(2015) 09 DEL CK 0151

In the Delhi High Court

Case No : LPA 502, 710, 503/2013 and LPA 316 of 2014

Indian Railway Finance Co. Ltd. and Others — APPELLANT

Vs

Yatender Kumar Sharma and Others — RESPONDENT

Date of Decision : 10-09-2015

Acts Referred:

Constitution of India, 1950 — Article 14
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1)
Industrial Disputes Act, 1947 — Section 25F

Citation : (2015) 09 DEL CK 0151

Hon'ble Judges : Pradeep Nandrajog, J;Mukta Gupta, J

Bench : Division Bench

Advocate : Sunil K. Jain, Reeta Choudhary, Shaantanu Jain, Advocates and Neeraj Kumar, Director, for the Appellant; Gautam Awasthi and Ayush Choudhary, Advocates for the Respondent

Judgement

Pradeep Nandrajog, J.

CM No. 14101/2013 in LPA No. 502/2013

Cm No. 14773/2013 In Lpa No. 503/2013

1. Since while deciding LPA No. 503/2013 we would be taking note of such documents which are relevant and would be relied upon by learned counsel for the Indian Railway Finance Corporation Ltd., and have prayed to be taken on record as additional documents in CM No. 14773/2013, we allow said application. Similarly while deciding LPA No. 502/2013 we would be taking note of such documents which are relevant and reference has been made thereto in the arguments by learned counsel for Indian Railway Finance Corporation Ltd. and have prayed to be taken on record as additional documents in CM No. 14101/2013, we allow said application.

LPA Nos. 502/2013, 710/2013, 503/2013 & 316/2014

2. Indian Railway Finance Corporation Ltd. generates revenue through fixed term

bonds. The revenue is used to augment the rolling stock of Indian Railways. Of necessity, the Corporation engages share transfer agents who maintain not only the record of transactions transacted by the agents and even accounts relatable thereto.

3. One such agent was M/s. Karvy Consultants Pvt. Ltd. previously another consultant was appointed by the name Allied Computer Techniques Pvt. Ltd. The terms and conditions on which the said two agents were to work for the Corporation were listed in the contract between the Corporation and said two agents.

4. Claim of Rajinder Prasad was that he was actually employed by the Corporation after he was interviewed and so were eight other persons, but as a ruse they were shown to be initially employees of Allied Computers Techniques Pvt. Ltd. and thereafter as employees of M/s. Karvy Consultants Pvt., Ltd. He sought regularization of his service, which was denied. He raised an industrial dispute which was referred to the Industrial Tribunal by the appropriate government. The term of the reference was :

"Whether it is fact that Shri Rajinder Kumar is a workman of the Indian Railway Finance Corporation (IRFC) ? If so, whether the action of the management in not regularizing the services of the applicant by the management is proper and justified? If not, what relief he is entitled to?"

5. The Corporation had awarded another contract to M/s. Hingorani M & Co. Chartered Accountants Ltd. for preparation of necessary vouchers, maintenance of books of accounts, control of monthly profit and loss account and balance sheet. As per the contract it was the obligation of M/s. Hingorani to send two representatives to the office of the Corporation to attend to such works concerning the contract works and one of them was Yatender Kumar who used to sit in the accounts office of the Corporation to execute the necessary works. He too claimed regularization under the Corporation. The claim was denied. He raised an industrial dispute when the contract with M/s. Hingorani came to an end and because said company terminated his services. The appropriate government made the following reference to the Industrial Tribunal:-

"Whether the termination of the services of Sh.Yatender Kumar w.e.f. 7.6.99 by the management of IRFC Ltd. is legal, fair and justified? If not, what relief the workman concerned is entitled to and from which date?"

6. Award dated October 15, 2010 in favour of Yatender Kumar Sharma has discussed the documentary evidence proved by Yatender concerning his working in para 20 to 22 of the award. It reads as under:-

"20. Though the claimant could not show that he was ever appointed by the Corporation, yet a peculiar fact has been brought over the record by him. He had proved documents Ex.WW1/1 to Ex.WW1/7. These documents are the applications submitted by the claimant to the Corporation for release of his travelling allowance for the month of July, 1997, January, April, May, June and July, 98 Ex.WWI/7 is an application submitted by the claimant for release of expenses incurred by him in performance of his duties with the Corporation. When perused it emerge over the record that he claimed travelling allowance from his residence to the office of the Corporation and sometimes from the office of the Corporation to his residence. His application was considered and granted. A sum of Rs. 15,207/- was ordered to be released in his favour by the Corporation. In the same manner his applications Ex.WW1/5, Ex.WW1/2, Ex.WW1/1, Ex.WW1/4 and Ex.WW1/3 were granted for the month of January, April, May, June and July, 98. Consequently it is evident that for the period referred above the Corporation sanctioned traveling allowance, incurred by the claimant for attending to his duties with the Corporation.

21. Question for consideration comes as to in what capacity the Corporation sanctioned travelling allowance, for the period referred above in favour of the claimant. Whether he could have claimed those allowances from the Corporation, while being an employee of Retainer of Accounts? Without being an employee of the Corporation, the claimant cannot put forward his claim for release of travelling allowance in his favour. By granting applications of the claimant, the Corporation conceded that there existed some relationship between it and the claimant. What were those relations is a proposition which the Corporation ought to have answered. The Corporation simply asserts, that he was an employee of the Retainer of Accounts, which assertion stands brushed aside by the fact that Corporation opted to release travelling allowance in favour of the claimant. Therefore, the documents referred above make it clear that impliedly the Corporation established relationship of employer and employee between it and the claimant.

22. When relationship of employee and employer was established by the Corporation with the claimant, in that situation Hingorani M. & Co. was in a capacity of a juristic person, who was interposed in between by the Corporation. Arrangement made by the Corporation in that regard cannot be termed as genuine. It was sham, bogus, ruse or camouflage with a view to avoid legal relationship between the parties and to deny legal rights of the claimant. Therefore, it is concluded that relationship of employer and employee were there between the Corporation and the claimant, since July, 1997. The claimant has been able to tilt the scale in his favour by proving the documents referred above. Consequently it is announced that relationship of employer and employee were there between the parties. Issue is, therefore, answered in favour of the claimant and against the Corporation."

7. Noting that Yatender Kumar Sharma had started working with the Corporation in April, 1997 and served continuously till May, 1999 vide award dated October 15, 2010 the Tribunal held that since Section 25F of the ID Act, 1947 was violated he would be entitled to reinstatement in service with continuity, but back wages were restricted to 25%. Noting that the evidence establish that one Mr.

Kannan who was engaged on temporary basis by the corporation as an Assistant was regularized in service the Tribunal held that Yatender Kumar would be entitled to be regularized in service post reinstatement.

8. Though not expressly stated by the Tribunal, it is apparent that the Tribunal has held that the agreement with M/s. Hingorani M & Company Chartered Accountants was a sham and that the direct employer- employee relationship was between the Corporation and Yatender Kumar Sharma.

9. Concerning Rajinder Prasad, the award dated October 27, 2010, which is in favour of Rajinder Prasad has discussed the evidence in paragraphs 15 to 21 and thereafter in paragraphs 23 to 28 as under:-

"15. When a dispute is raised in respect of existence of relationship of employer and employee between the parties, in that situation onus lies on the claimant to establish such relationship. To discharge that onus the claimant has examined Shri K.R. Menon, Vice President of Karvy Computer Share Pvt. Ltd., who were working as registrar and share transfer agent for the Corporation since 19th August, 1998. He unfolds that an agreement, which is Ex.WW1/1, was entered into between the Corporation and Karvy Consultants Ltd., on the strength of which the latter firm undertook to perform and fulfill such functions, duties and obligations and to provide such service as mentioned in the agreement. In the agreement it was not stipulated that the share transfer agent would be employing any person with the Corporation. Therefore, out of facts unfolded by Shri Menon it is crystal clear that the share transfer agents were not to employ any person for rendering services as detailed in Ex.WW1/1 with the Corporation. The Corporation could not get facts out of the mouth of the witnesses to establish that the claimant was an employee of share transfer Agent.

16. Shri Shakul Puri, Vice President of Karvy Consultants Pvt. Ltd., now known as Karvy Computer Share Pvt. Ltd. entered the witness box to lift the curtain in respect of relationship between the claimant and the Corporation. He unfolds that he had seen the claimant working in the office of the Corporation. The claimant had filed a writ petition before High Court of Delhi wherein Karvy Consultants Pvt. Ltd. was a party. He filed affidavit Ex.WW2/1 before the High Court. When Ex.WW2/1 is perused, it came to light that Karvy Consultants Pvt. Ltd. was appointed as registrar and transfer agent of the Corporation in August, 1998. The Corporation requested Shri Puri to route salary bill of 9 (nine) employees employed by the Corporation through its record on and around October, 98. Salary bill of nine employees were being routed through M/s. Allied Computer Techniques Pvt. Ltd. till then, who were previous registrars and transfer agents. Routing of salary of nine persons was a friendly accommodation, which arrangement was entered into to foster and cement a healthy working relationship between the Corporation and registrar and share transfer agent. During the course of his cross examination, he projects that there was an oral arrangement between M/s. Karvy Consultants Pvt. Ltd. and the Corporation and in pursuance of the said arrangement no appointment letter was issued to those

nine persons, referred by him in his affidavit Ex.WW2/1. He denied that Shri Rajinder Prasad was employed by Karvy Consultants Pvt. Ltd. However, he admits that he was paid by Karvy Consultants Pvt. Ltd. and money was being reimbursed by the Corporation as per arrangement. The arraignment started in November, 1998 and lasted till April or May, 2000. Facts projected by Shri Puri gives a jolt to the stand taken by the Corporation to the effect that the claimant was not its employee.

17. Shri Vipin Senger had placed documents Ex.WW3/1 to Ex.WW3/11 over the record, which are certified under Banker''s Book Evidence Act. Those documents relate to saving bank account No. 01/008095 maintained by the claimant at Corporation Bank Bhikaji Cama Place, New Delhi. These documents project that certain cheques were deposited in the aforesaid saving bank account by the claimant. The document, so referred by Shri Senger, would be considered in subsequent sections if need be. Shri Manohar Lal placed copies of documents Ex.WW4/1 to Ex.WW4/26 over the record which were brought by him from the office of the Corporation. These documents would be considered in subsequent sections, if need be.

18. Shri Rajinder Prasad swears in his affidavit Ex.WW5/A that he was an employee of the Corporation since January, 96. He was employed in Bond Section of the Corporation. Ex.WW5/1 to Ex.WW5/4 refer to payments made by the Corporation directly to him. Ex.WW5/8 is a document initiated by him which was signed by Shri S.K. Ajmani, Manager of the Corporation and Shri C.S. Verma, Company Secretary of the Corporation respectively. Attendance sheet Ex.WW5/9 to Ex.WW5/11 project that he regularly worked for the Corporation for the month of July, 97, August, 97 and June, 98. Copy of the minutes held on 14.7.98 were prepared by him which were signed by Shri Sondhi, S.K. Ajmani and Shri S.Balachandran, Executive Director and Shri C.S. Verma, Company Secretary of the Corporation, which minutes are Ex.WW5/12 and EX.WW5/13. Copy of the salary list of the staff of the Corporation, containing his name for the month of June, 99, and July, 99 are Ex.WW5/14 and Ex.WW5/15, which list has been signed by Sureshan, Accountant of Karvy Computers Pvt. Ltd. at point A, Madhu Accountant of Karvy Computers Pvt. Ltd. signed at point B and Shri S.K. Ajmani, Manager of the Corporation at point C and C.S. Verma Company Secretary of the Corporation at point D. He had also relied documents Ex.WW5/16 to Ex.WW5/23, to show that he was an employee of the Corporation. During the course of his cross examination he projects that he was interviewed by Shri C.S. Verma, Group Manager on 21st of January, 96. He admitted that there was no authority with him to prepare copies, which are Ex.WW5/5 to Ex.WW5/23, from its originals.

19. Shri S.K. Ajmani presents that the Corporation is competent to outsource matters relating to issuance of bonds and for that purpose it had appointed registrars. Registrars are required to be registered with SEBI. Registrar are not supposed to pay salary to the employees of the Corporation. Shri Harish Chand

Sondhi unfolds that the claimant was appointed in the Corporation by Shri C.S. Verma. Shri Verma interviewed the claimant and then appointed him. He (witness) worked on the post of Deputy Manager with the Corporation since 1990-91 and worked there upto 2002. Shri Harish Chand Sondhi projects that he retired as Deputy Manager from the Corporation in 1990-91. After his retirement he rendered his services as Consultant with the Corporation till 2002. Claimant was appointed by Shri C.S. Verma, who took his interview and engaged him. Claimant was working under him in the Bond Section. He was working as Incharge in the Bond Section since 1988. When he left the Corporation in 2002, the claimant was working there at that time. During the course of his cross examination he concedes that wages of the claimant were being paid by Karvy Consultants, the registrars appointed by the Corporation.

20. Shri S.Radhakrishnan swears in his affidavit Ex.MW1/A that the claimant was never employed by the Corporation either as an Assistant or as L.D.C. The Corporation have its share transfer agents, internal auditors and retainer of accounts, who work at its premises. An employee of share transfer agent, internal auditor and retainer of accounts cannot be an employee of the Corporation. The claimant is trying to get a back door entry in the service of the Corporation. The claimant is trying to get a back door entry in the service of the Corporation. He was not appointed by the Corporation at any point of time. During the course of his cross examination he concedes that Ex.WW5/18 and Ex.WW5/21 bear his signatures while Ex.WW5/23 bear signatures of Shri C.S. Verma at point A. He further concedes that contents of Ex.MW1/W2 highlight that M.Kannan was appointed on a short term vacancy, whose services have been regularized. Ex.MW1/W2 highlights that at one point of time there were 15 employees who were working with the Corporation.

21. When facts unfolded by the witnesses of the claimant and Shri R.Radha Krishnan are appreciated, it came to light that there was an arrangement between the Corporation and share transfer agents to route salary bill of nine employees, employed by the Corporation though share transfer agents since 1998. It also emerge over the record, as unfolded by Shri Menon, that share transfer agents were not to employ any person for rendering services to the Corporation. Affidavit Ex.WW2/1 was filed by Shri Puri before High Court of Delhi, wherein he projected facts relating to the arrangement between the Corporation and share transfer agents. Therefore, out of facts unfolded by Shri Menon and Shri Puri, it is evident that nine employees, appointed by the Corporation were shown as employees of share transfer agent through whom their salary bills were routed. Share transfer agents were interposed in between by the Corporation. These facts led High Court of Delhi to pass order Ex.WW2/M1, making observation to the effect that industrial adjudicator shall decide the matter in the light of the decision by the Apex Court in Steel Authority of India (supra). In writ jurisdiction, the High Court was not supposed to adjudicate disputed facts. Claimant claimed before the High Court that he was an employee of the Corporation, which fact was disputed. Shri Puri placed factum of arrangement

before the High Court by his counter affidavit and brought it to the light of the day that nine employees were engaged by the Corporation through share transfer agents. Therefore, evidently, the share transfer agents were interposed as a Contractor and in fact it was the principal employer, namely, the Corporation who had employed him.

22. x x x

23. In view of the law laid by the Apex Court, factual matrix would be appreciated. As unfolded by Shri Puri claimant and eight others were employed by the Corporation, interposing the share transfer agents in between. Shri Puri makes it clear that salary bill of those nine employees were routed by the Corporation through share transfer agents. His testimony makes it clear that in fact it was the Corporation who was their employer. Consequently it is evident that the arrangement so made by the Corporation with share transfer agents was ruse and camouflage, entered with a view to evade benefits available to their employees. Veil, which stood lifted through the affidavit of Shri Puri which is Ex.WW2/1, make it clear that in fact the claimant and 8 others were employees of the Corporation. Consequently this Tribunal is constrained to conclude that the arrangement so interposed is shame and bogus, brought in between by the Corporation with a view to avoid benefits to the claimant. Resultantly it is announced that the claimant was in fact an employee of the Corporation.

24. Findings recorded above are reaffirmed from the documents, which would be appreciated now. Ex.WW5/1 to Ex.WW5/4 are cheques issued by the Corporation in favour of the claimant. Ex.WW5/1 is the cheque for a sum of Rs. 7307/- only issued on 23rd of February, 98 by the Corporation in favour of the claimant. Ex.WW5/2 was issued by the Corporation on 5th of May, 98 in favour of the claimant for a sum of Rs. 1130/-. Ex.WW5/4 is the another cheque issued in favour of the claimant by the Corporation for a sum of Rs. 20007/- No explanation was offered as to why and for what services rendered by the claimant, the cheques were issued by the Corporation in his favour. Claimant agitates that he was an employee of the Corporation and these Cheques were issued in that capacity.

25. The relationship of employer and employee is constituted by a contract, express or implied between employer and employee. A contract of service is one in which a person undertakes to serve another and to obey his reasonable orders within the scope of the duty undertaken. A contract of employment may be inferred from the conduct which goes to show that such a contract was intended although never expressed and when there has, in fact, been employment of the kind usually performed by the employees. Any such inference, however, is open to rebuttal as by showing that the relation between the parties concerned was on a charitable footing or the parties were relations or partners or were directors of a limited company which employed no staff. While the employee, at the time, when his services were engaged, need not have known the identity of his employer, there must have been some act or contract by which the parties

recognized one another as master or servant.

26. Cheques referred above bring it over the record that the Corporation dealt with the claimant as its employee, when aforesaid cheques were issued in his favour. Ex.WW5/6 is a letter received by the Corporation from Surinder Kaur Bajaj, wherein she had showed her annoyance for time taken in transfer of bonds in her name. The said letter was marked to the claimant by Sh.S.K. Ajmani for disposal at his ends. Shri Ajmani enquired from the claimant as to what was the problem in transfer of bonds in the name of the lady. Piyush Aggarwal wrote for Allora Traders Ltd. to the Company Secretary of the Corporation seeking redemption of 100 bonds while sending Ex. WW6/7 by fax, Shri Aggarwal invited attention of the claimant for action in the matter. Claimant dealt with an application of Dunlop Employees Provident Fund for splitting of 1000 bonds into 19 certificates. He records Ex.WW5/8 detailing therein that certificates were signed by the Directors on 24.6.98 and common seal of the Corporation was fixed by him on those bonds in presence of Manager bonds and Mr. Rishi. HE presented Ex.WW5/8 for consideration of Shri S.K. Ajmani, Manager (bonds), who confirms the factum of affixation of seal of the Corporation and forward the document to Group General Manager (bonds), who ordered registration of those bonds in the name of Dunlop Employees Gratuity Fund. Ex.WW5/14 and Ex.WW5/15 are list of the staff of the Corporation prepared for release of salary for the month of June and July, 99, wherein name of the claimant appears as Shri R.P. Chamoli. These documents bear signature of Shri Sureshan in the capacity of Accountant, Karvy Consultants Pvt. Ltd. and Shri S.K. Ajmani, Deputy General Manager (bonds) of the Corporation. In the same manager Ex.WW5/17 is the list of the employees for release of arrears from April, to November, 96 and salary for the month of February, 97. Ex.WW5/19 is the document issued by Shri S.K. Ajmani commanding Shri Harish Chand Shondhi and the claimant to visit the Office of Karvy Consultants on 19th of September, 98 to assess progress of computerization of 3rd series data. Ex.WW4/13 is the document wherein the claimant deals with the bills presented by M/s. Shiva Associate for payment. He recommends that the payment of Rs. 5650/- may be made to M/s. Shiva Associates. His recommendations were dealt with by Shri S.K. Ajmani and by Shri C.S. Verma. In the same manner he dealt with a bill of M/s. Shiva Associates which document is Ex.WW4/15. Ex.WW4/17 was initiated by the claimant in respect of conveyance charges wherein he recommends that those charges may be restricted to Rs. 250/- each only, which recommendation is contained in Ex.WW4/17. He also deals with the bill of M/s. Shiva Associates and records that a sum of Rs. 6,280/-, including conveyance charges of Rs. 630/- may be passed for payment, which facts are projected in document Ex.WW4/21. In the same manner he submits Ex.WW4/22 for sanction of payments of bill amounting to Rs. 6280/- including conveyance charge of Rs. 630/- in favour of M/s. Shiva Associates. These documents were dealt with by the officers of the Corporation after recommendation so recorded by the claimant. Besides the documents referred above, Ex.WW4/25 is note sheet presented by Shri Rajinder

Singh to his superiors and ultimately it was dealt with by Shri S.K. Ajmani and General Manager (bonds) and Company Secretary. Out of the documents, referred above, one and the only conclusion emerges is that the claimant was performing his duties as an employee of the Corporation, who used to report to the Manager (bonds). Besides the above documents claimant have brought photo copy of attendance register over the record which are Ex.WW5/9, Ex.WW5/10 and Ex.WW5/11. Hence it is crystal clear that the claimant was working as an employee of the Corporation.

27. Shri Harish Chand Shondhi unfolds in unequivocal words that the claimant was working in bond section of the Corporation under him, who was interviewed and appointed C.S. Verma, General Manager (bonds). Claimant worked there alongwith him till 2002. When he left the Corporation in 2002, the claimant was working there at that time. Facts so unfolded by Shri Harish Chand Shondhi gives corroboration to the findings recorded hereinabove. Consequently, it is concluded that relationship of employer and employee existed between the claimant and the Corporation. The Corporation took direct services of the claimant and rooted his salary though share transfer agents, which modus operandi is deprecated by law.

28. Claimant projects that he filed a writ petition before High Court of Delhi, wherein order dated 24.3.99 was passed, which is Ex.W-1 restraining the Corporation from terminating his services. His writ petition was disposed of vide order dated 29.1.2003 with permission to raise dispute before the appropriate Government and the industrial adjudicator was commanded to decide the matter in pursuance of the decision of the Apex Court in Steel Authority of India Ltd. (supra), copy of the order passed by High Court of Delhi is Ex.WW2/M1. He projects that at that stage, the Corporation had not ''allowed him and his other colleagues to enter its premises. He was removed from the service of the Corporation and he approached the Conciliation Officer. Facts projected by Claimant remained unassailed, when the Corporation tried to purify his testimony by an ordeal of cross examination. Consequently, it is evident that the claimant was in continuous service of the Corporation since 1996 till January, 2001."

10. Concerning Rajinder Prasad, we need to highlight that to discharge the onus upon him, he examined seven witnesses one of whom was Sh.K.R. Menon, Vice President of Karvy Computer Shares Pvt. Ltd. which was the registrar and share transfer agent for the Corporation since August 19, 1999 and as per the agreement Ex.WW-1/1 entered into between the Corporation and Karvy Consultants Ltd. It was not a term that the Karvy Consultants Ltd. would be sending any person to the office of the Corporation. Shakun Puri, the Vice President of Karvy Consultants Pvt. Ltd. deposed that he had seen Rajinder Prasad working in the office of the Corporation. His testimony was that after Karvy Consultants Pvt. Ltd. was appointed as a registrar and share transfer agent of the Corporation, at the request of the Corporation he agreed that salary of 9 employees directly engaged by the Corporation would be paid by Karvy

Consultants Pvt. Ltd. and reimbursed by the Corporation and that one of the said 9 persons was Rajinder Prasad. As per him it was a friendly accommodation gesture and the arrangement was entered into to foster and cement a healthy working relationship between the Corporation and the registrar and share transfer agent. Rajinder Prasad proved Ex.WW-5/1 to Ex.WW-5/4 concerning payment directly made to him by the Corporation. He also proved Ex.WW-5/8, a document initiated by him in the files of the Corporation. He also proved Ex.WW-5/9 to Ex.WW-5/11 which were the attendance sheets signed by him and as maintained by the Corporation for the month of July, 1997, August, 1997 and June, 1998. He proved minutes written by him concerning board meetings of the Corporation, Ex.WW-5/12 and Ex.WW-5/13. Sh.Harish Chand Sondh Deputy Manager of the Corporation was also examined as a witness by him deposed that one Sh.C.S. Verma had interviewed Rajinder Prasad before he was given work in the Corporation. He deposed that Rajinder Prasad was working in the bond section under him but wages were being paid by the transfer agent.

11. The testimony of the witnesses have found a reflection in the reasoning of the Tribunal, and suffice it to record that findings of fact recorded by the Tribunal are final unless shown to be perverse.

12. In the written submissions filed by the Corporation not even an attempt has been made to list, or for that matter even approach to list, any perversity in the finding of fact recorded by the Tribunal concerning Rajinder Prasad.

13. Thus as regards Rajinder Prasad, we concur with the finding recorded by the Tribunal that he had successfully shown that he was directly employed by the Corporation; he was working directly for the Corporation and he discharging duties in the bond section which had no concern with the work awarded as per the contract awarded to the share transfer agent. He has established that a strategy of contrivance was adopted by the Corporation to route his salary through the share transfer agent.

14. To what relief Rajinder Prasad would be entitled to would be discussed a little later.

15. As regards Yatender Kumar the only documentary evidence on strength whereof he has been granted relief is Ex.WW-1/1 to Ex.WW-1/7 concerning payment of some travelling allowance to him.

16. In the decision reported as International Airport Authority of India Vs. International Air Cargo Workers'' Union and Another, AIR 2009 SC 3063 : (2009) 123 FLR 321 : (2009) 8 JT 661 : (2009) 4 LLJ 31 : (2009) 13 SCC 374 : (2010) 1 SCC(L&S) 257 : (2009) 8 SCR 1 : (2010) 2 SLJ 297 : (2009) AIRSCW 4926 . it was held in para 20 as under:-

"20. But where there is no abolition of contract labour under Section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID

Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principal employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under Section 10(1) of CLRA Act. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employees and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. But where there is no notification under Section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise. The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/ sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

17. On the parity of reasoning concerning Mr. Kannan engaged temporarily and later on made permanent i.e. the reasoning on the strength whereof regularization of service of Yatender Kumar was ordered, the award directs that upon reinstatement Rajinder Prasad would be regularized in service

18. W.P.(C) No. 3701/2011 filed by the Corporation challenging the award dated October 15, 2010 in favour of Yatender Kumar has been partly allowed. The direction in the award to regularize his service has been set aside.

19. W.P.(C) No. 3702/2011 filed by the Corporation pertaining to the award dated October 27, 2010 in favour of Rajinder Prasad has likewise been partly allowed. The direction in the award to regularize his services has been set aside.

20. This explains four intra-court appeals. In LPA No. 502/2013 and LPA No. 503/2013 the Corporation is aggrieved insofar relief of reinstatement and payment of 20% back wages granted by the Tribunal to Rajinder Prasad have not been set aside by the learned Single Judge and insofar relief of reinstatement and payment of 25% back wages granted by the Tribunal to Yatender Kumar have not been set aside by the learned Single Judge. Yatender Kumar has filed LPA No. 710/2013 challenging the decision of the learned Single Judge which has set aside the award which directed his service to be regularized and Rajinder Prasad has filed LPA No. 316/2014 challenging the decision of the learned Single Judge which has set aside the award which directed his services to be regularized.

21. With reference to the evidence led by Yatender Kumar, which we find concerns payment of some travelling allowance paid to him in the form of Ex.WW-1/1 to Ex.WW-1/7, in view of the law declared by the Supreme Court in International Air Cargo''s case (supra), the Tribunal has clearly erred in holding that the said evidence would show a direct employer-employee relationship between the Corporation and Yatender Kumar. No notification under Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 was proved by Yatender Kumar to have been issued, thus Yatender Kumar had to lead evidence of the kind contemplated by the Supreme Court in International Air Cargo''s case (supra) to establish that the contract between the Corporation and M/s. Hingorani M & Co. Chartered Accountants was a sham. His attempt to prove that the contract with M/s. Hingorani M & Co. Chartered Accountants was a sham through Ex.WW-1/1 to Ex.WW-1/7 is not sufficient evidence to show that the contract was sham. In International Air Cargo''s case (supra), it was held that in a case of supply of labour, necessarily, the labour supplied by the contractor will work under the direction, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer if the salary is paid by the contractor and if the right to regulate employment is with the contractor and the ultimate supervision and control lies with the contractor because the principal employer only controls and directs the works to be done by contract labour when such labour is sent to him. But it is the contractor, as employer, who chooses which worker to be sent. Similar would be the position with respect to a person concerning accounts.

22. Thus, as regards him there is no question of reinstatement or regularization under the Corporation because it was not the Corporation which terminated his contract. As the contract with M/s. Hingorani M & Co. Chartered Accountants Ltd. expired, the said company terminated his employment and any claim by him as a workman had to be against M/s. Hingorani M & Co. Chartered Accountants Ltd. Thus, LPA No. 503/2013 filed by the Corporation concerning the award in favour of Yatender Kumar has to be allowed and LPA No. 710/2013 filed by Yatender Kumar has to be dismissed.

23. As regards Rajinder Prasad, we find that he has successfully established a direct employer-employee relationship between him and the Corporation. He has

proved that before he was employed he was interviewed by Sh.C.S. Verma. He has proved that he was working in the bond section of the Corporation directly under the supervision and control of the officers of the company who used to direct what work he had to do. He has proved that before Carvy Computer Shares Pvt. Ltd. were engaged as registrar and share transfer agent for the Corporation said work was given to Allied Computer Techniques Pvt. Ltd., and around said time, after interviewing 9 persons, including him, he was made to work in the bond section of the Corporation and that payment of salary to him and 8 others through the so called registrar and share transfer agent was a ruse. The Tribunal has returned a finding of fact that his so called employment through the registrar and share transfer agent was a sham.

24. In the decision reported as Hari Nandan Prasad and Another Vs. Employer I/R to Management of FCI and Another, AIR 2014 SC 1848 : (2014) AIRSCW 1383 : (2014) 3 JT 415 : (2014) 2 LLJ 54 : (2014) 2 SCALE 399 : (2014) 7 SCC 190 : (2014) 3 SCJ 451 : (2014) 2 SLJ 231 , with reference to regularization of service, taking note of the law declared by the Supreme Court in the decision reported as Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 , the Supreme Court held that what was perceived to be a conflict in the law declared by the Supreme Court in the decision reported as U.P. Power Corporation Ltd. and Another Vs. Bijli Mazdoor Sangh and Others, (2007) 113 FLR 821 : (2007) 5 JT 611 : (2007) 2 LLJ 832 : (2007) 5 SCALE 732 : (2007) 5 SCC 755 : (2007) 2 SCC(L&S) 258 : (2007) 6 SCR 256 and the decision reported as Maharashtra State Road Transport Corporation and Another Vs. Casteribe Rajya P. Karmchari Sanghatana, (2009) 123 FLR 136 : (2009) 11 JT 609 : (2009) 4 LLJ 286 : (2009) 12 SCALE 25 : (2009) 8 SCC 556 : (2009) 13 SCR 937 : (2010) 3 SLR 588 : (2009) 9 UJ 4242 , was an incorrect perception and that a Labour Court or an Industrial Tribunal could direct regularization upon proof that there was a regular post available when the employee was taken in service. The Court noted that if there was law akin to MRTP Act and PULP Act, notwithstanding the decision in Umadevi''s case (supra), regularization was permissible. The observations of the Supreme Court in paragraphs 34 to 39 of the said decision need to be noted. They read as under:-

"34. A close scrutiny of the two cases, thus, would reveal that the law laid down in those cases is not contradictory to each other. In U.P. Power Corporation, this Court has recognized the powers of the Labour Court and at the same time emphasized that the Labour Court is to keep in mind that there should not be any direction of regularization if this offends the provisions of Article 14 of the Constitution on which the judgment in Umadevi is primarily founded. On the other hand, in Bhonde case, the Court has recognized the principle that having regard to the statutory powers conferred upon the Labour Court/Industrial Court to grant certain reliefs to the workmen, which includes the relief of giving the status of permanency to the contract employees, such statutory power does not get denuded by the judgment in Umadevi''s case. It is clear from the reading of this judgment that such a power is to be exercised when the employer has indulged in unfair labour practice by not filling up permanent posts even when available and continuing to workers on temporary/daily wage basis and taking the same work from them and making them do some purpose which was being performed by the regular workers but paying them much less wages. It is only when a particular practice is found to be unfair labour practice, as enumerated in Schedule IV of the MRTP and PULP Act, and it necessitates giving direction under Section 30 of the said Act, that the Court would give such a direction.

35. We are conscious of the fact that the aforesaid judgment is rendered under MRTP and PULP Act and the specific provisions of that Act were considered to ascertain the powers conferred upon the Industrial Tribunal/Labour Court by the said Act. At the same time, it also hardly needs to be emphasized that the powers of the industrial adjudicator under the Industrial Disputes Act are equally wide. The Act deals with industrial disputes, provides for conciliation, adjudication and settlements, and regulates the rights of the parties and the enforcement of the awards and settlements. Thus, by empowering the adjudicator authorities under the Act, to give reliefs such as a reinstatement of wrongfully dismissed or discharged workmen, which may not be permissible in common law or justified under the terms of the contract between the employer and such workmen, the legislature has attempted to frustrate the unfair labour practices and secure the policy of collective bargaining as a road to industrial peace.

36. In the language of Krishna Iyer, J:

"22. The Industrial Disputes Act is a benign measure which seeks to pre-empt industrial tensions, provide the mechanics of dispute-resolutions and set up the necessary infrastructure, so that the energies of the partners in production may not be dissipated in counterproductive battles and the assurance of industrial justice may create a climate of goodwill." Life Insurance Corporation of India Vs. D.J. Bahadur and Others, AIR 1980 SC 2181 : (1980) LabIC 1218 : (1981) 1 LLJ 1 : (1981) 1 SCC 315 : (1981) 1 SCR 1083 per Krishna Iyer, J.) ".

In order to achieve the aforesaid objectives, the Labour Courts/Industrial Tribunals are given wide powers not only to enforce the rights but even to create new rights, with the underlying objective to achieve social justice. Way back in the year 1950 i.e. immediately after the enactment of Industrial Disputes Act, in one of its first and celebrated judgment in the case of The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees'' Union, Delhi, AIR 1950 SC 188 : (1950) 1 LLJ 921 : (1950) 1 SCR 459 this aspect was highlighted by the Court observing as under:-

"61...In settling the disputes between the employers and the workmen, the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace."

37. At the same time, the aforesaid sweeping power conferred upon the Tribunal is not unbridled and is circumscribed by this Court in The New Maneck Chowk Spinning and Weaving Co. Ltd., Ahmedabad and Others Vs. The Textile Labour Association, Ahmedabad, AIR 1961 SC 867 : (1961) 1 LLJ 521 : (1961) 3 SCR 1 in the following words:

"6..This, however, does not mean that an industrial court can do anything and everything when dealing with an industrial dispute. This power is conditioned by the subject matter with which it is dealing and also by the existing industrial law and it would not be open to it while dealing with a particular matter before it to overlook the industrial law relating to that matter as laid down by the legislature or by this Court."

38. It is, thus, this fine balancing which is required to be achieved while adjudicating a particular dispute, keeping in mind that the industrial disputes are settled by industrial adjudication on principles of fair play and justice.

39. On harmonious reading of the two judgments discussed in detail above, we are of the opinion that when there are posts available, in the absence of any unfair labour practice the Labour Court would not give direction for regularization only because a worker has continued as daily wage worker/adhoc/temporary worker for number of years. Further, if there are no posts available, such a direction for regularization would be impermissible. In the aforesaid circumstances giving of direction to regularize such a person, only on the basis of number of years put in by such a worker as daily wager etc. may amount to backdoor entry into the service which is an anathema to Article 14 of the Constitution. Further, such a direction would not be given when the worker concerned does not meet the eligibility requirement of the post in question as per the Recruitment Rules. However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are on a par with them, direction of regularization in such cases may be legally justified, otherwise, non- regularization of the left-over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision."

25. In the absence of any evidence led by Rajinder Kumar that at the time he was employed for work, albeit under a shroud through Allied Computers Techniques Pvt. Ltd. and thereafter M/s. Karvy Consultants Pvt. Ltd., but actually under the Corporation a regular vacancy existed i.e. there was a post available

which was validly created against which he worked, it would be difficult for him to obtain relief. The tenuous evidence that one Mr. Kannan, initially taken on ad-hoc basis by the Corporation and then made permanent as an Assistant would not be of any help to Rajinder Prasad because of the law declared by the Supreme Court in Hari Nandan Prasad''s case (supra). The law declared by the Supreme Court in Umadevi''s case comes in his way to be regularized.

26. But, having once determined that between him and the Corporation there was a direct employee-employer relationship and that he had worked for more than 240 days when his services were terminated and there being a violation of Section 25F of the ID Act, 1947 the relief which he has been granted by the learned Single Judge i.e. of being reinstated in service with 25% back wages cannot be faulted and has to be upheld. Thus, both LPA No. 502/2013 and LPA No. 710/2013 are liable to be dismissed.

27. The four captioned appeals are accordingly disposed of as under:-

(i) LPA No. 502/2013 is dismissed.

(ii) LPA No. 710/2013 is dismissed.

(iii) LPA No. 503/2013 is allowed and the award in favour of Yatender Kumar is set aside.

(iv) LPA No. 316/2014 is dismissed.

28. Parties shall bear their own costs all throughout.

