Before Augustine George Masih, J.

VOITH PAPER FABRICS INDIA LTD.—*Petitioner*

versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT–II, FARIDABAD AND ANOTHER—*Respondents*

CWP No.13349 of 2013 (15 Cases)

August 07, 2020

(A) ***Contracts Labour (Regulation and Abolition) Act, 1970 — Ss. 23 and 24—Industrial Disputes Act, 1947—S.25 Relationship of employer and employee—Reinstatement with full back-wages and continuity of service—Held, relationship of employer and employee stood established that respondent-claimants were employed by Company but were shown to be employees of Contractors—Evidence on record further establishes that the certificate for which the registration was got done and issued under the 1970 Act, did not contain the nature of work which was being assigned to and performed by the respondent–claimants—Thus, in view of provisions as contained in 1970 Act, Labour Court rightly held claimants employees of Company.***

Held, that the evidence which has come on record further establishes that the certificate for which the registration was got done and issued under the 1970 Act, did not contain the nature of work which was being assigned to and performed by the respondent - claimants. In the light of the provisions as contained in 1970 Act, the Labour Court has rightly proceeded to hold that the claimants were the employees of the petitioner company. The principle as laid down in the judgment of *M/s JCB India Limited*'s case (supra) would apply to the case in hand entitling them to reinstatement in service with all consequential benefits as has been granted vide the impugned award.

(Para 25)

(B) ***Contracts Labour (Regulation and Abolition) Act, 1970 – Ss. 23 and 24 – Industrial Disputes Act, 1947 – S. 25 – Relationship of employer and employee – Burden of proof – As per Company, claimants were employees of Contractor but no document produced to establish the same – Petitioner produced record from year 2004 to 2006 and company destroyed record prior to 2004 to 2006 – Evidence***

led by Company correctly assessed by Labour Court leading to conclusion that claimants were employees of petitioner company – Thus, Labour Court rightly held that claimants were appointed by Company and not through Contractors.

Held, that the onus, therefore, stood discharged so far as the claimants are concerned especially when the factum that the respondent-claimants have been continuously working with the petitioner company from the date of their initial appointment till the date of their termination was not disputed. The onus shifted upon the petitioner company to establish its contention that the claimants were employed by the Contractors and were not engaged by the petitioner company. The evidence which has been led by the petitioner company has been correctly assessed by the Labour Court in this regard leading to the conclusion that the claimants were employees of the petitioner company as there is no documentary evidence to establish that the claimants were employees of the Contractor(s) engaged by the company.

(Para 21)

Pawan Kumar Mutneja, Advocate, *for the petitioner*(s) in all cases.

Harsh Aggarwal, Advocate, for respondent No.2 in CWP Nos.13349, 13351, 13357, 13360, 13361, 18019 and 17756 of 2013.

Amit Sheoran, Advocate, for S.S. Walia, Advocate, for respondent No.2 in CWP Nos.13345, 13353, 13355, 13358, 13362 and 13363 of 2013.

AUGUSTINE GEORGE MASIH, J.

(1) These fifteen writ petitions i.e. **CWP Nos.13349, 13345, 13351, 13353, 13355, 13357 to 13363, 17741, 17756, 18019 of 2013,** have been preferred by the employer challenging the award dated 19.12.2012 (Annexure P-16) passed by the Industrial Tribunal-cum-Labour Court-II, Faridabad, whereby, reference made by the Competent Authority stands answered in favour of the workmen holding therein that there was a relationship of master and servant between the management and the claimants and their termination was in violation of the provisions of law, entitling them to reinstatement with full back-wages and continuity of service along with other

consequential benefits.

(2) Counsel for the parties have agreed that the issue involved in all these cases is the same and the evidence which has been led is by and large common and thus, CWP No.13349 of 2013, titled as ***Voith Paper Fabrics India Ltd.*** *versus* ***Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad & another*** where the claim petition was filed by Sewa Ram and is respondent No.2, be taken as the lead case for the purpose of the facts and the evidence led therein.

(3) As per the writ petition, petitioner company, which was formerly known as M/s Porritts and Spencer (Asia) Limited, is engaged in the production and sale of industrial machine clothing for paper industry after importing polyester. The company weaves it into industrial fabric on the weaving machines, which are operated by the permanent working employees as machine operators. Weaving Department has no connection whatsoever with the Seaming Department. The primary product is the outcome of the Weaving Department, which accounts for 79% to 80% of the total product. Certain part of the product, which has defective weaving, is separated at the inspection level, which is segregated, as the dryer screen product for joining ends. This goes to the Seaming Department, which accounts for 7% to 8% of the total product. In the Seaming Department, the product is sought to be redeemed. If the said product is redeemed, then it goes to the main process else it goes waste, which has to be sorted and thrown out. This throwing out is done by the house-keeping, for which Contractor is engaged for providing workers. In case no work is available on a particular day, the contract workers are shifted to other departments by the Contractor for other house-keeping work.

(4) Petitioner states that claimant- respondent No.2 and other similarly placed workmen, who are private respondents in the other writ petitions, had been engaged by the Contractor in the house-keeping and they were working under the supervision and control of the Contractor, who pays them the wages. Various allied activities are carried out by the workers engaged by the Contractor. These activities can be broadly classified as horticulture, house-keeping, sweeping, cleaning, gardening, security, canteen and other general work.

(5) Petitioner company is registered under the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as '1970 Act'). Copies of certain registration certificates have been appended as

Annexures P-1 to P-3. The Contractors, who are engaged, also possess licenses and the workers, who are engaged to these Contractors, are covered under the Employees State Insurance Act, 1948 (hereinafter referred to as 'ESI Act') and Employees Provident Fund (Miscellaneous Provisions) Act, 1952 (hereinafter referred to as 'EPF Act'). Each worker has his own distinct code number under the ESI Act and EPF Act and the payment to the workers is made by the Contractor in the presence of the Management's representative by affixation of the signatures in the Wages Register by each worker as per the provisions of the statute. It is asserted that in case of any contravention of the provisions regarding employment of contract labour is found by a company of Sections 23 and 24 of 1970 Act, punishment is provided for such offences under Section 25 of this Act,.On this basis, it has been asserted that the impugned award dated 19.12.2012 (Annexure P-16) passed by the Industrial Tribunal-cum-Labour Court-II, Faridabad, ordering reinstatement of the claimants is unsustainable as there is no provision which would entitle them reinstatement with continuity of service along with all consequential benefits under the 1970 Act.

(6) Petitioner company has further asserted that the claimants-workmen had been employed with various Contractors from time to time. The claimants made a complaint in December, 2005 to the Labour Inspector that in October, 2005, they got to know that they were employed with the Contractors and were not regular employees of the company. Petitioner company appeared before the Labour Inspector on receipt of notice and pointed out that these workers were not employed by it but were the employees of the Contractors. Details of the records were supplied, which were maintained by the petitioner company under the 1970 Act.

(7) The matter was not settled, these 15 workers preferred individual demand notices under Section 2-A of the Industrial Disputes Act, copy of the demand notice of respondent No.2 – Sewa Ram stands appended as Annexure P-4. The claimant asserted therein that he was employed in August, 1990 as Seamer/Machine Operator in the Seaming Department of the Management and was drawing Rs.12,500/- per month as wages at the time of his termination. The Seaming Department was having approximately 24 to 25 Seamer/Machine Operators including respondent No.2 varying for a period from six years to fifteen years. They had been regularly working with the Management and were, therefore, under the impression that they were the regular employees of the company. In October, 2005, he along

with others came to know that they are being shown as employees of various Contractors from time to time. They approached the Management, who confirmed the said fact by asserting that Seamer/Machine Operators of the Seaming Department were kept on the rolls of the contractor with retrospective effect immediately. Eight workers were stopped from performing their duties w.e.f. 24.10.2005 and then, six other workers on 29.11.2005 followed by three more workers who were not allowed to join duty w.e.f. 23.12.2005 and one worker stopped from performing duty on 24.12.2005. It is then the workers realized that the Management would not take them on duty and they approached the Labour Inspector vide complaint dated 27.12.2005. The Labour Inspector called the Management and asked them to furnish the details but on non-furnishing of the same, proceedings failed. Demand notice dated 18.01.2006 was served by each of the claimants individually asserting violation of the provisions of Section 25 of the Industrial Disputes Act, as neither any domestic enquiry was held nor any compensation was paid to them. Apart from that, it was asserted by them that they could not be employed through Contractor(s) as they were working in the production process and therefore, provision of the 1970 Act would not apply to them. The claimants were all skilled workers and thus, the jobs are of the technical nature and therefore, do not fall within the scope of the 1970 Act. Even if the Management had shown them as employees of various Contractors during the period of their employment, all would be deemed to be the employees of the Management only as they were working as Seamer/Machine Operators in the Seaming Department and therefore, prayed for reinstatement with full backwages and continuity of service.

(8) Petitioner company appeared in the conciliation proceedings and pointed out that the claimants were the employees of the Contractors and the dispute could not be preferred against the petitioner company as there was no relationship of employer and employee and if they still felt aggrieved, they should implead the Contractor as a party. When the conciliation proceedings failed, the appropriate authority referred the dispute to the Industrial Tribunal-cum-Labour Court-II, Faridabad vide reference dated 25.01.2007 which reads as follows:-

> "Whether there is a relationship of employee and employer between the workman Sh.Sewa Ram and M/s Porritts and Spencer (Asia) Ltd., Plot No.113-114, Sector-24,

> Faridabad? As a result of decision on this point, whether the termination of his services is correct, if not, for what relief he is entitled to?"

(9) After reference, claim petition dated 27.04.2007 (Annexure P-6) was filed by the claimant–Sewa Ram. A detailed written statement was filed by the petitioner company denying the relationship of master and servant, copy whereof has been appended as Annexure P-7, wherein it was pointed out that there was no relationship of master and servant, which existed ever between the petitioner and the claimants. The claimants were never appointed by the petitioner company and therefore, there was no question of terminating their services. Petitioner was only a principal employer as defined under the 1970 Act and is bound for statutory liabilities created under the said Act. Reference being not maintainable deserves rejection. It was pleaded that since the claimants were employees of the Contractors M/s Reliable House-keeping Services, it was required to be impleaded as respondent. The wages were being paid by the Contractor to the claimants after signing the register of the Contractor and the claimants had got individual ESI Card's and Provident Fund slip's mentioning the name of the Contractor as their employer.

(10) Replication was preferred by the workers denying all the allegations made in the written statement and reiterated the contents of the claim petition. Thereafter, parties led their respective evidence. After the completion of the proceedings, Industrial Tribunal-cum-Labour Court-II, Faridabad, passed an award dated 19.12.2012 (Anneexure P-16) holding therein that the alleged contract between the principal employer and the Contractor was a sham and merely a camouflage to deny the benefit to the employee, who was, as a matter of fact, in direct employment of the petitioner company and thus, entitled to reinstatement in service.

(11) This award is being challenged by the petitioner company on the ground that Section 10 (4) of the Industrial Disputes Act, limits the adjudication of the Labour Court to the points referred and matters incidental thereto. The point which, therefore, was required to be adjudicated upon, as a preliminary issue, was whether there was a relationship of master and servant between the Management and the Claimant and if that point went against the petitioner company, then and only thereafter, could the Labour Court have proceeded to decide whether termination of workman from service was good and

appropriate or not? The Labour Court has overlooked the evidence led by the Management as the permission was there under the 1970 Act to engage contract labour. The Contractors, who were engaged, did possess the licenses under Section 13 of the said Act. The said employment, therefore, was not prohibited under the 1970 Act and thus, the contract could not be a sham one. As per the provisions of 1970 Act, Sections 23 and 24 cater to contravention of provisions regarding employment and contract labour and other offences. Section 25 of the said Act caters to the offences for companies. No evidence was brought on record of any violation over a long period of time during the period of employment of the claimants by the various Contractors. The Labour Court has overlooked these provisions of the statute. Petitioner company has produced the provident fund numbers and ESI details of these workers, which clearly show that they were employed with various Contractors from time to time. They themselves admitted that they were not the members of the Union of Workers in the establishment. The onus was on the workers to establish the relationship of master and servant and no evidence was produced by them in the form of appointment letter, rather the petitioner company produced the attendance register to show that they were not on the rolls of the petitioner company, which established the fact that there was no relationship of master and servant between the petitioner company and the claimants. All the Contractors, who were produced as witnesses, admitted that they maintained the attendance and wages register of all the employees. The Labour Court failed to go into the evidence in the right perspective and thus, the impugned award is perverse. Referring to Section 9 of the 1970 Act, it has been asserted that this Act prohibits the employment of contract labour in case of non-registration, which is not the case so far as the petitioner company is concerned as the petitioner company had the registration certificates, which were produced before the Labour Court. There was no evidence on record, which shows that the claimants were the regular employees of the petitioner company. Thus, the impugned award cannot sustain and deserves to be set aside.

(12) Reply has been filed by the private respondents wherein the plea as taken in writ petition stands responded to in detail denying all the assertions made therein.

(13) Counsel for the petitioner has put forth his submissions on the grounds which have been refered to above. He has placed reliance upon the judgments of the Hon'ble Supreme Court in ***Pottery Mazdoor***

Panchayat *versus* ***Perfect Pottery Co. Ltd. & another***[1] and ***Oshiar Prasad & others*** *versus* ***Employers in Relation to Management of Sudamdih Coal Washery of M/s Bharat Coking Coal Limited Dhanbad, Jharkhand***[2], to assert that the Tribunal cannot go beyond the term of reference made under the Industrial Disputes Act. Further reliance has been placed upon the another judgment of Hon'ble Supreme Court in ***Range Forest Officer*** *versus* ***S.T. Hadimani***[3], to contend that the onus is on the workman to establish on the basis of cogent evidence that he had been working for more than 240 days in the year preceding his termination. Similarly, reliance has been placed upon the ***Manager, Reserve Bank of India, Banglore*** *versus* ***S. Mani & others***[4], where again the burden of proof has been said to be on the workman and the onus lies on him to prove that he had completed 240 days in a year preceding his termination.

(14) Learned counsel for the petitioner has placed reliance upon the judgment of Hon'ble Supreme Court in ***Steel Authority of India Ltd. & others*** *versus* ***National Union Waterfront Workers & others***[5], to contend that some unspecified remedy in Section 10 of the 1970 Act or substitute for penal consequences specified in Sections 23 and 25, a different sequel, be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment, cannot be read into by a Court. Absorption of a contract labour, on issuing notification under Sub-Section (1) of Section 10, is not permissible and thus, such relief cannot be granted especially when the petitioner is registered under the 1970 Act. Reference has also been made to the judgment in ***Balwant Rai Saluja & another*** *versus* ***Air India Limited & others***[6], wherein the Hon'ble Supreme Court had, upon considering the various judgments passed by it, concluded that the relevant factors to be taken into consideration to establish the employer and 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.

---

[1] 1979 (3) SCC 762
[2] 2015 (4) SCC 71
[3] 2002 (3) SCC 25
[4] 2005 (5) SCC 100
[5] 2001 (7) SCC 1
[6] 2014 (9) SCC 407

whether there exists complete control and supervision. On the basis of these judgments, he challenges the impugned award dated 19.12.2012 passed by the Industrial Tribunal-cum- Labour Court-II, Faridabad.

(15) On the other hand, learned counsel for the private respondents, on the basis of evidence which has been led by the parties, pointed out that the factum of continuous work being performed by the claimants from the period they had so claimed till the date their services were terminated has not been disputed. Even the witnesses, who had appeared for the Management, admitted that the claimant was working with the Seaming Department. He asserts that the onus was fully discharged by the claimants when the officials of the petitioner company were summoned along with the records especially Mr. R.P. Bhatt, Manager, Manufacturing (WW-2), who stated that the records before the year 2004 has been destroyed and he had brought the records from the year 2004 to 2006. The onus having been discharged as the records which are normally and in routine maintained by the employer was duly summoned especially when even the witnesses who appeared for the Management accept that the records, on completion of contract with the alleged Contractors were taken back to see to it that the workers do not suffer and to fulfill the mandate of the various statutes including the ESI Act and EPF Act. When the Management was required to maintain the records, they should have kept the same in safe custody, whereas they intentionally proceeded to destroy the records. He contends that the Contractors who have been produced as witnesses by the Management, having failed to produce any records to substantiate their bald assertions made in their affidavits, cannot be accepted especially when in their cross-examination, these witnesses have admitted that the claimants were performing their duties in the Seaming Department. None of them had said that the claimants were engaged in the house-keeping. Referring to the Contractors licenses, which have been produced by the petitioner on record, it is asserted that two of the registration certificates i.e. Annexures P-1 and P-2, pertain to the period subsequent to the termination of the claimants, therefore, would not be relevant. As regards Annexure P-3, the same pertains to cleaning, sweeping, gardening, security and canteen and none of the functions which have been performed by the claimants falls within the provisions of the certificate of registration which was granted to the petitioner company.

(16) Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Bhilwara Dugdh Utpadak***

Sahakari S. Ltd. *versus* ***Vinod Kumar Sharma Dead by LRs and others***[7], to contend that where the employer has resorted to subterfuge by trying to show that their employees are in fact the employees of Contractor cannot be accepted in the absence of the evidence establishing the said fact. This is being done to avoid their liability under the various labour statutes, which cannot be permitted as this would lead to exploitation of workers. Reliance has also been placed upon the judgment of this Court in ***M/s JCB India Limited*** *versus* ***Omi Singh & others***[8], wherein it has been held that a workman, if employed for performing a particular job, for which the Contractor employed for providing labour, does not contain such work, the labour is deemed to be direct employee of the principal employer. It can be said that the worker was originally employed by the employer and continued as such till his services were terminated. The contract cannot be said to be genuine but is a sham and bogus contract and therefore, the workman would be a direct employee of the principal employer.

(17) I have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the pleadings as well as evidence and the records.

(18) The first plea which has been taken by the counsel for the petitioner challenging the award is with regard to the jurisdiction which has been exceeded by the Labour Court by going beyond the points referred to it. The Labour Court was required to first decide the relationship of master and servant between the Management and the claimant and thereafter, proceed in the matter. Along with this, it is the assertion that the Labour Court by ordering reinstatement of the workman has exceeded the jurisdiction and the ambit and scope of the 1970 Act, which provides punishment for violation of Sections 23 and 24 of the said Act, are detailed in Section 25 thereto, which action could have been taken but no order could have been passed for reinstatement of the claimants. This is, apart from the fact that the Labour Court has failed to appreciate the evidence which has been brought on record by the Management for establishing the fact that the respondent – claimants were the employees of the Contractors and not of the petitioner company.

(19) Perusal of the impugned award would show that the Labour

---

[7] 2011 (4) SCT 120
[8] 2016 (3) SCT 725

Court had clubbed up both the points as has been mentioned by the petitioner in the reference to come to a conclusion that the relationship of employer and employee stood established. This has been so done keeping in view the evidence which has been led by the parties because the issue with regard to the relationship of employer and employee is dependent thereon. In the considered view of this Court, Labour Court has not exceeded its jurisdiction or the terms of reference while passing the impugned award. All the points, which are the subject matter of reference, have been dealt by the Labour Court.

(20) It has been projected by the counsel for the petitioner that the reference carved out a preliminary issue relating to the relationship of employee and employer between the claimants and the petitioner company. To find a defect in the award, it has been argued that the onus was upon the claimants to establish the said relationship for which reliance was placed upon the judgments in *Range Forest Officer* and in *Manager, Reserve Bank of India, Banglore's* cases (supra).

(21) There can be no dispute upon the proposition which has been laid down by the Hon'ble Supreme Court in these judgments. Those were the cases where except for the bald statement made by the workman, no evidence was produced by him before the Court to show that he had worked for more than 240 days in a year preceding his termination. No efforts were made by him to substantiate his assertion apart from his own examination. He did not produce or call for any document from the office of the Management including the muster rolls, which could have ascertained the said fact. It is in these circumstances that the Hon'ble Supreme Court came to such a conclusion. The said judgments would not be of any help in the present case as the claimants here had called for the records from the petitioner company and in pursuance to the summons, Sh. R.P. Bhatt, Manager, Manufacturing, of the petitioner company appeared as WW-2, who in this statement (Annexure P-10) stated that he had brought the records from the year 2004 to 2006 and the records prior thereto had been destroyed by the company. He produced Exs.W2 to W-10 of the production of Seaming Department from the year 2004 to 2006. He also produced Ex.W-36, the wage chart of the Seaming Department of the factory, which was duly signed by the Supervisor of the company Shri Raj Kumar and Manager Shri Rakesh Nagpal. He even recognized claimant present in Court. Although he stated that the claimant is the employee of the Contractor but no document was produced by him to establish the same. The onus, therefore, stood discharged so far as the

claimants are concerned especially when the factum that the respondent – claimants have been continuously working with the petitioner company from the date of their initial appointment till the date of their termination was not disputed. The onus shifted upon the petitioner company to establish its contention that the claimants were employed by the Contractors and were not engaged by the petitioner company. The evidence which has been led by the petitioner company has been correctly assessed by the Labour Court in this regard leading to the conclusion that the claimants were employees of the petitioner company as there is no documentary evidence to establish that the claimants were employees of the Contractor(s) engaged by the company.

(22) Learned counsel for the petitioner company has placed reliance upon the *Balwant Rai Saluja'*s case (supra) to assert that the relevant factors which have to be taken into consideration to substantiate an employer and employee relationship has not been established. The onus in this regard in the present case, in the light of the above, was upon the petitioner company, which had admittedly destroyed the records. Efforts were made by the petitioner company to establish that the respondent – claimants were not the employees of the petitioner company but of the Contractors, who were engaged under the 1970 Act. None of the alleged engaged Contractors, who have been produced as witnesses by the Management, except for making a bald statement and pointing out the date of appointment, Provident Fund number and ESI number of the claimant, has produced any documentary evidence to substantiate the same, rather they have admitted the fact that the claimants were working with the Seaming Department of the petitioner company. Madan Pal (MW-9) was alleged to be the Contractor since 1990 to 2003. He was shown to be providing daily wagers for house-keeping etc. The work which was being performed by the claimants had nothing to do with the house-keeping, gardening or horticulture, for which said Madan Pal was engaged as a Contractor.

WW-1, Shri C.B. Sehgal, Executive Industrial Relations of the petitioner company, has admitted that the claimants were working with the Seaming Section of the factory. Ex.WA and WB, which have been produced by him pertain to the Seaming Department, which was duly signed by Shri R.P. Bhatt, Manager Manufacturing and Mr. Chattopadhyaya, Factory Manager. The said document did not mention

the name or signature of the Contractor. It contained the daily seaming production report. He admitted that Madan Pal Contractor was providing labour for horticulture, house-keeping, machines maintenance, cleaning of affluent treatment and helper etc. Although he mentioned that workers were also supplied in the Seaming Section of the factory including the claimants but he was unable to produce any document on record showing any such permission in the license granted to the contractor for such supply. There could be none as the works which have been assigned to the Contractors for which he could supply worker(s) could not be related to the production process as per the provisions of Sections 9 and 10 of the 1970 Act.

It would not be out of way to mention here that in the cross-examination of Shri R.L. Chauhan (MW-2), a contractor engaged by the company, owner of M/s Reliable House Keeping Services, has admitted that the claimants had been working with the earlier Contractor in the Seaming Department, which falls in the production wing. Shri P.K. Mukherjee (MW-3), in his cross-examination, has admitted that on conclusion/termination of the contract, the records were handed over to the petitioner company. He also admitted that Seaming Department relates to production.

(23) On the basis of the above, it can be safely said that no documentary evidence has been produced by the Management except for the bald statement of the Contractors that they had employed the respondents claimants.

It may be added here that Shri R.P.Bhatt, who appeared as WW-2 was the Manager Manufacturing and produced Ex.W-2 to W-10 and W-36. Ex.W-4, Wages register, which has been maintained by the petitioner company, depicts the wage chart of the claimants along with the wage chart of the other workers. The same has been duly signed by Shri Rakesh Nagpal, Manager and Shri Raj Kumar Supervisor being the regular employees of the petitioner company, which shows that the claimants were being paid by the petitioner company as these do not indicate or show any distinction between the regular workers and the contract workers as there is nothing mentioned in this regard in the said document. There is no signatures of the Contractor, which fact stands

admitted by the witness Shri R.P. Bhatt (WW-2). This establishes the fact that the respondent claimants were being paid by the petitioner company. Effort has been to submit that these charts were being maintained only for the purpose of the records and for making payment to the Contractor but no document has been produced on record either in the form of receipts or the bank statement, which would indicate the amount having been transferred to the account of the Contractor. Nothing has come on record with relation to the claimants having been appointed by the Contractors as it is admitted that no appointment letters were issued to the claimants by any of the Contractors. The stand, therefore, of the petitioner company cannot be accepted.

Control and supervision was always of the petitioner company which stands established from the statement of the Management witnesses.

In these circumstances, it has rightly been concluded by the Labour Court that the claimants were appointed by the petitioner company and not through Contractors.

(24) A plea has been taken by the petitioner company that for violation of provisions of Sections 23 and 24 of the 1970 Act, Section 25 deals with the punishment and therefore, Labour Court could not proceed to reinstate the claimants, reliance has been placed upon the Hon'ble Supreme Court judgment in *Steel Authority of India Ltd.*'s case (supra). The said judgment would not be applicable to the case in hand as it related to a matter where the Hon'ble Supreme Court was dealing with the provisions of Section 10 (1) of the 1970 Act, where on a notification issued under Section 10 (1) of 1970 Act, the employees who had been earlier working with the Contractor, were ordered to be absorbed with the management company. It is, under these circumstances, the Hon'ble Supreme Court had proceeded to make the observation as mentioned in para 105 of the said judgment on which reliance has been placed by the learned counsel for the petitioner. Present is a case where the factum of the claimants having been employed by the Contractor is not only disputed by the claimants but it is their positive case that they were employed by the Management directly and merely to deny and deprive the claimants of their various rights under the statutory provisions, they have been shown to be

working under the Contractor. The documents and the evidence which have come on record showed and established that the work, which was being performed by the claimants in the Seaming Department pertain to the production process which had no relation whatsoever to the works which could be taken from the labour to be supplied by the Contractor under the certificate of registration issued under the 1970 Act. Claimants, as per the evidence on record, had been working in the Seaming Department, where they were performing the technical work relating to production and thus, there is no question of they being appointed by Contractor. Therefore, the above referred to judgment of the Hon'ble Supreme Court would not apply being distinguishable on facts and the issue involved therein.

(25) In the light of the above and keeping in view the pleadings and the evidence which have been brought on record, the findings as recorded by the Industrial Tribunal-cum-Labour Court-II, Faridabad with regard to the relationship of master and servant between the petitioner company and the claimants cannot be faulted with as it has been amply established that the respondent claimants were employed by the petitioner company but were shown to be the employees of the Contractors. That apart, the evidence which has come on record further establishes that the certificate for which the registration was got done and issued under the 1970 Act, did not contain the nature of work which was being assigned to and performed by the respondent - claimants. In the light of the provisions as contained in 1970 Act, the Labour Court has rightly proceeded to hold that the claimants were the employees of the petitioner company. The principle as laid down in the judgment of ***M/s JCB India Limited*'s** *case (supra)* would apply to the case in hand entitling them to reinstatement in service with all consequential benefits as has been granted vide the impugned award.

(26) Having been established that the claimants are the direct employees of the petitioner company, their termination cannot be said to be in accordance with the provisions of Industrial Disputes Act, as it is not disputed by the petitioner company that the provision of Section 25 of the Industrial Disputes Act, 1947, at the time of termination of their services, had not been complied with. The relief, therefore, granted by the Industrial Tribunal-cum-Labour Court-II, Faridabad, in its impugned award dated 19.12.2012 cannot be said to be without any basis, unjustified or unsustainable.

(27) These writ petitions are dismissed being devoid of merit upholding the impugned award dated 19.12.2012 (Annexure P-16)

passed by the Industrial Tribunal-cum-Labour Court-11, Faridabad.

CM-5042-CWP-2018

(28) In the light of the dismissal of main writ petition, the present application for stay has been rendered infructuous.

(29) Disposed of as such.

Ritambra Rishi