

**IN THE COURT OF SH. ARUN KUMAR GARG
ADDITIONAL SESSIONS JUDGE(SC-RC)-01 (WEST)
TIS HAZARI COURTS COMPLEX : DELHI**

(This Judgment is pronounced in terms of Order No. 32/D3/Gaz.-1A/DHC/2026 dated 01.08.2026 of High Court of Delhi after transfer from the Court of PO, LC-03, RADC, New Delhi)

CNR No. DLCT13-000235-2022

Ref. F-24(266)/Lab./SD/2021/13570 dated 29.07.2021

LIR No. 141/2022

Sh. Rajesh Prasad Khosla S/o Sh. Shambhu Prasad Khosla,
R/o Village+Post- Bhupatti,
District Madhubani, Bihar

Through:

Sh. S.B. Dubey, General Secretary,
Universal Proutist Labour Federation,
F-30/5, Okhla Phase-II, New Delhi-110020
Mobile No. 9891892350

..... Workman

VERSUS

M/s. M/s I Kon Retail Pvt. Ltd.
F-90/2, Okhla Industrial Area,
Phase-I, New Delhi-110020.

Through its AR Ms. Pramita,
F-90/2, Okhla Industrial Area,
Phase-I, New Delhi-110020
Mobile No. 9717861165
Email ID-hr1@ikonretail.com

..... Management

Date of Institution of the case : 17.01.2022

Date on which Award is passed : 18.08.2026

AWARD

1. By this award, I will dispose off the present claim filed by Workman pursuant to reference under Section 10(1)(C) & 12(5)

of Industrial Disputes Act, received from the office of Deputy Labour Commissioner (South District), Labour Department, Govt. of NCT of Delhi vide order reference no. F-24(266)/Lab./SD/2021/13570 dated 29.07.2021, whereby, the following issue has been referred to this Court for adjudication:-

“Whether the services of Workman Sh. Rajesh Prasad Khosla S/o Sh. Shambhu Prasad Khosla, Aged-51 Years, Mobile No. 7428652513 have been terminated illegally and/or unjustifiably by the Management; and if so, to what relief is he entitled and what directions are necessary in this respect?”

2. Brief case of Claimant, as per his statement of claim, is that he had been working with Management since 20.09.2018 as an Embroidery Master against last drawn wages of Rs. 22,000/- per month, however, Management had issued an appointment letter in his name only with effect from 01.04.2019. Management, according to him, has not provided him with any statutory facilities such as annual leaves, weekly off and bonus etc. Annoyed by the demand of Claimant for his appointment letter with effect from 20.09.2018 and for aforesaid facilities, it is alleged by him, Management has illegally terminated his services with effect from 02.06.2020, while, with-holding his earned wages for the period 01.04.2020 to 01.06.2020.

3. It is further his case that Management has failed to reinstate him into the job despite receipt of demand notice dated 16.07.2020 and despite filing of a complaint dated 15.07.2020 and claim dated 10.08.2020 by him before the concerned Assistant Labour Commissioner. Claimant has thus prayed for his reinstatement into the job of Management with full back

wages, continuity of service and other consequential benefits, while, alleging himself to be wholly unemployed since the date of illegal termination of his services by Management without any advance notice or inquiry.

4. Management appeared in response to notice of statement of claim and filed its written statement on 01.12.2022. It is the case of Management, as per its written statement, that the Claimant was employed with Management as an Embroidery Master in its Sampling Department with effect from 01.04.2019 against last drawn monthly wages of Rs. 22,000/- and since as an embroidery master, he was performing both supervisory as well as administrative duties and at all times he had one or two tailors working under him to assist him in his duties, whom, he used to supervise and manage, he does not fall within the definition of Workman u/s 2(s) of Industrial Disputes Act, 1947 nor is he entitled to any compensation.

5. It is further the case of Management that during the relevant period there was no embroidery work in the Sampling Department of Management and hence, Claimant was given a 30 days notice on 13.02.2020 advising him to look for another job for himself, however, he refused to accept the aforesaid notice despite the fact that in terms of his appointment letter dated 01.04.2019, he was assured of payment of his salary upto 12.03.2020. After expiry of aforesaid duration, according to Management, at the request of Claimant, Management had allowed him to work for another 15 days *i.e.* until 27.03.2020, however, in the meanwhile, on account of break out of COVID 19 pandemic, a nationwide lock-down was announced by the

Government of India on 24.03.2020. The office of Management, it is alleged, was however, closed with effect from 21.03.2020 itself.

6. Since the entire salary of Claimant upto 31.03.2020, according to Management, was paid by Management without any deduction on 09.04.2020, there are no dues remaining to be paid by Management to Claimant. After resumption of office of Management, it is alleged, Claimant was called by Management for release of his full and final dues to the extent of Rs. 6,928/- however, he refused to accept the same and had approached the concerned Labour Department. Reply of Management to the aforesaid claim of Claimant, it is alleged in the written statement, was already communicated by Management to the concerned Labour Commissioner on 08.09.2020.

7. Under the aforesaid circumstances, according to Management, Claimant has falsely alleged illegal termination of his services by Management on 02.06.2020 despite the fact that his employment with Management had already come to an end on 27.03.2020 itself. Management has placed on record the attendance sheets for the months of March, 2020 to May, 2020 reflecting the absence of Claimant during April to May, 2020. Management has thus prayed for dismissal of present claim of Claimant with exemplary cost while denying the receipt of alleged demand notice dated 16.07.2020 from Claimant.

8. A rejoinder to the aforesaid written statement of Management was thereafter filed by Claimant on 27.02.2023, wherein, he has once again reiterated the averments made by him

in his statement of claim and has denied the contrary averments made by Management in its written statement.

9. Thereafter, on the basis of pleadings of parties, following issues were settled by Ld. Predecessor of this Court vide order dated 17.05.2023:-

(i) Whether the claimant was a workman as defined under the ID Act? OPW

(ii) Whether the services of the claimant were terminated illegally or unjustifiably by the Management? OPW

(iii) Relief, if any, to which Workman is entitled? OPW

10. Claimant has thereafter examined himself as WW-1 *i.e.* as the sole witness in support of his case and tendered his evidence by way of affidavit Ex.WW1/A along with following documents:

(i) Ex, WW1/1: Copy of complaint before the Conciliation Officer.

(ii) Ex. WW1/2: Copy of Postal Receipt qua dispatch of demand notice to Management.

(iii) Ex. WW1/3: Copy of appointment letter dated 01.04.2019 of Claimant.

(iv) Ex. WW1/4: Copy of Aadhar card of Claimant.

(v) Ex. WW1/5: Copy of identity card of Claimant issued by Management.

11. WW-1 was duly cross-examined by Ld. AR of Management. During his cross-examination, he was confronted with the copy of attendance sheet for the month of March, 2020 Mark WW1/M1. No other witness was examined on behalf of Claimant despite opportunity and hence, Claimant's evidence

was closed by this court vide order dated 17.11.2025.

12. Management has thereafter examined two witnesses in support of its case. Ms. Kanta Sharma, Authorized Representative of Management, has been examined by Management as MW-1 and she has tendered her evidence by way of affidavit Ex.MW1/A along with following documents:

- (i) Ex.DW1/1: Copy of board resolutions in favour of MW-1.
- (ii) Ex. DW1/2: Copy of salary sheets for the month of March, 2020.
- (iii) Ex. DW1/3 (colly): Copy of cheque and full and final settlement statement of Claimant.
- (iv) Ex. DW1/4: Copy of email dated 08.09.2020.
- (v) Mark B (Colly): Copy of muster roll for the period March, 2020 to May, 2020.
- (vi) Ex. DW1/6: Certificate U/s 63 of BSA, 2023 in support of documents Ex. DW1/2 to Ex. DW1/4.

13. Management has also examined one of its employee namely Sh. Buddh Sen in its evidence as MW-2. Both MW1 and MW2 were duly cross examined by AR of Claimant. No other witness was examined on behalf of Management despite opportunity.

14. Final arguments on behalf of both the parties were thereafter heard. Besides, written submissions have also been filed on behalf of both the parties on 13.07.2026.

15. It is submitted by AR of Claimant that Claimant has been able to prove, through his un-controverted testimony in the form of affidavit Ex.WW1/A, all the averments made by him in his statement of claim including his continuous employment with

Management at the post of Embroidery Master since 20.09.2018 against last drawn monthly wages of Rs. 22,000/- and illegal termination of his services by Management on 02.06.2020. On the contrary, according to him, Management has taken a false plea in its written statement that the Claimant had joined the services of Management only on 01.04.2019 or that his services were terminated by Management with effect from 12.03.2020 pursuant to an advance notice dated 13.02.2020.

16. He submits that Management has failed to produce any document to prove that any advance notice dated 13.02.2020 was ever served by Management upon the Claimant. On the other hand, according to him, the fact of the matter is that the establishment of Management was temporarily closed on 21.03.2020 on account of COVID 19 lock-down and it had resumed its operations on 01.06.2020. When, on 01.06.2020, according to him, Claimant reported on his duty with Management, he was allowed to resume his duties, however, on 02.06.2020, his services were illegally terminated by Management without any advance notice.

17. Management, according to him, has failed to lead any evidence to prove that Claimant had been performing both supervisory as well as administrative duties during his employment with Management, in as much as, admittedly he never had any power of appointment/termination or sanction of leaves in respect of any of the employees of Management. He submits that though the Management has examined one of its employees namely Sh. Buddh Sen as MW2 to prove that during his employment with Management, he used to work under the

supervision of Claimant however, the aforesaid witness did not support the case of Management. He submits that inability on the part of Claimant to produce any document to prove his continuous employment with Management since 20.09.2018 until 01.06.2020 was on account of reasons beyond his control, in as much as, no such document was ever provided by Management to Claimant and despite being in possession of entire record of attendance and payment of wages in respect of its employees, Management has failed to produce the record of all its employees with effect from 20.09.2018 until 02.06.2020.

18. An adverse inference, according to him, is thus required to be drawn against Management on account of non production of the aforesaid record, that, if produced, the same would have proved that Claimant was in continuous employment of Management since 20.09.2018 to 01.06.2020. AR of Claimant has thus prayed for an Award in favour of Claimant, in terms of prayer made by him in his statement of claim while relying upon the judgment of Hon'ble Madras High Court in *The Management, Tamil Nadu Khadi and Village Industries Board v. The Workmen & Another, Review Application no. 17/2013 in MP No. 01/2012 in W.P. no. 1160/2009* and Judgment of Hon'ble Bombay High Court in *Godrej and Boyce Manufacturing Company Ltd. v. Shivkranti Kamgar Sanghatana, 2024: BHC-AS; 14884*.

19. On the other hand, it is submitted by Ld. AR of Management that despite onus to prove himself to be in employment of Management as a Workman within the meaning of Section 2(s) of Industrial Disputes Act, 1947, being upon

Claimant, he has failed to lead any evidence to prove himself to be a Workman within the meaning of aforesaid provision. On the contrary, according to him, Management has been able to prove through the un-controverted testimonies of MW-1 and MW-2 that the primary and dominant nature of duties of Claimant during his employment with Management was supervisory and administrative, in as much as, at the time of cession of his employment with management at least one tailor namely Buddh Sen was working under his direct supervision and it was the Claimant who used to manage the work flow of the sampling department of Management.

20. Relying upon the judgment of Hon'ble Supreme Court of India in *S.K. Maini v. M/s Carona Sahu Company Ltd. & Ors. (1994)3 SCC 510*, he submits that it is not the designation of an employee, but, the actual nature of duties being performed by an employee, which, is determinative of the fact- whether an employee is a Workman within the meaning of Section 2(s) of the Industrial Disputes Act 1947 or not. In the absence of any proof on the part of the Claimant *qua* the nature of his duties, which shall bring him within the definition of Workman u/s 2(s) of the Industrial Disputes Act and in view of the evidence lead by Management to prove that primary nature of his duties, during his employment with Management, was supervisory and managerial, he submits, the present dispute sought to be raised by Claimant *qua* alleged illegal termination of his services by Management does not fall within the definition of Industrial Dispute u/s 2(k) of Industrial Disputes Act, 1947.

21. Even otherwise, according to him, despite the onus to prove

himself to be in continuous employment of Management since 20.09.2018 until 01.06.2020 being upon Claimant, Claimant has failed to lead any evidence in this regard. Rather, according to him, as per the documents produced by Claimant, he had joined the services of Management with effect from 01.04.2019 and he seems to be in employment of Management only until 27.03.2020 *i.e* much prior to the date of his alleged illegal termination by Management.

22. He submits that as per the attendance record in respect of employees of Management for the period March, 2020 to May, 2020, Claimant had failed to report on his duty at the establishment of Management after the lock-down. Under the aforesaid circumstances, according to him, there was no occasion for Management to terminate the services of Claimant with effect from 02.06.2020.

23. It is further submitted by Ld. AR of Management that despite seeking repeated adjournments for moving an application seeking a direction to Management to produce certain record, Claimant had failed to file any such application and hence, no adverse inference can be drawn against the Management for non production of any record, when, production of none of the records from the Management was sought by the Claimant at any stage of the trial. In the absence of proof by Claimant of alleged illegal termination of his services by Management on 02.06.2020, otherwise than by way of his self serving statements to the aforesaid effect, which, are wholly unworthy of credit, according to him, present claim of Claimant is liable to be dismissed. AR of Management has thus prayed for dismissal of

present claim of Claimant while additionally relying upon the judgment of Hon'ble Supreme Court of India in *Management of Delhi Transport Undertaking v. Industrial Tribunal, Delhi and Anr.*, 1964 SCC Online SC 74 and in *Range Forest Officer v. S.T. Hadimani*, (2002) 3 SCC 25.

24. I have heard the submissions made on behalf of both the parties and have carefully perused the material available on record. My issue-wise findings, on the issues settled by Ld. Predecessor of this Court vide order dated 17.05.2023, are as follows:

Issue no. (i): Whether the claimant was a workman as defined under the ID Act? OPW

25. Onus to prove the aforesaid issue was upon Claimant. It has already been observed herein above, in order to discharge the aforesaid onus, Claimant has examined himself as WW1 i.e. as the sole witness in support of his case. In para 1 of his evidence by way of affidavit Ex. WW-1/A, he has categorically deposed that he had been continuously working with Management as an embroidery master since 20.09.2018. During his cross-examination by Ld. AR of Management, his aforesaid testimony in para 1 of his affidavit has remained wholly un-controverted. In fact, AR of Management himself had given a suggestion during his cross-examination that Claimant used to Work at the post of Embroidery Master in the Sampling Department of Management and the aforesaid suggestion was duly admitted by Claimant.

26. In response to a question from AR of Management as to whether the Claimant knew Mr. Buddh Sen who was working

with Management, Claimant has categorically denied having known Mr. Buddh Sen. He has also categorically denied that he used to supervise and manage the work of Management. Management has failed to produce any document on record to prove that the primary nature of duties of Claimant during the course of his employment with Management was either administrative or supervisory.

27. No doubt in view of the authoritative pronouncement of Hon'ble Supreme Court of India in ***S.K. Maini v. M/s Carona Sahu Company Ltd. & Ors. (1994)3 SCC 510***, the designation of an employee, by itself, is not determinative of the issue as to whether an employee falls within the definition of Workman u/s 2(s) of Industrial Disputes Act, 1947 or not and it is the primary nature of his duties, which, is decisive of the aforesaid fact, however, in the case in hand, Management has failed to produce any document to prove the actual nature of duties of Claimant during his employment with Management. The only undisputed fact between the parties is that the Claimant used to work with Management as an Embroidery Master.

28. No doubt, in part 2 of her evidence by way of affidavit, MW1 has deposed that the Claimant was supposed to supervise and manage one or two tailors, who were working under him to assist him in his duties and his duties were supervisory and administrative in nature, however, as already been observed, hereinabove, MW1 has failed to produce any document in support of her aforesaid testimony. In fact, in para 2 of preliminary submissions/objections of Management in its written statement, it is mentioned by Management that it is the

designation of Claimant which suggests, he was performing both supervisory as well as administrative duties and at all times, he had one or two tailors working under him to assist him in his duties.

29. I do not find anything in the designation of Claimant, being an embroidery master, which indicates that he was performing any supervisory or administrative duties. MW1 was duly cross examined by Ld. AR of Claimant and during her cross examination, in response to a question about the name/designation of person having power on behalf of Management to recruit, terminate or allow leave applications in respect of employees of Management, it was deposed by MW-1 that it was the HOD of the Management who was having all the aforesaid powers. In fact, MW-1 has pleaded ignorance to the fact whether Claimant was having either of the aforesaid powers.

30. Under the aforesaid circumstances, this Court shall not be able to record any finding in favour of Management on the aforesaid issue merely on the basis of bald self serving statements of MW-1 in her evidence by way of affidavit Ex. MW-1/A, without any independent corroboration, more so, when the said testimony of MW-1 could not withstood the test of her cross-examination by Ld. AR of Claimant. In fact, the only other witness, examined by Management to prove the role and responsibilities of Claimant, during his employment with Management, being supervisory and administrative in nature, i.e. Sh. Buddh Sen has failed to corroborate the stand of Management that he used to work under supervision of Claimant. He has, in fact, even failed to recognize the workman during his

evidence before this Court and it was only upon prompting from the AR of Management that he had faintly recognized the Claimant.

31. It is significant to note in this regard that as an Embroidery Master, the Claimant was engaged in performance of manual work of Embroidery and hence, he falls within the first part of definition of Workman u/s 2(s) of Industrial Disputes Act, 1947. Management, on the other hand, has failed to lead any evidence to prove the primary nature of his duties being supervisory and administrative in nature so as to bring him out of the definition of Workman u/s 2(s) of Industrial Disputes Act, 1947.

32. Issue no. (i) is thus decided in favour of Claimant and against the Management.

Issue no. (ii): Whether the services of the claimant were terminated illegally or unjustifiably by the Management? OPW

33. As has already been observed above, Claimant has alleged illegal termination of his services by Management with effect from 02.06.2020. On the contrary, Management has admitted having terminated the services of Claimant with effect from 27.03.2020 initially by serving a 30 days' advance notice dated 13.02.2020 terminating his services *w.e.f.* 12.03.2020 and subsequently permitting, at his request, him to continue working with Management until 27.03.2020.

34. It is further the case of Management that in the meantime, the Management had to close its establishment *w.e.f.* 21.03.2020 on account of Covid-19 pandemic, however, Claimant was paid

his full wages for the month of March, 2020 without any deduction. It is further alleged by Management that since services of Claimant had already come to an end on 27.03.2020 and he had never reported for his duty after the resumption of office of Management post lock-down, there was no occasion for Management to terminate his services on 02.06.2020.

35. In view of aforesaid rival pleadings of parties, it was incumbent upon Claimant to prove, through cogent oral or documentary evidence, that his service were terminated by Management on 02.06.2020 and that he was in continuous employment of Management until the date of alleged illegal termination of his services by Management.

36. As has already been observed herein above, in order to discharge his onus to prove the aforesaid fact, Claimant has examined himself as the sole witness in support of his case. Though, he has once again re-affirmed the aforesaid facts in his evidence by way of affidavit, however, he has failed to produce any document to prove having worked with Management on any date after 27.03.2020. He has also failed to seek production of any such document either from the Management or from any other person or authority. He has also failed to examine any of his co-workers as a witness in support of his aforesaid plea.

37. A bare perusal of record, in fact, reveals that after Claimant was examined, cross examined and discharged on 05.11.2024, his AR sought time to file an application seeking production of certain documents by Management. No such application was, however, filed by Claimant despite repeated opportunities until

17.11.2025. Opportunity of Claimant to move any such application was accordingly closed vide order dated 7.11.2025.

38. Under the aforesaid circumstances, I do not find any force in the submission of AR of Claimant that an adverse inference needs to be drawn against Management for non production of record of attendance of its employees with effect from 20.09.2018 to 02.06.2020.

39. It is also submitted by AR of Claimant that during cross examination of MW1, he had required her to produce the attendance registers in respect of employees of Management for the period 20.09.2018 till 06.06.2020 however, MW1 had expressed her inability to produce the aforesaid record on the false pretext that the documents of the period prior to pandemic of COVID-19 were not available with the Management. A bare perusal of cross examination of MW1, however, shows that during her cross-examination, Claimant had failed to seek any direction to MW1 to produce the attendance registers in respect of its employees for the period 20.09.2018 to 02.06.2020. A bare perusal of cross examination of MW1, in fact, shows that it was merely inquired by AR of workman from MW-1 whether she can place on record attendance sheet for the period 20.09.2018 to 02.06.2020 and the witness had merely stated that she cannot assure whether she shall be able to produce the aforesaid record, since, Management company did not have the documents of the said period prior to COVID 19.

40. It is significant to note in this regard that this Court, in the present case, is not concerned with the record of attendance in

respect of employees of Management for the period *w.e.f.* 20.09.2018 to 01.04.2019, in as much as, actual length of service of Claimant with Management is not relevant for adjudication of present claim filed pursuant to reference order dated 29.07.2021, so long as, Claimant was admittedly in continuous employment of Management for over a period of 240 days within the year immediately preceding the date of his alleged termination, he, having admittedly joined the services of Management at least *w.e.f.* 01.04.2019.

41. The only relevant question which needs to be answered by this Court in view of rival pleadings of parties is whether Claimant was in employment of Management as on the date of alleged illegal termination of his service as on 02.06.2020. Since, it was not even deposed by MW-1 during her cross-examination that the attendance sheets of the period after COVID 19 Pandemic were not available with Management, in the absence of any request of Claimant for a direction to Management to produce the said record, no adverse inference can even be drawn by this Court against the Management for non-production thereof.

42. In fact, a bare perusal of record reveals that Management had annexed the copy of attendance sheets in respect of its employees for the period March, 2020 to June 2020 alongwith its written statement and even Claimant was confronted with the same during his cross-examination. Though, Claimant had alleged during his cross-examination that the said attendance sheets were not correct for want of his signatures thereon, however, he has failed to seek a direction to Management for

production of the originals thereof. Perusal of the aforesaid attendance record reveals that the Claimant had lastly worked with Management only until March, 2020 and neither his name nor his attendance has been recorded in the muster roll for the months of April, 2020 and May, 2020 despite the fact that other employees of Management are shown to be attending their duties during the aforesaid months. Under the aforesaid circumstances, in my considered opinion, there was no occasion for Management to terminate the services of Claimant on 02.06.2020.

43. No doubt, even Management has failed to produce or prove the copy of any notice dated 13.02.2020 allegedly served by Management upon Claimant terminating his services with effect from 12.03.2020 and later on *w.e.f.* 27.03.2020, however, the aforesaid fact by itself is not sufficient to presume illegal termination of services of Claimant by the Management *w.e.f.* 02.06.2020, more so, when the Claimant has failed to prove through any cogent evidence that he had ever reported for his duty after 21.03.2020.

44. In view of aforesaid peculiar facts and circumstances of present case, this Court finds itself unable to record a finding in favour of Claimant *qua* illegal termination of his services by Management *w.e.f.* 02.06.2020, merely on the basis of his self serving statement to the aforesaid effect, without any independent corroboration.

45. Issue no. (ii) is thus decided against Claimant.

Issue no. (iii): Relief, if any to which Workman is entitled against the Management? OPW

46. In view of my finding on issue no. (ii) herein above, since, Claimant has failed to prove illegal termination of his services by Management *w.e.f. 02.06.2020*, he is not entitled to any relief.

47. Present claim of Claimant, filed pursuant to reference order dated 29.07.2021, is thus hereby dismissed and reference dated 29.07.2021 is answered in negative in following terms:

“Claimant Sh. Rajesh Prasad Khosla S/o. Sh. Shambhu Prasad Khosla has failed to prove that his services were ever terminated by Management on 02.06.2020, much less, illegally and/or unjustifiably and hence, he is not entitled to any relief.”

48. Ordered accordingly.

49. Requisite number of copies of this award be sent to the competent authority for publication as per rules.

*Announced in the open Court on this 18th day of August, 2026.
This award consists of 19 number of signed pages.*

(ARUN KUMAR GARG)
Additional Sessions Judge (SC-RC)-01(West)
Tis Hazari Courts, Delhi

(Formerly Presiding Officer Labour Court-III)
Rouse Avenue Court, New Delhi