find any ground to intervene with the impugned award.

53. Hence, this Court is of the considered view that the grounds raised by the petitioner to seek the reliefs, as prayed, are insufficient and cannot be entertained by this Court.

54. In regard to the discussions of facts of the instant case as well as the law, this Court is not inclined to exercise its extraordinary writ jurisdiction under Article 226 of the Constitution of India as there is no force in the propositions put forth by the petitioner.

55. Taking into consideration the observations made in the foregoing paragraphs, this Court is of the view that the impugned award dated 31st May, 2006, passed by the learned POLC-V, Karkardooma Courts, Delhi, in ID No. 709/1999 does not suffer from any infirmity and the same is hereby upheld. In view of the same, the instant petition is liable to be dismissed being devoid of any merit.

56. Accordingly, the instant writ petition is dismissed. Pending applications, if any, also stands dismissed.

57. The order be uploaded on the website forthwith.