

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

*Decided on February 05, 2014*

+ **W.P.(C) 834/2014**

SHAILESH KUMAR PANDEY ..... Petitioner  
Represented by: Mr. R.K.Pathak, Advocate  
versus

RESEARCH AND ASSESSMENT CENTRE AND ORS.  
..... Respondents  
Represented by: Ms. Meera Bhatia, Advocate

**CORAM:**  
**HON'BLE MR. JUSTICE V.KAMESWAR RAO**

**V.KAMESWAR RAO, J. (Oral)**

**CM No. 1669/2014 (for condonation of delay)**

This is an application seeking condonation of delay of 201 days in re-filing the writ petition.

For the reasons stated in the application, the same is allowed.

**W.P.(C) 834/2014**

1. The petitioner, Shailesh Kumar Pandey impugns Award dated October 05, 2012 passed by the Industrial Tribunal No.1, Karkardooma Courts, Delhi, whereby the Industrial Tribunal holds that the petitioner is not entitled to any relief as he is an employee of the contractor.

2. It was the case of the petitioner before the Industrial Tribunal that he was employed as Security Guard in July, 1989 and his services were terminated by the respondent No.1 verbally on October 04, 1997 without giving wages for the month of September, 1997. According to him, no notice was given to him nor pay in lieu of notice or any retrenchment compensation was made.

3. The case of the respondent No.1 M/s Research & Assessment Centre was that no relationship of employer employee exist between it and the petitioner. He was never engaged by the Centre. He was an employee of M/s Rishi Raj Management Services, which was engaged by the respondent No.1 to carry out the watch and ward services. According to the respondent No.1, it is the contractor who had terminated the services of the petitioner. That apart it is the case of the respondent No.1 that it is not an “*industry*” within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 (‘Act’ in short).

4. The Industrial Tribunal primarily considered the claim of the petitioner from two aspects i.e. whether the respondent No.1 is an “*industry*” within the definition as given in the Act and whether there exist a relationship of employer employee between the petitioner and the respondent No.1.

5. On the aspect of “*industry*”, the Industrial Tribunal was of the view that the respondent No.1 Centre had nowhere mentioned the activities as being carried out by it. It took into consideration the affidavit Ex.MW1/A tendered by Mr.Krishan Kumar, wherein he simply details that the provisions of the Act are not applicable to the respondent No.1. It is also stated that the Centre is only engaged in recruitment and appointment of Scientists at all levels. The Tribunal was of the view that the recruitment and assessment of work of Scientists shows that the Centre contributes its skill and knowledge for production of resources relating to recruitment and assessment of work. Suffice would it be to

say, relying upon various judgments of the Supreme Court including the judgment in Banglore Water Supply & Sewerage Board, 1978 Labour Industrial Cases 778, the Tribunal was of the view that the triple tests are supplied and activities of the Centre fall within the ambit of the industry.

6. I may only state that this conclusion of the Tribunal has not been challenged by the respondent No.1. On the aspect whether there exist relationship of employer and employee between the parties, the Tribunal after referring to the judgment of the Supreme Court in the case of Steel Authority of India Ltd. and Ors. vs. National Union Water Front Workers and ors., 2001 (7) SCC 1, Shivnandan Sharma vs. The Punjab National Bank Ltd. (1955) 1 LLJ 688, Gujarat Electricity Board, Thermal Power Station, UKAI, Gujarat vs. Hind Mazdoor Sabha & Ors., (1995) 5 SCC 27 has concluded as under:

*“39. The Contractor undertook the obligation to provide uniform and identity card to its employees. Identity cards were to be surrendered to the Estate Manager of the Centre on completion of the contract period. Contractor was enjoined with a duty to select watch and ward personnel after the verification of their antecedents. The employees so engaged were to be treated employees of the contractor with no liability on the part of the Centre. It was the contractor who was supposed to pay their wages. Employees of the contractor were to work for eight hours a day and six days in a week. Supervisor for watch and ward staff was also to be engaged by the contractor. Therefore, above terms of service make it clear that it was the contractor who exercised administrative, managerial, financial and disciplinary control over his employees. There was relationship of command and obedience between the contractor and his employees. He used to control and manage security guards through his supervisor. Consequently, it is apparent that the contract agreement cannot be termed as sham and nominal.*

*40. Since the contract agreement between the contractor and the Centre is found to be genuine, in such a situation, claimant, who is an employee of the contractor, cannot maintain the present dispute against the centre. He is not entitled to any relief. There was no occasion for the Centre to terminate services of the claimant. As pointed above, his services were dispensed with by the contractor. The claimant has filed a false claim. The same is, therefore, dismissed. An award is, accordingly, passed in favour of the Centre and against the claimant. It be sent to the appropriate Government for publication.”*

7. Learned counsel for the petitioner would urge that there exist a relationship of “employer” and “employee” between the petitioner and the respondent No.1 and the Labour Court has erred in coming to the conclusion that no such relationship exist. According to him, under the provisions of various labour enactments, employer means any person who employs whether directly or through any other person whether on behalf of himself or any other person. He would state that the petitioner was working under the supervision of the Estate Manager. He would also submit that the petitioner was working with the respondent No.1 Centre since 1989. According to him, there is nothing on the record of Industrial Tribunal that before 1997 a contractor was engaged by the respondent No.1. In other words, according to the learned counsel for the petitioner between 1989 to 1997 he was directly employed with the respondent No.1Centre.

8. I have considered the submissions made by the learned counsel for the petitioner.

9. Before I go to the facts of this case, when a claim of this nature is made i.e. a contract labour represents that he is the employee of the principle employer the Supreme Court in the case of Steel Authority of India case (supra) has held that the contract labour has to plead that the contract between the principle employer and the employee is sham and camouflage.

10. On perusal of the claim petition filed by the petitioner, no such case has been put forward by the petitioner before the Industrial Tribunal. One not only has to plead sham and camouflage but has to prove the same on the basis of appropriate evidence. That apart the test which has been laid down by the Supreme Court in the International Airport Authority of India vs. International Air Cargo Workers' Union and Anr., (2009) 13 SCC 374, is for establishing a direct relationship with the principle employer is that there is a direct payment of wages to the contract labour by the principle employer; direct penal action in case of misconduct by the principle employer; and direct control and supervision of contract labour by the principle employer. The relevant conclusion of the Supreme Court in International Airport Authority's case is reproduced hereunder:

*“53.The last finding is that there were three indicators to show that contract labour for loading/unloading were direct employees of IAAI: direct payment of wages, direct penal action by IAAI against the contract labour, and direct control and supervision of contract labour by IAAI. Therefore, the contracts for supply of contract labour were “paper” contracts and a camouflage to deny benefits of labour laws to the members of the first respondent Union.*

*53.1. We will first examine whether there was any material at all to hold that the wages were being directly paid by*

*IAAI to the contract labour. The contracts between IAAI and the Society make it crystal clear that a lump sum consideration was to be paid by IAAI to the Society and the Society was responsible for payment to its members who were sent as contract labour. The workers did not produce any document to show that the payment was made by IAAI directly to the workers. But the Tribunal wrongly held that Exts. W-1 to W-6 showed that the payment was directly made.*

*53.2. Ext. W-1 is an appointment letter dated 31-1-1978 issued to one Godaraman by Airfreight. Ext. W-2 dated 31-10-1983 is a pay slip of one D. Natarajan issued by Airfreight. Both these documents relate to the period prior to 31-10-1985 when the workers were the permanent employees of Airfreight, and had absolutely no connection with IAAI.*

*53.3. Ext. W-3 dated 18-4-1988 is a cash receipt for payment of ex gratia amount paid to cargo loaders for the period 22-3-1986 to 9-5-1986 and 17-5-1986 to 23-5-1986. It shows that a sum of Rs 7267.20 was paid as ex gratia amount. Though the said receipt is dated 18-4-1988, it clearly shows that the payment related to the work done between 22-3-1986 to 9-5-1986 and 17-5-1986 to 23-5-1986 when, admittedly, these workers were direct casual daily-wage employees under IAAI and when the contract between IAAI and the Society had not even come into existence. The contract labour arrangement admittedly came into existence only from 1-7-1986. This document has, therefore, no relevance to show that any payment was made to the contract labour directly.*

*53.4. Ext. W-4 is a circular dated 18-2-1986 of IAAI notifying that wages of 82 loaders mentioned therein had been drawn from 1-1-1986 to 31-1-1986 and directed the said daily-wage labourers to receive their wages immediately. This again is of no relevance as it related to the period prior to the contract labour agreement when the workers were working as casual daily-wage employees directly under IAAI.*

53.5. Ext. W-5 is the pay slip of one S.C. Yadav for May 1990 who was working at Bombay Airport and Ext. W-6 is a pay slip of one Aseem Das, cargo loader for June 1990 who was working at Calcutta Airport. These two documents were produced only to show that IAAI had employed some persons as direct labour in its cargo department at Calcutta and Bombay Airports and had nothing to do with the workers who were working at Madras.

53.6. On the basis of these documents, the Tribunal has held that payments were being directly made to workers when they were contract labours. This is a finding based on absolutely no evidence and is shockingly perverse and is liable to be rejected accordingly.

53.7. The Tribunal held that IAAI was taking penal and disciplinary action by suspending and punishing the contract labour and that was proof of direct employment. This finding is also based on no evidence. Not even a single document was produced to show that any notice of suspension or show-cause notice for disciplinary action or order imposing punishment was passed by IAAI in regard to any of the contract labour. Reliance was placed on Exts. W-10, M-15 to M-17, M-21, M-23 as also M-2, M-24 to M-31 and M-34 to M-40 to prove that IAAI was directly taking action against the contract labour. None of them is relevant.

53.8 Ext. W-10 is a letter dated 7-3-1990 from IAAI to the Society, stating that one Ram Chander, loader-cum-packer had given an assurance to work in a disciplined manner and therefore it was decided to allow him to work. This is not a communication addressed to the contract labour but to the Society informing the Society that Ram Chander may be permitted to work in view of his assurance to behave properly.

53.9. M-15 to M-17 are three letters dated 9-3-1987, 16-6-1988 and 11-6-1990 addressed by IAAI to the Society

*regarding the allotment of contract labour and their identification.*

*53.10. Ext. M-21 is a letter dated 20-2-1991/22-2-1991 from IAAI to the Society for supply of contract labour. Ext. M-23 is a letter dated 14-5-1991 from IAAI to the Society regarding duty roster. Ext. M-24 is a letter dated 2-12-1987 from IAAI to the Society informing that there is no improvement in the attendance of the contract labour, and requesting the Society to take necessary action to improve their attendance.*

*53.11. Exts. M-25 to 31 and 34 to 40 are letters complaining about pilferage and other irregularities committed by the contract labour noticed by security personnel. These letters give the particulars of the irregularities committed and inform the Society not to send them to work pending investigation. None of them relates to imposition of punishment by IAAI as employer against any employee. These are merely communications informing the contractor Society that some of the contract labour provided by it were guilty of some illegal acts and therefore directing the contractor not to send those employees. This was expressly provided for in Clauses 20 and 25 of the contract labour agreement.*

*53.12. Thus, none of these documents is evidence of any penal or disciplinary action by IAAI against the contract labour.*

*53.13. The next ground referred is that the contract labour were working under the direct supervision and control of officers of IAAI. This is not in fact disputed. The contract labour were engaged in handling cargo, that is, loading, unloading and movement of cargo in the cargo complex of IAAI. Naturally, the work had to be done under the supervision of the officers of IAAI. Merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer.*

*54. Clause 17 of the contract agreement required a supervisor to be employed by the Society also. Exercise of some control over the activities of contract labour while they discharge their duties as labourers, is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employees of the principal employer.*

*55. It is thus seen that all the three grounds mentioned by the Tribunal and which have found favour with the Division Bench as indicators of direct employment by IAAI and the contract labour agreement with the Society being a camouflage, are wholly baseless.”*

11. I find that in this present case, the petitioner has not even pleaded such a case in his claim petition. Rather the deposition would prove otherwise. The deposition is reproduced hereunder:

*“I worked in RAC i.e. recruitment and assessment centre. I used to receive my wages of the salary in the RAC premises in canteen where one person used to sit and disbursed salary. Workman including me used to mark attendance with their own hand at the gate. I also used to mark my attendance at the gate. My affidavit exhibit WW1/A was prepared under my instruction. I know the contents of the affidavit. It is correct that I have filed the letter marked ex.WW1/6 annexed in my affidavit. It is correct that I used to work with M/s Rishiraj Management Services. Volunteered that I had been continuously working with the respondent w.e.f. since 1989 till 1997. I do not know if my salary were paid by M/s Rishiraj or by some other. It is correct that previously I have impleaded M/s Rishiraj Management Service as a party to this case. I was worked as a Security Guard. I was recruited in the premises (Canteen of premises within the premises of RAC). I cannot tell the name of the person who recruited me. I made inquiries from the Security Guard who ask me to come on Monday when sahib comes to the Canteen. Hence, I appeared in the Canteen of RAC before the Sahib*

*for my recruitment. The sahib checked my certificates and took a certificate from guarantee and recruited me as Security Guard. I was not provided any uniform but asked to purchase the same from the market. The respondent did not reimbursed me for my uniform. My uniform was not bearing any batch of Rishiraj services volunteered my uniform was not bearing any batch. Security Officer used to assign my duties. Security Officer was Sh.S.N.Shukla. It is incorrect to suggest that my services were terminated by M/s Rishiraj Services. Volunteered I was informed by some officials of the office that Mr. Rishiraj has asked me to not to attend the duties as my services have been discontinued on this. I met Shukla Sahib, Mr.Arvind Pandey. Mr. Pandey told to talk to the office. And I was informed by Mr.Shukla that he has been informed by Mr. Pandey that I have not to attend duties in RAC any more. I cannot tell the designation of Mr.Arvind Pandey. It is incorrect to suggest that no person by the name of Mr.Arvind Pandey was working in the RAC. Joining Officer & Security Director has written on the letter head as to why Sailesh Kr.Pandey has been dismissed from the services.*

*The joint director had addressed the letter on the letter head to Mr.Arvind Pandey asking him why services of Sailesh Pandey has been terminated. I had taken that letter written by Joint Director to Mr.Arvind Pandey. Mr.Pandey took the letter from me and give on copy to me and told me that he will talk inside. Thereafter I went to the office twice and thrice but did not obtain any satisfactory response from any one and I initiated the court proceeding. The letter referred to is ex.WW1/6. It bears the signatures of Security Office & Joint Director.*

*It is correct that respondent has given a contract to M/s Rishiraj service for providing security guards to the management. It is correct that Mr.Rishiraj used to make payment of wages to me. It is incorrect to suggest that he also assigned duties to me. It is incorrect to suggest that my claim is against Rishiraj. My claim is against RAC only. It is correct that Respondent RAC is controlled by M/o Defence. It is incorrect to suggest that I am making a*

*false statement and I am not entitled to the relief claimed. I am not presently employed anywhere.”*

12. That apart I find that the Tribunal has come to a conclusion that the contract between the parties was not sham, rather a genuine one.

13. Even otherwise, I am of the view that in the absence of the contractor being a party in the proceedings before the Tribunal, the petitioner was not entitled to any relief.

14. Assuming for a moment that the contractor had come to the scene only in the year 1997, and the engagement of the petitioner was made through the contractor, the arrangement has not been challenged by the petitioner at the relevant point of time, it is too late for the petitioner to contend that before 1997 he was employee directly engaged by the Centre.

15. Keeping in view the position of law as considered by the Tribunal and this Court, I am of the view that the petitioner is not entitled to any relief in this writ petition.

16. The writ petition is accordingly dismissed.

17. No costs.

**(V.KAMESWAR RAO)**  
**JUDGE**

**FEBRUARY 05, 2014/km**