(2022) 09 CAL CK 0146

Calcutta High Court

Case No: APO No. 526 Of 2015, WPO No. 878 Of 2003

Upendra Choudhury		APPELLANT
	Vs	
M/S. J. K. Industries Ltd. & Ors.		RESPONDENT

Date of Decision: Sept. 30, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 226, 227
- Industrial Disputes Act, 1947 - Section 2A, 2K, 2(s), 10, 10(1)

Hon'ble Judges: I. P. Mukerji, J; Biswaroop Chowdhury, J

Bench: Division Bench

Advocate: Nayan Rakshit, Kushal Chatterjee, Subhendu Sinha Roy

Judgement

Biswaroop Chowdhury, J

The appellant before us was a workman before the Industrial Tribunal and respondent no-1 in Writ Application 870 of 2003. This appeal is directed

against the Order dated 6th August 2015 passed in the said Writ Application.

The case of the appellant may be summed up thus:

1. That the Writ Petitioner/Company is widely known and well reputed concern earning huge profit and growing day by day by the skillful

performance and hard labour rendered by its labourer / workmen engaged under it.

2. The Company though a prosperous and flourishing one but unfair and exploitative to its workmen and has little regards to observe the principles and

provisions of Industrial laws, specifically those enacted for the welfare of the labourers.

3. The workman/appellant concerned was engaged under the said Company as a driver in the year of 1994, without issuance of any appointment

letter. He had to work 14, to 16 hours in a day and even on Sundays and holidays without any extra remuneration and in a very poor emoluments. His

name was not enrolled in the attendance register, pay register only to deprive him from all legitimate dues, entitlement, though he drove the car

belonging to the company under the instruction and supervision of the company and paid by the company for the said services.

4. The appellant/workman concerned orally protested to stop all such unfair practices, and irregularities, but he had to keep under the threat of

throwing out of employment by the company. Inspite of such injustice and ruthless antilabour policy the workmen had all along been working hardly

sincerely honestly and left no stone unturned to satisfy his superiors by best of his services throughout the tenure of employment.

5. Inspite of his earnest effort and best services the workman all on a sudden was terminated from his services, by the said company w.e.f. 07.09.97

without assigning any reason and prior notice but only by verbal order. His monthly salary was Rs. 2000/- at that point of time.

6. Under the said circumstances the workman protested against the said illegal and unjustified termination and demanded his immediate re-instatement

in service with full back wages along with all consequential benefits by writing a letter dated 20-10-97 addressed to the company and sent the said

letter through registered post with acknowledgement, simultaneously forwarding a copy of the said letter to the union of which he is a member,

authorizing the union to represent his case.

7. Thereafter when the union came to understand that the company is in no mode to accept the legitimate and justified demands of the workman, the

union represented the matter before the Labour Directorate West Bengal vides their representation dated 25-11-97 addressed to the Assistant Labour

Commissioner West Bengal New SecretariatÂ Building, Â 11thÂ floor,Â Calcutta-700001Â andÂ the said office took up the said matter. Md.

Zahiruddin, Asstt. Labour Commissioner, initiated the conciliation proceedings and exerted his efforts to settle the dispute inter alia convening joint

conferences between the representations of the company and union but his efforts went in vain due to the adamant and non-conciliatory attitude of the

company.

8. Under the circumstances the conciliation officer submitted necessary report before the Government and thereafter the matter came up for

adjudication before the Learned 4th Industrial Tribunal for adjudication of the issue as framed in the order of reference by the Government.

9. The company has acted in highly illegal unjustified arbitrary and malafide manner to terminate the services of the workman by violating all the

provisions of Industrial Law and principles of natural and social justice as well. The workman was issued no charge-sheet nor any domestic enquiry

was proceeded with against him before the termination. He was given no notice and/or any monetary benefit prior to the termination. He was simply

asked verbally not to come any more for duty which is nothing but a colourable exercise of powers used by the company as a part of their hire and

fire policy.

10. The workman has failed to obtain any employment and/or any sort of earning since his termination of service and passing hard days with extreme

poverty Â and starvation. The writ petitioner/company contested the case by filing written statement of defence. The written statement of defence

may be summed up thus:

1. The alleged dispute referred to The Honâ€™ble Tribunal under section 10 of the Industrial disputes act 1947 obviously does not fall under section

2(K) of that Act because it has not been raised or espoused by a substantial number of the managementsâ€™ workmen. It is apparent sponsorer that

is the Calcutta Motor Driversâ€™ Union represents none else but Shri Upendra Chowdhury who is not and has never been an employee or a

workman of the management. Thus the dispute falls under section 2A of the Act.

2. The written statement of claim is neither signed nor verified by Shri Upendra Chowdhury, it was instead signed and verified by Shri Prasanta

Mukherjee, General Secretary at the Calcutta Motor Driversâ€™ Union. Nothing is indicated therein as to what prevented Shri Chowdhury to himself

sign and verify the same. The written statement of claim is liable to summary dismissal unless Shri Chowdhury files with the leave at the Tribunal, a

fresh properly signed and verified written statement of defence.

3. Assuming though most emphatically denying that the present dispute falls within the ambit of Section 2(K) of the Industrial Disputes Act, 1947 Shri

Chowdhury in the eyes of law is certainly not the â€˜personâ€™ as understood therein. The Calcutta Motor Driversâ€™ Union does not have on its

roles, a single employee or workman of the management, the interest of the union members and the managementâ€™s workmen is poles apart. The

written statement of claim is also liable to summary dismissal. The respondent/company on merits has denied paragraph Nos.1, 2, 3, 4, 5, 10 and 11 of

the written statement of claim. The respondent/company has contended that since the claimant was never an employee of the management as alleged

or otherwise, there was never any occasion or reason to terminate his services on 7th September, 1997 or for that matter on any other day, no

question of assigning any reason or giving prior notice did or could arise. The fact that the space for entering the rate of the claimantsâ€™ salary has

been left blank in the last line of the paragraph under reply is an eloquent proof of the falsity of his being an employee of the management. Even at the

later stage, the claimant does not know the rate of his own salary. The claimant was never an employee of the management, the contentions to the

contrary in the paragraph under reply were denied. Â

It is further contended that the appellant was never an employee under the management but a personal and privately employed driver of Shri T. C.

Sharma the then Regional Manager (Tyres) of the Management at Calcutta. The Calcutta Motor Driversâ€™ Union has no locus standi in the present

proceedings. The respondent/company prayed for dismissal of the claim case.

Learned Tribunal upon considering the evidence adduced by both the Appellant/Workman, and Respondent/ Company was pleased to pass an award

holding that the appellant/workman was an employee of the respondent/company and re-instatement of the appellant with back wages and

consequential benefits. The respondent/company being aggrieved by the award passed by the Learned 4th Industrial Tribunal Calcutta moved a Writ

Application being W.P. No. 878 of 2003. By order dated on 6th August, 2015, Learned Trial Judge was pleased to pass an order allowing the Writ

Application by setting aside the order passed by Learned 4th Industrial Tribunal Calcutta.

The Appellant being aggrieved by the order passed by the Learned Trial Judge in W.P. No. 878 of 2003 has come up with the present appeal.

The Writ petitioner/respondent challenged the award on the ground that the Appellant was never an employee of the petitioner in any manner

whatsoever and there was no occasion for terminating his services on 07-09-1997 or on any other date. It was further contended that there was no

material before the Learned Tribunal to come to the conclusion that the appellant/workman was the employee of the company as a driver. It was also

contended that the award does not disclose any material or proof showing engagement/appointment of the appellant as a driver of the petitioner and

payment of salary or wages made to the appellant. It was also argued that the appellant not being an employee or a workman of the management of

the writ petitioner the alleged dispute falls under Section 2A of the said Act of 1947.

Learned trial Judge was pleased to dispose of the writ application by setting aside the award passed by the learned Tribunal. Learned trial Judge was

pleased to observe that the findings of the learned Tribunal in the impugned award is perverse. Learned Judge was further pleased to observe that the

materials on record show that the absence of any proof whatsoever regarding nexus between the respondent no.1 and the petitioner save and except

allegations made by the former.

Heard learned advocate for the appellant/workman and the learned advocate for the writ petitioner/respondent company.

Learned advocate for the appellant submits that the learned trial Court erred in law in interfering with the award passed by the learned Tribunal when

the said award was not perverse. It is further submitted by the learned advocate that the learned trial Judge did not appreciate the facts to the effect

that the car in question belonged to the company used to be driven by the appellant/workman as no documents were proved by the writ

petitioner/company that the said car was used by the Officer of the company and the appellant/workman was personal driver of the said Officer.

Learned advocate for the appellant draws attention to the deposition of O.P W. No.1, an employee of the writ petitioner/company and submits that as

the employee of the company has deposed that the appellant was the employee of the writ petitioner, it is a sufficient proof that the appellant was the

employee of the writ petitioner.

Learned advocate for the writ petitioner submits that the alleged dispute referred to under Section 10 of the Act of 1947 does not fall under Section 2k

of the said Act of 1947 because it has not been raised or espoused by a substantial number of managementâ€™s workmen. Learned advocate further

submits that as the appellant/workman is not an employee or a workman of the management of the petitioner the alleged dispute falls under Section

2A of the said Act of 1947. It is also submitted by the learned advocate that although the appellant/workman drove the vehicle of the petitioner

company but he was engaged by Mr. T.C Sharma as his personal driver.

Learned advocate for the respondent/writ petitioner relies upon the following decision, namely, Employers in relation to Punjab National Bank vs.

Ghulam Dastagir, reported in 1978 LLJ P-312.

Learned Advocate for the parties have also relied upon the following decisions:

1. Workmen of the Food Corporation of India vs. Food Corporation of India, reported in 1985 (2) SCC 136,

2. Kumar Exports vs. Sharma Carpets reported in 2009(2) SCC 513.

3. Syed Yakoob vs. K.S Radhakrishan reported in 1964 AIR (SC) 477.

4. Pepsi Co India Holding Pvt. Ltd. vs. Krishnakant Pandey reported in 2015 ICCR 560,

5. Bank of Baroda vs. Hemarbhai Harjibhai Robari reported in 2005 IICLR 279,

6. Paradeep Phosphates Ltd. vs. State of Orissa & Ors. reported in 2018 (157) FLR 996.

Upon hearing the learned advocates and considering the materials on record and upon perusing the evidence adduced before the learned Tribunal it

will appear that the fact of the appellant driving vehicle being No. DL 2 CG 3751 which is vehicle of the company. The company/writ petitioner

contended that the appellant was neither engaged nor employed by the management as a driver or otherwise in 1994 or at any time, and thus was

never an employee of the management but a personal and privately employed driver of Shri T.C Sharma, the then Regional Manager (Tyres) of the

management at Calcutta. The writ petitionerâ€™s case is that there is no post of driver in the company although it is deposed by the witness of the

company that the appellant was the employee of the writ petitioner/company and was driving the vehicle of the company. As from the evidence it is

an admitted position that the appellant/workman used to drive the car of the company being DL 2 CG 3751, the two issues which come for

consideration is whether appellant/workman was personally engaged by Mr. T.C Sharma, manager of the writ petitioner/company and paid salary by

him and whether there is any post of driver in the company.

At the very outset it is to be remembered that when a vehicle is owned by an individual or a business undertaking the power to induct driver for plying

the said vehicle lies with the said individual or business undertaking. Drivers may be inducted directly by a business undertaking on salary basis or it

may be inducted from Drivers centre/Drivers Agency by entering into contract with the said agency. When an agreement is entered with driversâ€™

agency, drivers are provided by the said agency and different drivers may be provided for different periods and the obligation of payment of salary to

the said driver vests with the driverâ€™s centre/agency. In the instant case, the writ petitioner-company did not produce any documents to show that

the appellant was engaged through the drivers agency, thus, it is to be inferred that the appellant workman was engaged by the writ petitioner-

company as driver. The writ petitioner-company had tried to convince by contending that the appellant used to bring Mr. T. C Sharma from his

residence to Office and back and the appellant was engaged by Mr. Sharma and salary was paid by him. Although the writ petitioner-company has

raised the contention that Mr. Sharma engaged the appellant and paid his salary but no document was furnished in this regard. When a vehicle is

owned by a business undertaking to carry staff/employees from Office to their residence or to be taken to other places for official work the normal

presumption is that the driver is the employee of the said undertaking unless the contrary is proved. When a business undertaking takes a policy

decision in general or with regard to some individual employees that the vehicle of the company will be used by employees on condition to pay the

drivers salary and with a discretion of the said employees to appoint drivers of their choice there will be an administrative order to that effect by the

said undertaking and when the vehicles will be handed over to the officers, terms and conditions will be entered into between the said officers and the

business undertaking.

Without any specific administrative order and agreement between a business undertaking and its employees it cannot be presumed that an

officer/employee of a business undertaking is under obligation to pay the driver and have power to appoint driver of his choice. In the instant case, the

writ petitioner-company has failed to show any administrative order empowering the officers/employees who are using the vehicle for official purpose

to appoint drivers of their choice, and no document showing terms and conditions with Mr. T.C Sharma and his authority to appoint driver of his choice

and obligation to pay the said driver with regard to the vehicle used by him for official purpose. Moreover, Mr. Sharma who could be the best witness

in this regard was not examined by the writ petitioner-company before Tribunal. Thus, there is ground for inference that the appellant was driver of

the writ petitioner-company. Now with regard to the evidence adduced by the parties, it appears that O.P.W 1, the witness of the company stated in

his examination-in-chief that the appellant was an employee of the company. Again from the deposition of O.P.W 2, it will appear that the said

witness in cross-examination stated that the appellant workman was driving the vehicle belonging to the company.

Upon considering these statements, it will be clear that the appellant workman was engaged by the writ petitioner-company to drive the vehicle

belonging to the company. Although no appointment letter was issued but that cannot negate the claim of the appellant as employee of the company. It

was a specific case of the appellant/workman that he was engaged in service without issuing any appointment letter. Thus, in order to ascertain as to

whether the appellant was engaged in service the oral evidence and surrounding circumstances is to be considered. The writ petitioner-company is not

a Government Company thus, there may not be existence of the procedure of issuance of appointment letter in all cases. Moreover, when there is

allegation of non-issuance of appointment letter at the time of engagement, such allegation is to be enquired into and relevant evidence should be

considered in this regard. Labour Law is enacted to mitigate the problems of unfair labour practices, thus necessary enquiries should be made when

there is such allegation. It is not unnatural that sometimes business undertaking engages employees without issuing appointment letter and terminates

without issuing termination letter and make payment without issuing pay slip. Thus, if the claim of an employee is discarded on the ground of not

possessing appointment letter without considering the relevant evidence and surrounding circumstances it would not be doing justice in accordance

with the letter and spirit of labour legislation. Thus, Learned Trial Judge erred in holding that the appellant failed to produce documentary evidence

regarding appointment, payment of salary, or termination and rejecting the claim of the appellant and setting aside the judgment passed by the Learned

Tribunal, without taking into consideration the oral evidence. The decision relied upon by Learned Trial Court in the case of Punjab National Bank vs.

Ghulam Dastagir reported in AIR 1978 SC 481 is not applicable in the facts of the case. The said case which was relied upon by the writ petitioner-

company will show that the Bank authorities specifically proved that Rs.200/- was paid by the Bank to the area manager to employ a personal driver

of his own, and Rs.200/- was the maximum allowance payable and if the expense incurred by the area manager Shri K. P Sharma was less than

Rs.200/- the allowance would be reduced to the actual. In the instance case, the writ petitioner-company did not produce any document to show car

allowance was paid to Mr. T.C Sharma who was brought from residence to office by the appellant, nor was any administrative order produced

permitting Mr. T.C Sharma to use companyâ€™s car and engage driver of his choice, and pay his salary. No document was produced to show any

agreement between T.C Sharma and the company permitting T.C Sharma to engage driver of his choice and pay his salary. Moreover, Mr. T.C

Sharma who could have been the best witness was not examined by the writ petitioner-company before the Tribunal. Thus, case relied upon by the

Learned Trial Judge is not applicable. The statement of the appellant workman in cross-examination that in absence of Mr. Sharma, staff of the office

sometimes also used the vehicle when necessary will clearly go to show that the appellant was not the driver of Mr. Sharma but driver of the

company and there was nexus between the company-writ petitioner and the appellant workman. The argument of the writ petitioner that the

statement of the appellant in cross-examination that he was paid salary by T Sharma goes to show he was employed by Mr. Sharma cannot be

accepted as the appellant in cross-examination has also stated that he used to receive salary from the office as well as Mr. Sharma. Thus, if the

evidence of the appellant before the Tribunal as well as the evidence of the witness of the company read as a whole, it will give the inference that the

appellant was engaged by the company, to drive the vehicle of the company and was paid salary by the company. It is not very unnatural that on some

occasions salaries are paid by managerial persons to drivers, when there is delay in payment of salary by office and hardship is faced by the drivers

concerned but that does not alter the position to convert drivers of the company as drivers of the said managers when there is evidence to show that

the drivers were engaged by the company.

It is to be remembered that Industrial Disputes Act is welfare legislation, the object of which is peaceful settlement of industrial dispute through

conciliation officers and in case of failure of settlement of dispute, reference to the Labour Court or Industrial Tribunal for adjudication. Even when

matters come before the Industrial Tribunal for adjudication the tribunals are not bound to follow law of evidence or strict principles of the Code of

Civil Procedure but are to follow principles of natural justice. The Legislature in its wisdom has excluded Civil Courts in case of reference of industrial

disputes and in case of adjudication of dispute before the Tribunal there is restriction of engagement of advocate unless there is consent of the

opposite party and the members of Trade Union can also depose before Industrial Tribunal for necessary adjudication. Hence strict proof which is

required in civil suit is not required in case of adjudication of Industrial Dispute. When a tribunal is prima facie satisfied after hearing the necessary

parties that there exist some rights the tribunal can declare those rights and grant the relief. It is not necessary for the Industrial Tribunal or the Labour

Court to insist on proof of fact by law of evidence. When unfair labour practices are committed by some business undertaking it is quite natural that an

employee will not have relevant documents to establish his right hence in such a situation the Labour Court or Industrial Tribunal will have to consider

oral evidence and surrounding circumstances to decide as to whether an employee/labour is deprived of his lawful rights. In the event the Industrial

Tribunal insists on production of relevant documents in all cases and proof of the case strictly as per law of evidence then in most of the cases an

employee/labour will not be able to establish his right and have to return with frustration after litigating for a considerable period which is not the object

of labour legislation.

In the case of Punjab National Bank vs. Ghulam Dastagir reported in (1978) 2 SCC Para 358 the Honâ€™ble Supreme Court observed as follows:

â€˜Social justice is the signature time of the Constitution of India and this note is nowhere more vibrant than in industrial jurisprudenceâ€™.

In the case of Paradeep Phosphates Limited and the State of Orissa and Others reported in 2018 (157)FIR 996 the Honâ€™ble Supreme Court

observed as follows:

â€œundoubtedly it is a cardinal principle of law that beneficial laws should be construed liberally. The Indistrial Disputes Act, 1947 is one of the

welfare legislations which intends to provide and protect the benefits of the employees. Hence, it shall be interpreted in a liberal and broad manner so

that maximum benefits could reach to the employees. Any attempt to do strict interpretation would undermine the intention of the legislature. In a

catena of cases, this Court has held that the welfare legislation shall be interpreted in a liberal wayâ€■.

In the case of Bank of Baroda vs. Ghemarbhai Harjibhai Rabari reported in 2005 II CLR-279 the Honâ€™ble Supreme Court observed as follows:

â€œwhile 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 caseâ€■

In the case of Krushna Narayan Wonjori vs. Jai Bharti Shikshan Sanstha Henganghat through its Secretary and Another reported in (2018) 2 SCC (L

and S) 386 the Honâ€™ble Supreme Court observed as follows:

â€œHaving regard to the fact that the documents were produced before the High Court we are of the view that the High Court was not justified in

refusing to look into the same. After all the Industrial Court had looked into the entire materials and had awarded the salary for the disputed period.

Unless the approach is wholly perverse in the sense that the Tribunal acted on no evidence, the High Court under Articles 226/227 is not justified in

interfering with the award. It is not a Court of first appeal to re-appreciate the evidence. Therefore, the appeal is allowed and the impugned orders are

set aside and the order dated 14.03.2012, passed by the Industrial Court, Nagpur Bench, Maharashtra is restoredâ€™â€™

In the case of Indian Overseas Bank vs. I.O.B. Staff Canteen Workers Union and Anr. reported in 2000 II CLR 268 SC the Honâ€™ble Supreme

Court observed as follows:

â€œThe Learned Single Judge seems to have undertaken an exercise impermissible for him in exercising writ jurisdiction by liberally re-appreciating

the evidence and drawing conclusions of his own on pure questions of fact unmindful though aware fully that he is not exercising any appellate

jurisdiction over the awards passed by a Tribunal presided over by a judicial officer. The findings of fact recorded by a fact finding authority duly

constituted for the purpose and which ordinarily should be considered to have become final cannot be disturbed for the mere reason of having been

based on materials or evidence not sufficient or credible in the opinion of the Writ Court to warrant those findings at any rate as long as they are

based upon some materials which were relevant for the purpose or even on the ground that there is yet another view which can reasonably and

possibly be takenâ€■

Now with regard to the last contention of the writ petitioner-company that the alleged dispute referred to under Section 10 of the Industrial Disputes

Act, 1947 does not fall under Section 2 (k) of the said Act of 1947 because it has not been raised or espoused by a substantial number of

managementâ€™s workmen, and that the learned Industrial Tribunal ought to have considered that the appellant not being an employee or a workman

of the management of the petitioner the alleged dispute falls under Section 2A of the said Act of 1947 it is necessary to consider the provision

contained in Section 10 of the Industrial Disputes Act, 1947.

Section 10 of the Industrial Disputes Act, 1947 provides as follows:

1. Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended it may at any time by order in writing-

a) refer the dispute to a Board for promoting a settlement thereof;

or

b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

c) refer the dispute or any matter specified in the Second Schedule to a Labour Court for adjudication; or

d) refer the dispute or any matter appearing to be connected with or relevant to the dispute whether it relates to any matter specified in the Second

Schedule or the Third Schedule to a Tribunal for adjudication.

In the case of Bangalore Woolen Cotton and Workmen reported in (1968) 1 CLJ 555 (SC) Silk Mills Co. Ltd. vs. it is observed that the discretion of

the appropriate government under Section 10(1) is very wide to refer an industrial dispute or any matter appearing to be connected with or relevant to

the dispute whether it relates to any matter specified in the Second Schedule or the Third Schedule to a Tribunal for adjudication.

Upon perusing the order of reference dated 01.08.2000 being No. 1232-I.R./IR/10C-66/99 made by the State Government it clearly appears that the

State Government was of opinion that Industrial Dispute exists and referred the matter to the 4th Industrial Tribunal for adjudication after specifying

the issues. As the company/writ petitioner did not challenge the said reference by filing objection before the State Government or by way of Judicial

Review the said reference reached its finality. The Learned Tribunal adjudicated the matter in terms of the said reference, considered all relevant

evidence and came to a finding that the appellant was employee of the writ petitioner. The findings of the Learned Tribunal are not at all perverse.

Thus the Learned Trial Judge erred in setting aside the findings of the Learned Tribunal.

In view of the discussion made hereinabove, I with due respect am unable to accept findings made and order passed by the Learned Trial Judge in

WPO No. 878 of 2003. The Appeal is thus allowed. Impugned order dated 6th August, 2015 passed in WPO no. 878 of 2003 is set aside and the

WPO No.878 of 2003 is dismissed.

The Award passed by Learned 4th Industrial Tribunal in Case No. VIII-105/2000 is restored. I request the Learned Industrial Tribunal to expedite the

execution of the Award.

I. P. MUKERJI, J

I have read the draft judgment proposed to be delivered by my brother. I fully concur with the reasons advanced by his lordship and the ultimate order

that he proposes to pass. However, I would like to add a few words of my own.

The question of law raised in this appeal is the extent to which a court exercising its writ jurisdiction can evaluate the correctness of an award passed

by an Industrial tribunal.

The ground of perversity was mainly taken by the employer to challenge an award dated 21st November, 2012 made by the tribunal. It succeeded

before the learned single judge. By a final judgment and order dated 6th August, 2015, the writ application was allowed, setting aside the impugned

award.

The issue whether the award was perverse or not arose from the finding of the learned tribunal on a preliminary issue. The jurisdiction of the tribunal

to hear the reference made to it by the government of West Bengal was challenged before it by the company by raising the issue that the appellant

was not its workman.

The appellantâ€™s case was that since 1994 he was working as a driver of the company at a salary of Rs.2,000/- per month. He was entrusted with

driving the vehicle with Registration No.3751DL20C, owned by the company. This vehicle was used by one T.C. Sharma, an officer of the

organization and in his absence by other employees.

The learned tribunal noted that the appellant had very successfully proved the above facts. That the car was owned by the company was admitted.

According to the company, although, the alleged workman drove the companyâ€™s car, he was the personal driver of T.C. Sharma, who paid his

salary.

The learned judge in passing the impugned judgment and order dated 6th August, 2015 came to the following finding:-

â€œIn this case the materials on record to show the absence of any proof whatsoever regarding nexus between the respondent no.1 and the petitioner

save and except allegations made by the former. The findings of the Tribunal in the impugned award, therefore, are also perverse in satisfying the

circumstances laid down in Collector of Custom (supra).

For the reasons aforesaid, the writ petition succeeds. The impugned award and the order publishing the same are both set aside.â€■

Although the facts are a lot but not completely similar, Punjab National Bank vs. Ghulam Dastagir reported in (1978) 2 SCC 358, does not come to the

aid of the respondent. In that case, it was clearly established by evidence that the monthly remuneration of the driver was paid by the employee who

used the vehicle. This impelled the court to form an opinion that the alleged employee had not been able to discharge his burden of proof, that his

salary was drawn from the employer and that his service was under his control and direction. The said tests to determine who is the employer was

prescribed in Merssy Docks & Herbour Board vs. Coggins & Sr ffith Liverpool Ltd. reported in 1947 AC 1 and approved by the Supreme Court in

Shivnandan Sharma vs. Punjab National Bank Ltd. reported in AIR 1955 SC 404.

In our case, the assertion of the appellant that his monthly remuneration was paid by the company could not be disproved by the employer by calling

Sharma as a witness as observed by the learned tribunal.

What had to be established by the appellant was that he was working in an industry, that he was employed by the employer and that there was a

relationship of employer and employee or master and servant between them as held by the Supreme Court in Workmen of the Food Corporation of

India vs. Food Corporation of India reported in (1985) 2 SCC 136.

Facts more similar to this case occurred in Bank of Baroda vs. Ghemarbhai Harjibhai Rabari reported in 2005 II CLR 279. It was decided by a three

judge bench of the Supreme Court. Here, it was established that the car belonged to the bank and driven by a driver for its employee. The workman

asserted that his salary was paid by the bank. As in our case, the bank could not prove through the employee who had used the car, that the salary

was paid by the employee and not by the bank. Mr. JusticeÂ N.Â SantoshÂ HedgeÂ heldÂ thatÂ theÂ workmanÂ hadÂ beenÂ ableÂ to

discharge the burden of proof on him and able to prove his case that he was employed by the bank as a workman under Section 2(s) of the Industrial

Disputes Act.

Mr. Justice Gajendragadkar in Syed Yakoob vs. K.S. Radhakrishnan and Ors. reported in AIR 1964 SC 477 displaying his lordshipâ€™s mastery of

the law wrote:-

â€œ7.....A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where

orders are passed by inferior courts 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 properly, as for instance, it decides a question

without giving an opportunity, 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. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court

exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal

as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the

record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal,

a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material

evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no

evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however,

we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground

that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or

sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal,

and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226

to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque, 1955-1 SCR 1104 : Nagandra Nath v.

Commr. of Hills Division, 1958 SCR 1240 and Kaushalya Devi v. Bachittar Singh, AIR 1960 Supreme Court 1168.â€■

In Pepsico India Holding Pvt. Ltd. vs. Krishna Kant Pandey reported in (2015) I CLR 560, the Supreme Court did not approve of the High Court re-

appreciating the evidence and drawing its own conclusion with regard to the status of the alleged workman.

In this case, the tribunal had tried the issue as a preliminary issue. It had followed a proper procedure of allowing both the employer and the alleged

employee to adduce evidence both oral and documentary. It had taken into account the evidence produced by both the parties. In my opinion, this

evidence was correctly weighed, analysed and evaluated by the learned judge of the tribunal. The observation of the learned judge that if the bank had

to prove that Mr. Sharma had paid the remuneration of the driver, he had to be called as a witness which the bank did not do, was a very proper

analysis and interpretation of the evidence before it. Thereafter, the tribunal held on the basis of the evidence produced before it that the vehicle

belonged to the bank, it was driven by the appellant for its employee Mr. Sharma, and that the appellant had discharged his evidential burden. In the

above facts, a presumption could also be made that the appellant was an employee of the company, which could not rebut the presumption or disprove

the facts proved by the appellant. The appellant had and the bank had failed to discharge its burden of proof. The conclusion reached by the tribunal

and the reasons in support thereof were, in my opinion, logical, most probable, reasonable and far from perverse.

On this appreciation of evidence, the learned writ court below was not right in coming to a different conclusion because the learned judge felt

otherwise.

Therefore, I fully agree with my brother that the impugned judgment and order is to be set aside and the order of the Industrial tribunal affirmed and

upheld.

Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.