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

% **Reserved on: 8th April, 2024**
Pronounced on: 31st May, 2024

\+ W.P.(C) 3014/2010

SAWHNEY RUBBER INDUSTRIES ..... Petitioner

Through: Mr.Anurag Lakhotia and Mr.Udit Dwivedi, Advocates

versus

WORKMEN ..... Respondent

Through: Mr.Sanjoy Ghose, Sr. Advocate with Ms. Urvi Mohan, Advocate Mr.Anurag Sharma and Mr.R.P. Sharma, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of the petitioner entity seeking quashing of the impugned award dated 29th September, 2009 passed by the learned Ld. Presiding Officer, Industrial Tribunal, Karkardooma Courts, Delhi, in dispute bearing ID No. 57/2000.

FACTUAL MATRIX

2. The petitioner management is a factory involved in the business of manufacturing cycle/rikshaw tyres and tubes.

3. In one of its decisions dated 8th July, 1996, the Hon'ble Supreme Court ordered closure of 168 industries creating pollution in Delhi and the petitioner management was one of them.

4. Whilst passing the above said order, the Hon'ble Supreme Court held that the factories which wanted to shift from Delhi, had to pay additional one year wages to its workmen as compensation and the factories which wanted to close had to pay additional six years wages as compensation to its workmen.

5. However, the management approached the Hon'ble Supreme Court by filing an application stating therein that the management wanted to continue its operation in Delhi, by fulfilling the requirement relating to the pollution. The Hon'ble Supreme Court, in the above said application, passed an order dated 4th December, 1996 allowing the management to continue its operation after fulfilling all the requirements of the law relating to pollution and after obtaining fresh licenses from different authorities. Thus, the order dated 30th July, 1996 was not applicable on the management and the management was not liable to pay any compensation to its workmen.

6. In the interregnum, the workmen employed with the petitioner management raised a dispute before the Conciliation Officer under the Industrial Disputes Act, 1947 (hereinafter "the Act") stating that the management had not given any designation to them and did not reply to the demand notice seeking designation either.

7. The said dispute was referred to the learned Industrial Tribunal by the Secretary (Labour) Government of NCT of Delhi vide order of reference No. F. 24(5252)/99-Lab./9637-41 dated 21st March, 2000 with the terms of reference as *"Whether the workmen in Annexure A are entitled to the designations mentioned therein, and if so, to what relief are they entitled and what directions are necessary in this respect?"*. The

said industrial dispute was registered as ID No. 57/12000. Annexure-A is a list of 378 workmen who are part of the respondent union wherein the names of the workmen, their designation and the department is given.

8. In the above said dispute, it was alleged by the workmen that by not giving them wages as per their designation, the management was not complying with the provisions of the Factory Act, 1948 (management was bound to keep a register with the names and designations of the workmen) and the Minimum Wages Act, 1948 (as per Section 3 of the said Act, the management was bound to clarify the category- skilled, semi-skilled or unskilled- that the worker belonged to, and to give the workers minimum wages accordingly).

9. The learned Industrial Tribunal passed the award dated 29th September, 2009 adjudicating the dispute in favour of the workmen and against the management. It was held by the learned Tribunal that workmen are entitled to the wages as per the designation contended by them in Annexure – A.

10. Being aggrieved by the above stated impugned award, the petitioner management has approached this Court seeking setting aside of the same.

PLEADINGS

11. In the instant petition, the petitioner management has assailed the impugned award on the following grounds:

> "*..2. That the learned Industrial Tribunal I failed to appreciate that the real issue involved in this case is that as to whether the workers named in the Annexure to the reference were working with the Management as per the designation alleged by them in annexure to the reference.*

3. That the learned Industrial Tribunal I failed to appreciate that onus to prove the same was upon the Workmen, and to discharge this onus, the Workmen had to prove certain documentary evidence or any Labour Inspector Report to prove that they were working as they have alleged in the Annexure to the reference. For this judgment of the Hon'ble Supreme Court is relied upon in the case of Range Forest Officer v/s S.T Hadimani as reported in 2002 S. C. C (L&S) page 367 in which the Hon 'ble Supreme Court has held that "filling of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had in fact worked for 240 days"

4. That the Ld. Industrial Tribunal-I has wrongly and arbitrarily put the onus /burden on the Management to prove that these workers were not working as skilled employees.

5. That the Ld. Industrial Tribunal-I failed to appreciate that the workmen did not discharge the onus / burden to prove that they were working as per the designation alleged by them in the Reference Order.

6. That the Ld. Industrial Tribunal-I failed to appreciate that the workmen have not filed even a single document showing that they were working as what they have alleged in their reference.

7. That the Ld. Industrial Tribunal-I failed to appreciate that no Inspector under Minimum wages Act was ever called for by the Union to inspect and to prove that the workers were/are working as skilled workers and not as unskilled workers.

8. That the Ld. Industrial Tribunal-I failed to appreciate that even no Labour Inspector Report was filed by the workmen to show that they were working as the skilled workers.

Further in case the award of the Ld. Industrial Tribunal-I is not set aside then it will lead to a situation that whatever workmen states in his Affidavit that will held to be true and it will be very easy for a workmen to become a skilled worker, though may be doing the work of unskilled nature of job.

9. Because the Ld. Industrial Tribunal-I wrongly held that there is no answer on behalf of the management that who were the operators / supervisors in the factory of the Management. Sh. Harish Bhasin, MW-I, the Management Witness, had specifically stated and named the workers who were operators / supervisors in his cross examination whenever he was asked for the same.

10. That the Ld. Industrial Tribunal-I wrongly held that the Claimants were working on electric driven machines, he failed to appreciate that the even the workmen had themselves stated in cross examination that they were doing work manually for example WW-9, Sh. Ram Chander, had specifically stated "It is correct that different sizes of tubes used to be prepared after cutting the tubes manually".

11. That the Ld. Industrial Tribunal-I wrongly took into consideration only oral testimony of workmen into their favour, though they were cross examined on the point and during the cross examination many variance also came into picture.

12. That the Ld. Industrial Tribunal-I wrongly held that the preliminary Objection taken in written statement that the workers names in Annexure-A were engaged as labourers and performing as skilled nature of job is absolutely wrong in the light of statement of MW-1. He further wrongly held that the workmen were performing the specialized job, therefore, their demand for designation according to ·their job performed is not illegal and justified.

13. The Ld. Industrial Tribunal-I on its own arbitrarily and whimsically presumed that the workers were/are performing specialized jobs, whereas the witness, Sh. Harish Bhasin has specifically stated that all these workers are working as the unskilled nature of work and even not a single document was filed by the workers to prove that they were working as skilled workers.

14. That the Ld. Industrial Tribunal-I, further wrongly held that as the Management had large number of machines in the factory for carrying out the work of every manufacturing activity and thus the claim of the workmen is justified and legal. If the reasoning given by the Ld. Industrial Tribunal-I is held to be good then it will lead to a situation wherever a management will have large number of machines than that management cannot employ helpers or unskilled labours.

15. That the Ld. Industrial Tribunal-I wrongly held that the management had tried to conceal the truth or that the claim of the workmen is justified and legal or that the workmen succeeded to bring out the· reality. It is submitted that the Ld. Labour Court had whimsically and arbitrarily come to this conclusion that the Management had tried to conceal the truth, whereas there is not even a single documentary evidence to prove that the workers were/ are working as what they have alleged in their claim statement on the other hand there is the appointment letter of the workers in which they are designated as labourers, their wage slips in which they have been paid wages for the unskilled labourers, a fact that they have never complained to the labour inspector under the Minimum Wages Act nor to any other authority. All this proves that the case of the workmen was a sham which the Ld. Industrial Tribunal-I failed to appreciate.

16. That the Ld. Industrial Tribunal-I failed to appreciate that out of 378 workmen only 52 workmen appeared before the Ld. Industrial Tribunal for cross examination and for remaining there was not even oral evidence also but he had

held that all the workers were working as per the designation alleged in the reference. The Ld. Industrial Tribunal-I whimsically and arbitrarily held even without oral evidence that the workers were working as skilled workers.

17. That the Ld. Industrial Tribunal-I failed to appreciate that these 378 workers were labourers as per their appointment letters and had never worked as skilled workers.

18. That the Ld. Industrial Tribunal-I failed to appreciate that as per its own observation paragraph-14 "most of them are performing the skilled nature of job, some of them semi skilled nature of job and a few unskilled nature of job who did not work on any machine", the Ld. Industrial Tribunal by itself is not clear as to who was working as what and it had held arbitrarily and wrongly all of them were working as skilled employee…."

12. The respondent Union has filed its counter affidavit dated 21st July, 2010 refuting all the submissions advanced on behalf of the petitioner management. The relevant extracts of the same are as under:

"*…1. The contents of Ground 1 are disputed and denied and the corresponding averments are reiterated.*

2. The contents of Ground 2 are disputed and denied and the corresponding averments are reiterated.

3. The contents of Ground 3 are disputed and denied. It is submitted that the decision referred to therein was delivered in the context of retrenchment U/s.25F of the ID Act. Subsequently, this judgment has been explained in several decisions of the Hon'ble Court which the Respondents crave leave to rely upon at the time of hearing.

4. The contents of Ground 4 are disputed and denied. In any event, it is submitted that the burden has been discharged by the Respondents and it is the Petitioner which only could disclose information which is exclusively within its domain but which has failed to rebut the case of the workmen that they were performing skilled functions.

5. The contents of Ground 5 are disputed and denied.

6. The contents of Ground 6 are disputed and denied. It is submitted that in the event that a Management resorts to disguise and camouflage and does not create any record or creates a false record in respect of the actual nature of work being performed by employee, it is unrealistic to expect the workmen to bolster their claim with documentary evidence.

7. The content of Ground 7 are disputed and denied.

8. The contents of Ground 8 are disputed and denied. It is not true that affidavits of the workmen were accepted as gospel truth. In fact, the workmen were subjected to the rigours of cross examination and it is only on that basis that the Industrial Adjudicator has arrived at a finding of fact which cannot be reversed by re-appreciation of evidence.

9. The contents of Ground 9 in terms as above. It is reiterated that the Management witness was unable to precisely and completely disclose the correct factual position.

10. The contents of Ground 10 are disputed and denied. Pieces or parts of a testimony cannot be appreciated in isolation and therefore it is denied that any workmen has admitted that they were exclusively performing manual duties.

11. The contents of Ground 11 are disputed and denied in terms as above.

12. The contents of Ground 12 are disputed and denied the Petitioner is seeking re-adjudication and re-appreciate and disputed questions of facts.

13. The contents of Ground 13 are disputed and denied in terms as above.

14. The contents of Ground 14 are disputed and denied in terms as above. In any event, it is submitted that when company does have a large number of machines and when the company fails to rebut through cross examination the testimony of the workmen that they are performing skilled work, it cannot be said that the conclusion of the Industrial Adjudicator that the workmen have established their claim that they were performing skilled work should be considered to be perverse.

15. The contents of Ground 15 are disputed and denied. In any event if there were indeed wage slips and appointment-letters which indicated the exact designation of the workmen, then there would be no question of any dispute for adjudication.

16. The contents of Ground 16 are disputed and denied. The industrial dispute raised was a general demand case and adjudicator has held that the dispute was validly espoused. In these circumstances, it was unnecessary to produce every workmen to substantiate the general demand…"

13. Written arguments dated 3rd April, 2024, filed on behalf of the petitioner management as well as the brief submissions dated 19th January, 2024 filed on behalf of the respondent Union are on record.

SUBMISSIONS
(on behalf of the petitioner)

14. Mr.Anurag Lakhotia, learned counsel appearing on behalf of the petitioner submitted that the impugned award is bad in law and is liable to

be set aside since the learned Tribunal failed to take into consideration the entire facts and circumstances of the matter.

15. It is submitted that the learned Court below failed to appreciate that the reference made to it was regarding the 378 workers, however, only 52 workers appeared in the witness box and out of these, 51 workers have given self-serving affidavits on the basis of which the learned Tribunal has passed the impugned award.

16. It is submitted that the Hon'ble Supreme Court in the matter of ***Range Forest Officer v. S.T. Hadimani***[1] held that filing of an affidavit is merely the statement of the deponent in his own favour and the same cannot be regarded as sufficient evidence for any Court or Tribunal.

17. It is submitted that the learned Tribunal was wrong in holding that none of the workmen were confronted with any evidence that they were not performing the nature of the job mentioned against their name in Annexure –A .

18. It is submitted that the workmen were confronted with their wage slips and appointment letters which showed that they were appointed as "labourers" and they even admitted that they never got any promotion.

19. It is submitted that the learned Tribunal has picked parts from the cross examination of the management witness and has considered the same out of its context. The MW-1 had said *"one operator used to operate one machine at a time. However, the machine could not be run continuously, therefore, one operator used to run two-three machines"*.

20. It is submitted that the learned Tribunal has assumed that the workmen had been working on machines run on electricity for which

[1] **(2002) 3 SCC 25**

special knowledge is required. However, many of the workmen in their cross-examination have stated that they were working manually. WW9, WW10 and WW20 have categorically mentioned this in their cross-examinations.

21. It is submitted that even without any appreciation of any material on the record, the learned Tribunal arrived at the conclusion that since the workmen worked on machines run on electricity, special knowledge was required for their work. It was clarified by the Factory in-charge in its affidavit that the services of many labourers and unskilled workers were employed in different departments like packing of tubes which did not require any special skill and is a job of unskilled nature.

22. It is submitted that the learned Tribunal held that it was not clear as to who are the Operators/Supervisors or Checkers, if all the workmen were Helpers. It is further submitted that the learned Tribunal has turned a blind eye to the testimonies of MW1 and WW1 whereby, they had detailed the complete process of tyre manufacturing as well as the machines involved and further as to who were the employees actually operating those machines.

23. It is submitted that without reference to the material on record, the learned Tribunal held that since the workers work on electric driven machines, they cannot be called totally ‘unskilled’ workers. It was not appreciated by the learned Tribunal that it is the Operator who used to operate the electric driven machines and the Helpers only assisted them in the materials loading-unloading, packing and many other aspects of that industry itself.

24. It is submitted that many of the witnesses who appeared in the witness box have given different designations in their own affidavit against what they had sought in the reference. WW-5, i.e., Mr Virender had sought in reference the designation of Fitter, whereas in his affidavit, he had stated that he was working as "Wrapping of Wire", the learned Tribunal failed to consider the same.

25. It is submitted that the learned Industrial Tribunal arrived at the conclusion that the workmen had been performing duties of skilled/semi-skilled nature solely by perusing the affidavits of only few of the workers asserting the same without considering the cross-examinations or the documents presented before it.

26. It is submitted that the learned Industrial Tribunal misinterpreted the statement of MW1 to conclude that since the workmen were performing specialised jobs, they were not performing unskilled jobs. This conclusion was contrary to the complete affidavit in evidence given by the MW1 who had stated that the workmen were transferrable from one department to another and all of their work was of an unskilled nature.

27. It is submitted that the learned Industrial Tribunal has illegally put the onus of proving that the workmen were not entitled to the designations claimed upon the management. It should have been the workmen's onus to discharge that they were working as per the designation alleged by them.

28. It is submitted that the Industrial Tribunal failed to consider that the workers have not filed any document to show that they were working as skilled workers.

29. It is submitted that no Inspector under the Minimum Wages Act, 1948 was ever called by the workers, and neither was any Labour Inspector Report filed by them to show that they were working as per alleged designations.

30. It is submitted that it was not appreciated by the learned Industrial Tribunal that these workers were duly paid the minimum wages as per unskilled category and no worker had ever made any complaints to the Labour Inspector under the Minimum Wages Act, 1948 or to any other authority.

31. It is submitted that the learned Industrial Tribunal was wrong in holding that in cases of transfer of some of the workers, the awards of Industrial Tribunal would not operate as *res judicata as the nature of the job* was not substantially in issue in those matters as it is here.

32. It is further submitted that the same will act as *res judicata* as the workers there had pleaded for relief from being transferred on the ground that they were skilled workers and they were being transferred to an unskilled job. The Industrial Tribunal in those cases had categorically held them to be unskilled workers and the same is bound to act as *res judicata*.

33. It is submitted that it has been held without any documentary proof and even against the evidence led before the learned Court below that *"none of the workmen witnesses have been confronted with any evidence that he was not performing the job of the nature mentioned against their name,*" whereas in the cross examination of the workmen witness they have been confronted with their wage slips and appointment letters; they

admitted that they never got promotion. All the suggestions were given to them that they were not working as "*skilled workers*".

34. It is submitted that no complaint was made by the workmen to the Labour Department, though it was a strong union, specifically on the point that they were doing the job of "skilled workmen" while being paid as "unskilled workmen".

35. Therefore, in view of the forgoing submissions, it is submitted that the instant petition may be allowed and the reliefs be granted as prayed.

(on behalf of the respondent Union)

36. *Per Contra*, Mr.Sanjoy Ghose, learned senior advocate appearing on behalf of the respondent Union vehemently opposed the instant petition submitting to the effect that the same being devoid of any merit is liable to be dismissed.

37. It is submitted that the impugned award has been passed after taking into consideration the entire facts and circumstances available on the record of the learned Tribunal and there is no illegality of any kind thereto.

38. It is submitted that the industrial dispute raised by the workmen was a general dispute which was validly espoused and for the purposes of establishing the same, it is not pertinent to produce every single workman to substantiate the general nature of their demands.

39. It is submitted that most of the workers working with the management are members of the respondent Union and therefore, the workers raised the dispute under Section 10 of the Act before the Conciliation Officer, forming part of the demand notice but the

management neither showed any interest in the settlement of the dispute nor replied to the demand notice.

40. It is submitted that the petitioner management has been violating the provisions of the Act and did not assign workmen the designation they were entitled to. Therefore, it was prayed before the learned Tribunal that the petitioner management be directed to assign the designation as shown against their respective names in the Annexure A and accordingly, the award impugned herein was passed.

41. It is submitted that the learned Tribunal rightly took into account the settled position of law that the condition of an espousal or of a body or a considerable section of workmen making a common cause with the particular dispute arises only when the dispute *per se* is of the nature of an individual dispute concerning a particular workman as opposed to collective dispute involving all the workmen.

42. It is submitted that none of the workman witnesses was confronted with any evidence that the concerned workman was not performing the job of the nature mentioned against their name and the same was rightly taken into account by the learned Tribunal.

43. It is submitted that the preliminary objection in the written statement saying that all the workmen named in Annexure A to the reference order were engaged as labourers and performing unskilled nature of job, is an absolutely wrong statement in light of the statement of MW-1. It is also submitted that when the workmen were performing specialized jobs, their demand for designation according to their job performed is not illegal and unjustified. It is further submitted that most of the workmen are performing the skilled nature of job, some of them

skilled/semi-skilled-unskilled nature of job and a few unskilled nature of job who did not work on any machine.

44. It is submitted that it is evident from the testimony of MW1 that the management has a large number of machines in the factory for carrying out the work of every manufacturing activity. Thus, the claim of the workmen is justified and legal.

45. It is submitted that the learned Industrial Tribunal had rightly noticed the evasive approach adopted by the petitioner and it ought to have drawn adverse inference against the petitioner as it had failed to disclose the exact nature of the work performed by the workmen covered by the dispute as well as the names and other information pertaining to the same.

46. It is submitted that as per Section 106 of the Indian Evidence Act, 1872, the above said facts were specifically within the knowledge of the petitioner and therefore, the burden to prove the same lies upon the petitioner. The petitioner, however, has failed to disclose the details of the so-called skilled and trained persons who were operating the machines.

47. It is further submitted that none of the witnesses on the side of the workmen were confronted with any evidence to rebut their claim *qua* the nature of their job.

48. It is submitted that as per the settled position of law, the scope of interference of this Court on decisions of the fact-finding forum is limited and such findings can only be interfered with if found to be perverse, i.e., (i) erroneous on account of non-consideration of material evidence; (ii) conclusions which are contrary to the evidence; or (iii) based on inferences that are impermissible in law.

49. It is further submitted that no such errors of law are apparent on the face of the record of the learned Labour Court which implies that the impugned award has been passed in contravention of any settled law.

50. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed.

ANALYSIS AND FINDINGS

51. The matter was heard at length with arguments advanced by the learned counsel on behalf of both the parties. This Court has perused the entire material on record and has duly considered the factual scenario of the matter, judicial pronouncements relied upon by the parties and pleadings presented by the learned counsel for the parties.

52. It is the case of the petitioner that the learned Industrial Tribunal erred in passing the impugned award since it ignored the factum that the reference made to it was regarding 378 workers, however, only 52 workers appeared in the witness box and out of these, only 51 workers have given self-serving affidavits on the basis of which the learned Tribunal has erroneously passed the impugned award. It has been submitted that the learned Tribunal erred in holding that none of the workmen were cross examined with any evidence to show that they were not performing the job of the nature mentioned against their name.

53. It has been contended that the workmen were indeed deposed with regard to their wage slips and appointment letters, which showed that they were appointed as "labourers" and they even admitted that they never got any promotion. The petitioner has also asserted that the learned Tribunal, without assigning any reason and without referring to any material on record, has erroneously assumed that the workmen had been

working on machines run on electricity for which special knowledge is required. However, certain workmen have in their cross-examination stated that they were working manually. Reliance in this regard has been placed upon testimonies of WW9, WW10 and WW20, where the workmen have categorically mentioned this in their cross-examinations that they have been working manually.

54. It has been further averred on behalf of the petitioner management that the learned Tribunal held that it was not clear as to who are the Operators/Supervisors or Checkers, if all the workmen were Helpers.

55. The petitioner has submitted that the learned Tribunal has turned a blind eye to the testimonies of MW1 and WW1 whereby, they had detailed the complete process of tyre manufacturing as well as the machines involved and further as to who were the employees actually operating those machines. Without reference to the material on record, it has been erroneously held by the learned Tribunal that since the workers work on electric driven machine, they cannot be called totally 'unskilled' workers. It was not appreciated by the learned Tribunal that it is the Operator who used to operate the electric driven machines and the Helpers only assisted them in the materials loading-unloading, packing and many other aspects of that industry.

56. In rival submissions, it has been submitted on behalf of the respondent union that the petitioner has failed to show any error apparent on the face of the record so as to invite the interference of this Court under Article 226 of the Constitution of India. In the absence of any such patent illegality on the face of the record, this Court cannot re-appreciate the evidence and facts as it is not for this Court to sit in appeal and re-

examine the facts since it is the learned Tribunal who is the fact-finding authority and the appropriate authority to decide the dispute on merits.

57. It has been contended on behalf of the respondent union that the petitioner's contention that the dispute raised before the learned Industrial Tribunal was not validly espoused is baseless and misconceived. The petitioner has failed to put forth any propositions of law to prove as to how there has not been a valid espousal of the workmen's cause. The industrial dispute raised by the workmen was a general dispute of the entire individual workman, which was validly espoused and for the purposes of establishing the same, it is not pertinent to produce every single workman, to substantiate the general nature of their demands. The workmen were performing the specialized jobs, therefore, their demand for designation according to their job performed is not illegal and unjustified. Furthermore, most of the workmen were performing a skilled nature of job, some of them semi-skilled nature of job and a few unskilled nature of job who did not work on any machine. Also, it is evident from the testimony of MW1 that the management has a large number of machines in the factory for carrying out the work of every manufacturing activity. Thus, the claim of the workmen is justified and legal.

58. Before delving into the merits of the instant petition, this Court deems it appropriate to peruse the impugned award, relevant paragraphs of which are as under:

> "*..An industrial dispute pending between the management of M/s. Sawhney Rubber Industries, B-1, Jhilmil lndl. Area, G.T. Road, Shadara, Delhi-95 and its workmen as represented by Sawhney Rubber Industries Mazdoor Union, B-417, Gali No:3, Meet Nagar, Wazirabad Road, Delhi-94*

had been referred· for adjudication to my Ld. Predecesor vide order of reference no. F.24(5252)/99-Lab./9637-41 dated 21.3.2000 on the following terms of reference:
*"**Whether the workmen as per Annexure-A are entitled to wages as per the designations mentioned against their names and if so, to what relief are they entitled, and what directions are necessary in this respect?"***

The Annexure A is the list of 378 concerned workmen alongwith designation and department.

However, subsequently the Secretary(Labour) Govt. of NCT of Delhi issued as Corrigendum with amended terms of reference as following:

"Whether the workmen as per Annexure-A' are entitled to designation as mentioned against their names and if so, to what relief they are entitled, and what directions are necessary in this respect.?"

2. The statement of claim has been filed on behalf of workmen through the secretary of Sawhney Rubber Industries Mazdoor Union with averments that the most of workers working with the management are members of our union. That the management has not given any designation to the workers. Therefore, the workers raised the dispute under 10 of the Industrial Dispute Act before Conciliation Officer, forming part of the demand notice but the management did neither show any interest in the settlement of the dispute nor replied the demand notice. The said dispute has been referred for the determination to this Tribunal. It is submitted that the union has given the date of appointment, department and salary in the Annexure given with demand notice. Not giving the designation to workers as per their work is illegal, further it is illegal not to pay them the minimum wages as per designation. The management has been committing omissions and irregularity by not applying the provisions of Factory Act 1948 and the

minimum wages Act 1948. The workmen are entitled to their wages as per their designation and the category like unskilled, semi-skilled and skilled. The management has been violating the provisions of law and did not assign Workmen the designation. It is prayed that management be directed to assign the designation to the workmen as shown against their respective names in the Annexure-A and, accordingly, award be passed in favour of workmen and against the management.

3. The management resisted the claim of workmen and filed their Written Statement controverting the averments of the statement of claim on merits in para wise reply, besides taking preliminary objections that the claim of the workmen has not been properly espoused. Therefore, it is not an industrial dispute. Vast majority of the workmen are not the members of Sawhney Rubber Industries Mazdoor Union and never authorized the union to raise the dispute. Therefore, this union has no Locus-Standi to raise or espouse the cause of the workmen. Delhi Administration has not applied its mind and reference has been made mechanically. It is well settled law that promotion is discretion of the management. There is no allegation of superseding or not giving the promotion by discriminating. The jobs as referred in the Annexure are not available with the management as most of them do not exist with the management. All the workmen whose name appear in the reference were engaged as labourers and performing unskilled nature of the work. The workman mentioned at serial numbers 2,3,4,6,7,8,10,12,19,21,24,25,29,30,31,33,37,38,43,45,50,51, 55,57,58,59,76,84,87,94,97,99,103,206,110,112,124,134,13 5,143,144,148,149, 150, 152, 157, 161, 162, 163, 164,168,174,189,192,193,198,199,200,202,204,210,214,215, 216,217,218,228,232,235,241,245,250,251,253,260,276,280, 292,294,300,302,304,308,309,313,314,315,317,318,321,323, 335,337,340,352,357,362,363,367,368,369,371,374,375,376, 3778&147 in the annexure have already settled their dispute with the management. Therefore, no dispute exists between

them and the management. It is submitted that in view of the preliminary objection, the reference is not maintainable. It is prayed that reference be decided in favour of the management and against the workmen.

4. The workman filed Rejoinder controverting the contrary allegations of the Written Statement and reaffirming those of the statement of claim.

5. On pleadings of the parties, on 01.08.2011 following issues were framed:

1. Whether there is proper espousal of the dispute?

2. As per terms of reference.

6. After framing of issues, parties were directed to lead their respective evidence in support of their respective claim. The workmen examined WW1 Sukhbir Singh, WW2 Sanjay Tripathi, WW3 Ram Khilawan, WW4 Ishwar Deen, WW5 Virender Kumar, WW6 Ram Aasre, WW7 Degree Prasad, WW8 Pappu Kumar, WW9 Ram Charder, WW10 Poonam Devi, WW11 Anil Kumar, WW12 Rarnayan Yadav, WW13 Mr. Sudil Prasad, WW14 Vinod Kumar, WW15 America Razak, WW16 Vashista Muni, WW17 Mr. Ram Ashish Prasad, WW18 Mr. Braham Pal, WW19 Sh. Surender Kumar, WW20 Ram Gulam, WW21 Garib Ram, WW22 Shashi Bushan Pandit, WW23 Rajender Kumar, WW24 Gaya Prasad, WW25 Sunil Prasad WW26 Vishambhar, WW27 Virender Prasad Verma, WW28 Krishan Kant Jha, WW29 Naval Kishore, WW30 Sanjay Kumar, WW31 Chander Bhushan, WW32 Kishore Prasad, WW33 Hari Shanker, WW34 Sh. Kanhai Mandal, WW35 Pratap Singh, WW36 Bipin Kumar, WW37 Manoj Kumar, WW38 Chand Kiran, WW39 Dhananjay Kumar, WW40 Vijay Kumar, WW41 Lal Chand, WW42 Sh. Natyanand Jha, WW43 Sh. Chintu Kumar, WW44 Sh. Om Prakash Shah, WW45 Sh. Mithlesh Jha, WW46 Sh. Bans Bahadur Singh, WW47 Sh. Jai Prakash Choudhary, WW48 Shri. Arjun Pandit, WW49 Shri. Anil Prasad, WW50 Shri. Jai Prakash, WW51 Lajja Ram,

WW52 Babban who tendered their respective affidavits in evidence. They were cross examined on behalf of management. Thereafter evidence of workmen was closed. Thereafter management examined MW1 Harish Bhasin and MW2 Ved Prakash Tiwari who tendered their affidavits in evidence. They were cross examined on behalf of workmen, thereafter, the evidence of management was closed.

7. I have gone through the entire record including evidence adduced oral and documentary on behalf of the parties carefully ad heard Ld. Authorized Representatives for both the parties with patience. My issue wise findings are as following:

Issue No. 1:- *The burden of proof of this issue was· on the workmen to establish that there is proper espousal of the dispute. The present dispute has been raised for 378 workers. It is in itself a group of substantial number of workmen who can espouse the cause of each other, among themselves. Therefore, intact, there is no need of the espousal in the present case. In this regard the case of* ***Payen & Talbros Ltd. vs. Hans Taj (1968) IV DLT 130*** *may be quoted, the Hon'ble High Court of Delhi in para no.10 has held as under:-*

"lt would, therefore, appear that the condition of an espousal or of a body or a considerable section of workmen making a common cause with the particular dispute arises only when the dispute per se is of the nature of an individual dispute concerning a particular workman concerning a particular workman as opposed to collective dispute involving all the workmen·. In the present case according to the terms of reference reproduced earlier, in this judgment, sought to be introduced for the benefit of all the workmen employed in the petitioner-company. It was per se an industrial dispute. No espousal or support was therefore needed for such a dispute. The appropriate Government was

entitled under section 10 of the Industrial Disputes Act, 1947, to refer this dispute to the Tribunal for settlement."
Another case of the ***Workmen Versus Dharampal Premchand(Saughandhi), 1965*** *(I)* ***L.L.J 688= AIR (1966) SC 182*** *may be quoted, the Supreme Court in para has held as under:-*

"In fact, the object of trade union movement is to encourage the formation of larger and bigger unions on healthy and proper trade union lines, and this object would be frustrated if industrial adjudication were to adopt the rigid rule that before any dispute about wrongful dismissal can be validly referred under S.10(1) of the Act. It should receive the support of the union consisting exclusively of the workmen working in the establishment concerned. Besides, there is another way in which this question can be ·considered. If eighteen workmen are dismissed by an order passed on the same day. it would be unreasonable to hold that they themselves do not form a group of workmen which would be justified in supporting the cause of one another. In dealing with this question, we ought not to forget the basic theory on which limitation has been introduced by this court on the denotation of the words "Industrial dispute" as defined by S.2(k) of the Act."

9. It is not a dispute of an individual workman. Even otherwise, none of the workman witnesses has been cross-examined in this regard. During the course of the arguments, also no serious objection has been raised regarding the espousal of the present case. Therefore, there is no substance in this plea. Accordingly, it is held that the cause of the workmen has been properly espoused by the Union. This issue is accordingly decided in favour of workmen and against the management.

10. ***Issue No. 2:-*** *This issue is comprised of Terms of reference as referred in para no. 1 of this Award. According to the terms of reference, it was to be determined whether*

the workmen as per Annexure-A are entitled to designation mentioned against their names and if so, to what relief they are entitled? The workmen examined 52 witnesses in support of their claim deposing consistently as per the averments in the statement of the claim. None of the workman witnesses has been confronted with any evidence that he was not performing the job of the nature mentioned against their name. On the other hand, management examined Mr. Harish Bhasin as MW1. In his cross-examination on behalf of workmen, it has come in evidence that he was production incharge during the period from 1987 to December 1997. In the year 1996, there 1500 workers were employed and In the December 1997, there 600 workers were more employed. However, in July 1996 to December 1997, about 900 workers had left the job. He denied that they were removed illegally from the services. The main production of the management company is Bicycle Tyres and Tubes. This witness has explained the process of tyre manufacturing. He mentioned that there were seven Kneeder machines in year 1996. On the each machine, 3-4 helpers used to work. There were two Mixture machines, four Die machines, three-four Patti machines, sixty Mono-Band machines. There were 40 machines in Tar Section. There were two Calender machines in Calender Section in addition to two mixture machines.

11. In Electrical Department, under the charge of Sh. Ajit Bedi, 3 electricians and 7-8 helpers used to work. There were three Lathe machines and one Welding machine. He stated that there were 30-40 persons of unskilled nature. This witness has stated that several helpers used to work on the above machines. This witness also stated that besides the helpers, one operator used to work on 2-3 machines. This statement does not convince that one operator at a time can handle 2-3 machines. He further stated that there is coal-fire-boiler where loading and unloading is done through fire-man. There were 5-6 Tube Die machines in the year 1996 and 18-20 helpers used to work over them. According to him, presently only Tyres are being manufactured. This

witness has denied that· the suggestion came on behalf of workmen, some of workmen used to work as Operators, Supervisors and checkers in quality control. As per the case of the management, all the workmen were laborers. These workmen have been working on machines run on electricity for which the special knowledge is required-. The persons who are skilled in this regard can only work properly, otherwise accidents are to occur. According to the management, these workers are only helpers/laborers so unskilled workmen. in case, these workmen only are helpers, then who were the operators/supervisors or checkers. There is no answer in this regard on behalf of management. These workers working on electric driven machines cannot be called totally unskilled workers of labour class. Some of them must be Supervisors, some Operators having quality of skilled, semi-skilled and unskilled nature of work. Unskilled can work as helper.

12. MW2 has stated that he never worked in the said factory. Therefore, his testimony is totally worthless. having no personal knowledge of work and workers.

13. Now considering, the individual evidences of the workmen side, Sukhbir Singh was working as Electrician, Sanjay Tripathi working as Motor-winder, Degree Parsad was working on Tar machines, Ram Chander was working on cutter machine as Cutter Operator, Poonam Devi was working as Valve maker, Ram Aasre .was working as Buff operator on buffer machine, Ram Khilawan worked as Chhanai machine operator on filtering machines, Anil Kumar Operator on Cutter Machine, Ramayan Yadav operator on Tar Machine, Sudeel Parsad Tube-remover from pipe, Vinod Kumar Operator on cutter machine, America Razak Operator on Kneeder machines, Vashista Muni Operator on kneeder machine, Ram Ashish Parsad working on Press-die machine, Surender Kumar Operator on Ring-wire machine. Therefore, this goes to show that workmen have ' been performing the job of skilled, semi-

skilled nature. A labourer cannot perform such job with safety and accuracy of quality along with quantity of production on machines run on electricity.

14. The preliminary objection in the Written Statement saying that all the workmen named in Annexure-A to the reference order were engaged as laborers and performing unskilled nature of job, is absolutely wrong statement in the light of the statement of MW1. When the workmen were performing the specialized jobs, therefore, their demand tor designation according to their job performed is not illegal and unjustified. Most of them are performing the skilled nature of job, some of them semi-skilled nature of job and a few unskilled nature of job who did not work on any machine. It is evident from the testimony of the MW1 that management has large number of machines in the factory for carrying out the work of every manufacturing activity. Thus, the claim of the workmen is justified and legal. The management has tried to conceal the truth. The workmen have succeeded to bring out the reality. All the workmen working be give designation as claimed by them as per Annexure-A as per job performed by each, except those workmen who are Mali, Fire-man or Loader or simple helper. But they also can be designated accordingly. Accordingly, it is held that workmen are entitled to the relief of giving designation as claimed. However, on behalf of the management, list is placed on record as EX. MW1/1 of those workers who have already settled. Another list Ex. MW1/2 is showing who did not claim the designation. In this regard, it may be clarified that the designation of workmen be given as per their work. It cannot on the whimps and fancy of the management to keep only a particular designation when various types of work is performed. EX. MW1 /3 is showing the list of some unskilled workers held by lndustrial Tribunal no. 1 and Industrial Tribunal no. 2. EX. MW1/4 is the list of those workers who are claimed to be still working with the management. The management has filed certain copies of award of Industrial Tribunals in this regard with admission

on behalf of the workmen regarding being unskilled labour. It is pertinent to note that nature of job was not substantially in issue in those matters as the same were the cases of transfer. Even, issue of nature of work was not framed. Therefore the same cannot operate as res-judicata against the present case, in view of settled position of law. However, in order to avoid inconvenience, doubts or mis-understanding, it is hereby clarified that the benefit of designation as per this award will be available to only those workmen who have not settled their claim in any manner with the management so far. Accordingly, issue no. 2 is decided in favour of the workmen and against the management. The terms of reference is accordingly answered in favour of workmen and against the management. This award is hereby passed. Appropriate Government be informed accordingly. File be consigned to record room after completion of necessary formalities..."

59. Upon perusal of the above, it is made out that the workmen Union had contended that not giving designation to them as per the nature of their work is illegal. Further, not paying them minimum wages as per their designation is also in contravention to the settled law. It was prayed that the management be directed to assign designation to the workmen as shown against their respective names in Annexure-A.

60. The workers had raised a dispute before the Conciliation Officer under Section 10 of the Act, but the management did not show any interest in the settlement of the dispute and neither replied to the demand notice. It was also contended that the petitioner management had been committing omissions and irregularity by not applying the provisions of the Factory Act, 1948, and the Minimum Wages Act, 1948.

61. The petitioner management, on the other hand, resisted the claim of the workmen union and took a preliminary objection that the claim had

not been properly espoused. Secondly, it contended that a vast majority of the workmen are not members of Sawhney Rubber Industries Mazdoor Union and they did not authorise the union to raise the dispute. It also contended that the jobs as referred to in Annexure – A do not exist with the management. Further, multiple claimants had already settled their dispute with the management and therefore, no further dispute exists.

62. With respect to the preliminary objection taken by the management concerning espousal of the dispute, the learned Tribunal noted that the burden of proving that there was proper espousal was on the workmen and since the dispute had been raised for 378 workers, there was no need of espousal in the present case as the group in itself constitutes a substantial number of workmen. The learned Tribunal considered the individual evidence led by the workmen and observed that the workmen were performing the job of skilled, semi-skilled nature and were not unskilled, as asserted by the petitioner management. Hence, since they were performing specialised jobs, their demand for designation was held to be justified.

63. Therefore, in light of the foregoing discussion, the Tribunal held that all workmen be given designation as claimed by them as per Annexure-A except those who are Mali, Fire-men, Loader or simple helper. It was also noted that the petitioner management cannot keep only a particular designation for the workmen when various types of work are performed by them.

64. The learned Tribunal also clarified that the benefit of designation pursuant to the award will be available only to those workmen who have not settled their claim in any manner with the management.

65. Therefore, the short question that arises for the consideration of this Court is whether the interference under its writ jurisdiction is warranted in the impugned award passed by the learned Industrial Tribunal or not. In order to adjudicate the same, the below mentioned issues are required to be answered:

I. **Whether the dispute before the learned Tribunal was properly espoused?**

II. **Whether the learned Tribunal rightly decided the designation of the workmen?**

I. Whether the dispute before the learned Tribunal was properly espoused?

66. Before delving into the merits of the instant issue, it is pertinent to state the law settled *qua* the principle of espousal.

67. Section 10 of the Act authorizes the appropriate government to refer only an industrial dispute to a Tribunal or Labour Court. If there is no industrial dispute, the same cannot be referred. As per the labour jurisprudence, the dispute between an individual and the management cannot be an industrial dispute unless it is covered by the scope of the Act. Thus, in order to be an industrial dispute, it must satisfy the definition of Section 2(k) of the Act. In ***J.H. Jadhav v. Forbes Gokak Ltd.***[2], the Hon'ble Supreme Court observed that an industrial dispute is any dispute or difference between an employee/s and an employer/s which is connected with the employment or non-employment or the terms of the employment or with the condition of labour of any person. The relevant paragraphs of the said judgment are as under:

[2] **(2005) 3 SCC 202**

"*...**5.** The definition of "industrial dispute" in Section 2(k) of the Act shows that an industrial dispute means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment or with the conditions of labour, of any person. The definition has been the subject-matter of several decisions of this Court and the law is well settled. The locus classicus is the decision in Workmen v. Dharampal Premchand (Saughandhi) [(1965) 3 SCR 394 : AIR 1966 SC 182] where it was held that for the purposes of Section 2(k) it must be shown that: (1) The dispute is connected with the employment or non-employment of a workman. (2) The dispute between a single workman and his employer was sponsored or espoused by the union of workmen or by a number of workmen. The phrase "the union" merely indicates the union to which the employee belongs even though it may be a union of a minority of the workmen. (3) The establishment had no union of its own and some of the employees had joined the union of another establishment belonging to the same industry. In such a case it would be open to that union to take up the cause of the workmen if it is sufficiently representative of those workmen, despite the fact that such union was not exclusively of the workmen working in the establishment concerned. An illustration of what had been anticipated in Dharampal case [(1965) 3 SCR 394 : AIR 1966 SC 182] is to be found in Workmen v. Indian Express (P) Ltd. [(1969) 1 SCC 228 : AIR 1970 SC 737] where an "outside" union was held to be sufficiently representative to espouse the cause.*

***6.** In the present case, it was not questioned that the appellant was a member of the Gokak Mills Staff Union. Nor was any issue raised that the Union was not of the respondent establishment. The objection as noted in the issues framed by the Industrial Tribunal was that the Union was not the majority union. Given the decision*

in Dharampal case [(1965) 3 SCR 394 : AIR 1966 SC 182] the objection was rightly rejected by the Tribunal and wrongly accepted by the High Court.

***7.** As far as espousal is concerned there is no particular form prescribed to effect such espousal. Doubtless, the union must normally express itself in the form of a resolution which should be proved if it is in issue. However, proof of support by the union may also be available aliunde. It would depend upon the facts of each case. The Tribunal had addressed its mind to the question, appreciated the evidence both oral and documentary and found that the Union had espoused the appellant's cause.…*"

68. In the above said judgment, the Hon'ble Supreme Court relied upon an earlier judgment passed in the case of ***Workmen v. Dharam Pal Prem Chand***[3] and reiterated the tests for the purpose of classifying a dispute as an industrial dispute and further, explained the principle of espousal. The relevant paragraphs of the afore cited judgment are as under:

"*…**12.** It is well-known that in dealing with industrial disputes, industrial adjudication is generally reluctant to lay down any hard and fast Rule or adopt any test of general or universal application. The approach of industrial adjudication in dealing with industrial disputes has necessarily to be pragmatic, and the tests which it applies and the considerations on which it relies would vary from case to case and would not admit of any rigid or inflexible formula. There is no doubt that the limitations introduced by the decisions of this Court in interpreting the effect of the definition prescribed by Section 2(k) of the Act were based on such pragmatic considerations. It may also be conceded that if the dismissal of an individual employee working in an establishment in Delhi is taken up by the union of workmen*

[3] **1965 SCC OnLine SC 128**

in a place away from Delhi, that would clearly not make the dispute an industrial dispute. Section 36 of the Act which deals with the representation of parties, incidentally suggests that the union which can raise an individual dispute as to a dismissal validly, should be a union of the same industry. Generally, it is the union of workmen working in the same establishment which has passed the impugned order of dismissal. But in a given case, it is conceivable that the workmen of an establishment have no union of their own, and some or all of them join the union of another establishment belonging to the same industry. In such a case, if the said union takes up the cause of the workmen working in an establishment which has no union of its own, it would be unreasonable to hold that the dispute does not become an industrial dispute because the union which has sponsored it is not the union exclusively of the workmen working in the establishment concerned. In every case where industrial adjudication has to decide whether a reference in regard to the dismissal of an industrial employee is validly made or not, it would always be necessary to enquire whether the union which has sponsored the case can fairly claim a representative character in such a way that its support to the cause would make the dispute an industrial dispute. "Industry" has been defined by Section 2(j) of the Act and it seems to us that in some cases, the union of workmen working in one industry may be competent to raise a dispute about the wrongful dismissal of an employee engaged in an establishment belonging to the same industry where workmen in such an establishment have no union of their own, and an appreciable number of such workmen had joined such other union before their dismissal. In fact, the object of trade union movement is to encourage the formation of larger and bigger unions on healthy and proper trade union lines, and this object would be frustrated if industrial adjudication were to adopt the rigid Rule that before any dispute about wrongful dismissal can be validly referred under Section 10(1) of the Act, it should receive the

support of the union consisting exclusively of the workmen working in the establishment concerned.

13. *Besides, there is another way in which this question can be considered. If 18 workmen are dismissed by an order passed on the same day, it would be unreasonable to hold that they themselves do not form a group of workmen which would be justified in supporting the cause of one another. In dealing with this question, we ought not to forget the basic theory on which limitation has been introduced by this Court on the denotation of the words "industrial dispute" as defined by Section 2(k) of the Act. Therefore, we are satisfied that the Tribunal was in error in rejecting the reference on the preliminary ground that the dispute referred to it was an individual dispute and not an industrial dispute within the meaning of Section 2(k)…*"

69. Perusal of the above states that Section 2(k) of the Act outlines specific criteria for a dispute to fall within its purview. Firstly, it must pertain to the employment or non-employment of a worker. Secondly, the dispute should involve either a single worker whose cause is espoused by a union or multiple workers supported by their union. Notably, the term "the union" refers to the worker's union, even if it represents only a minority of the workforce. Thirdly, if an establishment lacks its own union and some workers join a union from a similar industry, even if it's not exclusively comprised of workers from the concerned establishment, the said union can advocate for the workers if it adequately represents them.

70. Thus, in order to give jurisdiction to the appropriate government to refer the dispute to the learned Tribunal for adjudication, it is essential for the workmen union to show that the individual dispute, i.e., the

designation and wages as per the designation claimed by the individual workmen that it represents was sponsored or espoused by it (the union).

71. Now adverting to the matter at hand, the learned Tribunal determined that the burden of proof of the instant issue was on the workmen to establish that there is proper espousal and the same was rightly observed by the learned Tribunal.

72. The dispute at hand involves a significant number of workers, totaling 378 individuals, collectively advocating for their cause with regard to the categorization of their designation in terms of the nature of their work.

73. The above stated collective representation suggests a unified front among the workmen, indicating that they are capable of supporting each other's grievances.

74. Notably, the said dispute is not an isolated issue concerning just one workman, rather, it encompasses a substantial group. Moreover, it is apparent from the perusal of the record and from a bare reading of the impugned award that none of the workman witnesses were subjected to cross-examination regarding this matter, indicating a lack of objection to the collective representation during the proceedings. Even during the arguments before the learned Tribunal, no substantial objections were raised against the collective espousal of the case.

75. Consequently, the learned Tribunal determined that the workmen's cause had been effectively espoused by their union. Furthermore, given the cohesive representation, the learned Tribunal concluded that there is no necessity for espousal in this particular case.

76. In the instant case, the industrial dispute, in terms of Section 2 (k) of the Act, was raised before the appropriate government on a collective basis because the dispute was espoused by others of the class to which the individual workman, mentioned in 'Annexure-A', belong. This Court has no doubts with regard to the fact that the issue of designation and non-receipt of wages as per the proper designation is an industrial dispute.

77. Therefore, it can be seen from the above that all the workmen (378), represented through the respondent union have substantial interest *qua* the said industrial dispute which is in terms of their employment or non-employment or terms of the employment or conditions of labour.

78. As per the settled position of law discussed in the preceding paragraphs, a dispute between an individual workman and the employer can be treated as an industrial dispute only where the workmen as a body or a considerable section of them, make common cause with the individual workman and espouse his demand.

79. In view of the afore said discussions, this Court is of the considered view that there was sufficient evidence before the learned Tribunal which was considered in accordance with the law to arrive at the conclusion that the dispute of the 378 workmen had been espoused by the respondent union.

80. Accordingly, issue no. I is decided in favour of the respondent union and against the petitioner management.

II. Whether the learned Tribunal rightly decided the designation of the workmen?

81. Before delving into the facts of the instant dipsute, this Court deems it appropriate to refer to the decision of the Hon'ble Supreme

Court in ***Paras Nath v. Union of India***[4], wherein, while considering the various categories of employees working with 'Delhi Milk Scheme', it was held that the nature of functions performed by 'Dairy Mates and Junior Plant Operators' is of semi-skilled workers, and therefore, the Hon'ble Court held them to be entitled to the pay scales of semi-skilled category. The Hon'ble Court noted that 'Dairy Mates' had to be versatile with the work in all the units, i.e. both un-skilled and semi-skilled, hence they could not be equated with the Sweepers. Furthermore, in ***V.K. Jain v. Kamal Singh Thausingh***[5], the Division Bench of Madhya Pradesh High Court upheld the order of the Labour Court in a case where the employee was performing the duties of Supervisor but treated as Jobber, therefore, classifying him as a Supervisor. On an objection to the jurisdiction of the Labour Court, the High Court noted that the Labour Court in fact did not grant promotion to the employee but properly classified him in the category he was entitled to and directed the employer to accordingly make the payment to the Chowkidars and Malis who were categorized as un-skilled workers.

82. The terms of reference for the dispute in the instant case revolve around determining whether the workers listed in Annexure-A are entitled to the designations mentioned alongside their names and, if so, what relief they should receive.

83. Throughout the proceedings, the respondent union presented 52 witnesses who consistently supported their claims, attesting to the nature of their work as described in their statements. Notably, none of these

[4] **AIR 1990 SC 298**
[5] **1978 MP LJ 664**

worker witnesses were challenged with evidence suggesting they did not perform the tasks specified in their designations.

84. Conversely, the petitioner management's witness, namely Mr. Harish Bhasin, MW-1, deposed as to the insight into the factory's operations, including details about machinery and workforce composition.

85. However, his testimony lacked clarity regarding the roles of workmen, particularly regarding skilled positions like operators and supervisors.

86. The petitioner management argued that all the workmen were laborers, but the learned Tribunal found this assertion inadequate given the specialized tasks described by the individual workman and the machinery's complexity.

87. Individual testimonies of the workmen further corroborated their claims, indicating that they indeed performed skilled or semi-skilled jobs, such as electricians, motor-winders, and machine operators etc. This contradicted the petitioner management's assertion that all workmen were unskilled laborers.

88. The learned Tribunal rejected the management's preliminary objection that all workmen were engaged as laborers, considering the evidence provided by the workmen and the complexity of the factory's operations. It was therefore determined that the workmen's demands for designation according to their job roles were justified and legal.

89. The learned Tribunal emphasized that designations should align with the tasks performed and not be arbitrarily assigned by the management. While some workman had settled or did not claim specific

designations, the learned Tribunal underscored that the workmen should be designated based on their actual duties. Additionally, the lists of unskilled workers from previous Tribunal cases were presented, but their relevance to the current dispute was deemed to be limited, as those cases primarily concerned transfers rather than job designations.

90. In conclusion, the learned Tribunal held that based on the evidence presented, highlighting the discrepancy between the workmen's actual roles and the petitioner management's assertions, the workmen are entitled to the designations claimed by them.

91. This Court is of the view that Mr. Harish Bhasin (MW-1) in his cross-examination had elaborately deposed as to the nature of his work and that he was the production in-charge for the petitioner management from the period of year 1987 to 1997, wherein the number of workers gradually decreased from 1500 workers to 600 workers. He categorically testified with respect to the nature of work of the petitioner factory which is manufacturing of bicycle tyres and tubes. He deposed that there were seven *kneeder* machines in the year 1996 and on each machine 3-5 helpers used to work. He further deposed that there were two mixture machines, four die machines, three-four *patti* machines, sixty mono – band machines and there were forty machines in tar section. Further, in addition to the two mixture machines, there were two calendar machines in the calendar section.

92. MW-1 had further made categorical statements with regard to the electrical department and as per his statement, there were three electricians and a significant number of helpers, indicating a division of labor to manage the electrical systems.

93. Additionally, the presence of three lathe machines and one welding machine suggests a level of mechanical work within the department. The witness also mentioned a substantial workforce of unskilled individuals, presumably tasked with more basic labor-intensive duties.

94. However, the witness's claim that one operator could handle 2-3 machines simultaneously appears dubious, casting some uncertainty on the accuracy of their testimony. Furthermore, the witness describes the presence of tube die machines and a coal-fire boiler, indicating a diverse range of machinery in the petitioner factory.

95. Pertinently, MW-1 denied the suggestion that some workers held roles as operators, supervisors, or quality control checkers, contradicting the management's assertion that all workers were laborers. This discrepancy underscores a fundamental disagreement regarding the skilled levels and job roles of the workmen.

96. The witness had categorically stated that working with electric-driven machinery requires specialized knowledge, implying that not all workmen could be classified as unskilled laborers. Instead, the witness suggests a more nuanced classification, including supervisors, operators, and workers with varying degrees of skill. This testimony challenges the management's characterization of the workforce and supports the workmen's claims for designations of their work based on their actual responsibilities and skills. Further, the learned Industrial Tribunal had sufficient material on record including the wage slips, appointment and acceptance letter as well as the testimonies of the witnesses.

97. In light of the above observations *qua* the testimony of the management witness before the learned Tribunal, this Court does not find

any merit in the contentions of the petitioner in challenging the impugned award. The petitioner management's case stands defeated in light of its testimony discussed herein above.

98. The petitioner has contended before this Court that since all the workmen failed to provide affidavit and testimonies before the learned Tribunal, the designation, as claimed by others who have failed to file their affidavit cannot be relied upon. In this regard, this Court is of the view that in disputes involving a large number of workers, it's not always necessary to identify and record evidence from each individual worker. The focus is typically on presenting representative evidence that adequately represents the collective grievances and positions of the workers as a whole. The Allahabad High Court in the judgment titled ***Sheo Kumar Gupta v. Bhikham Singh***[6] held that plurality of witnesses to prove a fact is not required at all. In order to prove a fact, even a single witness's testimony can be relied upon to inspire the Court's confidence. The relevant paragraph of the said judgment is as under:

> "...***8.*** *Law does not require to examine multiple witnesses to prove a certain fact. For proof of a fact even a solitary witness can be believed provided his testimony is credible and it inspires confidence of the Court. Plurality of witnesses to prove a fact is not required at all. The Court while appreciating the evidence in this case could not have ignored that the plea set up by the landlord about the rate of rent per month was supported by the testimony of the applicant's witness, whose statement will be binding on the applicant in these proceedings. The Court below has taken pains in appreciating the evidence. It could have relied upon the solitary testimony of the landlord also. But when the landlord's statement is corroborated by the applicant's*

[6] **1990 SCC OnLine All 487**

witness the fact which was to be considered by the court below was amply proved and there is no infirmity in the finding which is arrived at on the evidence of the applicant's witness supported by the landlord's statement. Therefore, the contention of the learned counsel for the applicant that the court below has ignored the material evidence from consideration is of no avail to the applicant…"

99. Therefore, in the context of a dispute raised by 378 workmen, recording evidence from 52 representative witnesses may be deemed adequate, provided that their testimonies effectively convey the common issues and concerns of the entire workforce which it does.

102. Moving further, it has been contended by the petitioner that the designation claimed in Annexure-A cannot be allowed since no such jobs exist in the petitioner management. With regard to the same, it is stated that the said contention of the petitioner cannot be accepted as it cannot claim that since no such job exists in the management, the workman cannot be given designation.

103. If a particular workman is doing the job of a particular nature, he or she has to be given the proper designation and the management cannot be allowed to escape its liability. Admittedly, the workmen have been doing work in different capacities such as electrician, operator machine, fire man, unloading, running die machines, coal-fire boiler etc. and all such work has to be categorized in terms of 'skilled/semi-skilled/unskilled. Therefore, it has been rightly observed by the learned Tribunal that the petitioner management cannot keep only a particular designation for one workman when various types of work are being performed by other workmen in different capacities.

104. Accordingly, issue no. II is decided in favour of the respondent union and against the petitioner management.

105. At this juncture, this Court shall briefly revisit the scope of this Court's power under Article 226 of the Constitution of India. The jurisdiction, of the High Court in matters where Article 226 has been invoked, is limited. It is a well settled proposition of law that it is not for the High Courts to constitute itself into an Appellate Court over the decisions passed by the Tribunals/Courts/Authorities below, since, the concerned authority is constituted under special legislations to resolve the disputes of a kind.

106. A writ is issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals and such errors would mean 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 improperly, 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.

107. Tersely stated, f*irstly*, a High Court shall exercise its writ jurisdiction sparingly and shall act in a supervisory capacity and not adjudicate upon matters as an appellate court. *Secondly*, the Constitutional Court shall not exercise its writ jurisdiction to interfere when *prima facie*; the Court can conclude that no error of law has occurred. *Thirdly*, judicial review involves a challenge to the legal validity of the decision. It does not allow the Court of review to examine

the evidence with a view to forming its own view about the substantial merits of the case. The reasoning must be cogent and convincing. *Fourthly*, a High Court shall intervene only in cases where there is a gross violation of the rights of the petitioner and the conclusion 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. *Fifthly*, if the Court observes that there has been a gross violation of the principles of natural justice.

108. To summarize the discussions in the preceding paragraphs with regard to the findings of the learned Tribunal, it is stated that the reasoning provided for Issue No. 1 addresses the proper espousal of the dispute. The learned Tribunal has rightly highlighted that the burden of proof lies with the workmen to establish this aspect. In the instant case, the dispute involves a significant number of workers (378), leading the learned Tribunal to conclude that espousal by a representative body such as the respondent union is sufficient, given the collective nature of the dispute. Legal precedents were relied upon by the learned Tribunal to support this conclusion, emphasizing that in industrial disputes involving a group of workers, the need for individual espousal is alleviated. The learned Tribunal dismissed the petitioner management's objection regarding espousal, stating that it lacks substance, and ruled in favour of the workmen union. This Court does not find any infirmity or illegality of any kind in the afore stated findings of the learned Tribunal and accordingly, it is held that the same was adjudicated in accordance with the law.

109. Furthermore, Issue No. 2 before the learned Tribunal pertained to the entitlement of workmen to designations as per Annexure-A and the reliefs they are entitled to. With regard to the same, the learned Tribunal examined the evidence presented by both the parties, including witness testimonies and documents such as wage slips, appointment and acceptance letter etc. It observed that the deposition of 52 workmen witnesses supporting their claims is consistent. The management's witness was also deposed with details provided regarding the production process and workforce dynamics at the petitioner management. Ultimately, the learned Tribunal concluded the dispute in the workmen's favour, noting the specialized nature of their jobs and the necessity for appropriate designations. It rejected the management's argument that all workmen were engaged as laborers performing unskilled tasks, highlighting discrepancies in the evidence provided. The learned Tribunal thereby awarded that the designations be assigned to the workmen as claimed, except for those who have settled their claims previously. In conclusion, the learned Tribunal adjudicated the dispute in favor of the workmen on both issues, affirming their right to espousal and entitlement to designated roles based on the nature of their work, and the same was decided in terms of the settled law.

110. At this stage, this Court finds it pertinent to mention that the petitioner management had contended that the learned Tribunal has passed a mechanical order by not classifying the workmen even though the dispute with some of the workmen has already been settled and that some of the workmen cannot be granted the designation of skilled/semi-skilled.

111. In regard to the above, it is stated that the learned Tribunal has categorically observed in paragraph no. 14 of the impugned award that all the workmen working in the petitioner management will be given designation as claimed by them in Annexure-A which is as per the job performed by each of them ***'except those workmen who are Mali, Fire-Man or Loader or Simple Helper'***.

112. In paragraph no. 14 of the impugned award, the learned Tribunal has also clarified that if there are workmen who have not claimed their designation, they may also be given designation as per their work. The learned Tribunal has further given clarification regarding the fact that the benefit of designation as per the award will be available to only those workmen who have not settled their claim in any manner with the petitioner management so far.

113. Therefore, this Court does not find any reason to go beyond the above said clarification provided by the learned Tribunal with regard to the workmen who are unskilled, workmen who have settled their claim and workmen who have not claimed their designation as the impugned award in itself sufficiently explains the same.

114. Accordingly, this Court is of the considered view that the findings arrived at by the learned Tribunal are right and the petitioner management has been unable to make out a case to the contrary. Hence, the grounds raised by the petitioner to seek the reliefs as prayed for are insufficient and cannot be entertained by this Court.

CONCLUSION

115. Taking into account the limited scope of this Court's power under Article 226 of the Constitution of India, this Court is of the

considered view that there is no error apparent on the face of the impugned award and there is nothing on record to show that the learned Tribunal has exceeded or usurped its jurisdiction, or acted illegally or in contravention to any law.

116. It is observed by this Court that the learned Tribunal has provided a detailed discussion in the impugned award which is based on the testimony and evidence presented before it. The reasoning in the impugned award show that the designation provided to the workmen is in accordance with the law and there is no infirmity in arriving at the said finding.

117. This Court has given a detailed scrutiny to the findings of the learned Tribunal and it is held that the contentions of the petitioner management that the learned Tribunal erred in adjudicating the issue of espousal and classifying the workmen as per the designation provided in Annexure - A is rejected and it is held that the learned Tribunal rightly considered the issue of espousal and granted designation to the workmen.

118. It is held that the petitioner management has failed to make out a case to show that the learned Tribunal has acted in an arbitrary manner or in contravention to the law. The petitioner had sufficient opportunities to substantiate its assertion with sufficient evidence and the same is apparent from the impugned award. Taking note of the same, the learned Tribunal has rightly passed the impugned award.

119. In light of the foregoing discussions, the impugned award dated 29th September, 2009 passed by the learned Industrial Tribunal – I, Karkardooma Courts, Delhi, in industrial dispute bearing ID No. 57/2000 is upheld.

120. Accordingly, the instant petition stands dismissed. Pending applications, if any, also stand dismissed.

121. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

MAY 31, 2024
dy/ryp/av