

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No.94 of 2013

ISS SDB Security Services Pvt. Ltd., a company registered under the Companies Act, 1956, having its registered office at No.4, 7th Avenue, Harrington Road, Chetpet, Chennai – 600 031, through its authorized officer Vinod Sahu, S/o Shri R.L. Sahu, aged about 30 years, Manager (HR), C-17, First Floor, Housing Board Colony, Balco Nagar, PS Balco Nagar, Civil & Revenue Distt. Korba (CG)

---- Petitioner

Versus

1. Assistant Labour Commissioner, Korba, Civil & Revenue Distt. Korba (CG)
2. Labour Officer, Under the Chhattisgarh Industrial Relation Act, 1960, Civil & Revenue Distt. Korba (CG)
3. State of Chhattisgarh, Through Secretary (Labour), Mantralaya, Naya Raipur, Civil & Revenue Distt. Raipur (CG)
4. Lekhram Bareth, S/o Shri Johit Ram Bareth, Security Guard, Balco Township, Balco Nagar, PS Balco Nagar, Civil & Revenue Distt. Korba (CG)

---- Respondents

Writ Petition (L) No.117 of 2013

1. Peregrine Guarding Private Ltd., a company registered under the Companies Act, 1956, through Mr. Tarun Jaiswal, S/o Late S.L. Jaiswal, aged about 37 years, ASM, Peregrine Guarding Pvt. Ltd., PS Balco Nagar, Civil & Revenue Distt. Korba (CG)
2. Head (HR), Bharat Aluminum Co. Ltd., Balco Nagar, Korba, Through Mr. Heeramani Sharma, S/o Shri Tejram Sharma, Associate Manager, Security, Balco Nagar, PS Balco Nagar, Civil & Revenue Distt. Korba (CG)

---- Petitioners

Versus

1. Assistant Labour Commissioner, Under the Chhattisgarh

Industrial Relations Act, 1960, Korba, Civil & Revenue Distt. Korba (CG)

2. Labour Officer, Under the Chhattisgarh Industrial Relation Act, 1960, Korba, Civil & Revenue Distt. Korba (CG)
3. State of Chhattisgarh, Through Secretary (Labour), Mantralaya, Naya Raipur, Civil & Revenue Distt. Raipur (CG)
4. Ramesh Kumar Pandey, S/o Shri Ramdeen Pandey, Security Guard, Balco Township, Balco Nagar, PS Balco Nagar, Civil & Revenue Distt. Korba (CG)

---- Respondents

Writ Petition (L) No.123 of 2013

ISS SDB Security Services Pvt. Ltd., a company registered under the Companies Act, 1956, having its registered office at No.4, 7th Avenue, Harrington Road, Chetpet, Chennai – 600 031, through its authorized officer Vinod Sahu, S/o Shri R.L. Sahu, aged about 30 years, Manager (HR), C-17, First Floor, Housing Board Colony, Balco Nagar, PS Balco Nagar, Civil & Revenue Distt. Korba (CG)

---- Petitioner

Versus

1. Assistant Labour Commissioner, Civil & Revenue Distt. Korba (CG)
2. Labour Officer, Under the Chhattisgarh Industrial Relation Act, 1960, Civil & Revenue Distt. Korba (CG)
3. State of Chhattisgarh, Through Secretary (Labour), Mantralaya, Naya Raipur, Civil & Revenue Distt. Raipur (CG)
4. Anil Kumar Pal, S/o Shri R.S.Pal, aged about 32 years, R/o Old Daily Market, Sector 5, Balco Nagar, Korba, Civil & Revenue Distt. Korba (CG)

---- Respondents

AND

Writ Petition (L) No.124 of 2013

Peregrine Guarding Private Ltd., a company registered under the Companies Act, 1956, through Mr. Tarun Jaiswal,

S/o Late S.L. Jaiswal, aged about 37 years, ASM, Peregrine Guarding Pvt. Ltd., PS Balco Nagar, Civil & Revenue Distt. Korba (CG)

---- Petitioner

Versus

1. Assistant Labour Commissioner, Civil & Revenue District Korba (CG)
2. Labour Officer, Under the Chhattisgarh Industrial Relation Act, 1960, Civil & Revenue District Korba (CG)
3. State of Chhattisgarh, Through Secretary (Labour), Mantralaya, Naya Raipur, Civil & Revenue District Raipur (CG)
4. Samaru Das Mahant, S/o Shri Muni Das Mahant, aged about 38 years, R/o Village Belakachar, Near Kabir Chabutra, Balco Nagar, Korba, Civil & Revenue District Korba (CG)

---- Respondents

For Petitioners:	Mr. Abhishek Sinha & Ms. S. Harshita, Advocates.
For State/respondents No.1 to 3:	Mr. Dheeraj Kumar Wankhede, GA & Mr. Suvigya Awasthi, PL.
For Respondent No.4:	Mr. K.P.S. Gandhi, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/12/2015

1. Preeminent issue that cropped up for consideration in this batch of writ petitions is whether Labour Officer appointed under the Chhattisgarh Industrial Relations Act, 1960 (for short 'the Act of 1960') has power and jurisdiction to adjudicate the substantive right of employee in exercise of power conferred under Section 30 (6) (b) of the Act of 1960 and direct his reinstatement.

2. Since this batch of writ petitions involve common question of law and fact, they are being tagged together and heard simultaneously and decided by this common order. However, facts of W.P.(L)No.94/2013 are taken as lead case for the purpose of deciding the dispute.
3. The petitioner is a company registered under the provisions of the Companies Act, 1956 and is involved in the business of private security agency to the industries and has entered into agreement with Bharat Aluminium Company Limited (BALCO) to provide security guards and officers at various levels to safeguard the interest of BALCO. In order to provide security in terms of agreement, the petitioner Company used to employ persons on contract basis from time to time to cater to the needs of the company. The petitioner company has license under Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970. Respondent No.4 was Security Guard working under the petitioner, he remained unauthorizedly absent for long time since 6-11-2011, therefore, his services were dispensed with by the petitioner herein. Thereafter, on 28-12-2011, respondent No.4 made a complaint to respondent No.2 Labour Officer appointed under the Act of 1960 for his back wages and reinstatement. Thereafter, on 1-3-2012 (Annexure P-1), respondent No.2 in exercise of power under Section 30 (6) (b) of the Act of 1960 passed order directing

the petitioner Company to reinstate respondent No.4 on the post of Security Guard. The order was not complied with by the petitioner Company leading to passing of the order Annexure P-2 dated 7/8-5-2013 forfeiting its security deposit of Rs.25,000/- and directing compliance of order dated 1-3-2012. Feeling aggrieved against the aforesaid orders Annexures P-1 & P-2, W.P.(L)No.94/2013 has been filed stating inter alia that the Assistant Labour Commissioner who has been conferred with the power of Labour Officer under the Act of 1960 has no jurisdiction and authority to adjudicate the substantive right of employees and he has only the duty to investigate the grievances of employees as Labour Officer and to represent to the employer such grievances, and make recommendations to the State Government the existence of industrial dispute, therefore, the order Annexure P-1 directing reinstatement is without jurisdiction and without authority of law. Consequently, the order Annexure P-2 also be quashed.

4. Return has been filed by respondent No.4 opposing the writ petition stating inter alia that the order Annexure P-1 passed by respondent No.2 is strictly in accordance with law and there is no illegality or jurisdictional error committed which needs to be set aside by this Court and the order Annexure P-2 is also just and proper.
5. The State of Chhattisgarh has also supported the impugned

orders.

6. Mr. Abhishek Sinha and Ms. S. Harshita, learned counsel appearing on behalf of the petitioners, would submit that respondent No.2 Labour Officer has absolutely no jurisdiction and authority to adjudicate the substantive dispute of termination, if any, existing between the parties, as the Labour Officer in exercise of power under Section 30 (6) (b) of the Act of 1960 can only investigate the grievances of employees and represent to the employer such grievances and make recommendations to the State Government as such, that authority is without jurisdiction and without authority of law. Mr. Abhishek Sinha would further submit that exercise of jurisdiction by respondents No.1 & 2 under the Act of 1960 is also without jurisdiction and without authority of law, as order Annexure P-2 is only the consequential order of Annexure P-1 by which reinstatement of respondent No.4 has been ordered by respondent No.2 and as a consequence of non-implementation of order Annexure P-1, forfeiture of security deposit of Rs.25,000/- has been ordered by respondent No.1 vide order Annexure P-2.
7. Mr. Dheeraj Kumar Wankhede, learned Govt. Advocate, and Mr. Suvigya Awasthi, learned Panel Lawyer, appearing on behalf of the State/respondents No.1 to 3, would oppose the writ petitions and submit that the orders passed by

respondents No.1 & 2 are in accordance with law and no jurisdictional error has been committed by them and, therefore, the writ petitions deserve to be dismissed.

8. I have heard learned counsel for the parties, perused the orders impugned and also gone through the records and relevant provisions without utmost circumspection.

9. It is not in dispute that respondent No.4 was employee of the petitioner Company and his services have been dispensed with, with effect from 6-11-2011 on account of his unauthorized absence and he has not been taken back in service by the petitioner for which respondent No.4 made a representation to respondents No.1 & 2, and respondent No.2 acting as Labour Officer under the provisions of the Act of 1960 in exercise of power under Section 30 (6) (b), has directed for reinstatement of respondent No.4.

10. At this stage, it would be appropriate to notice Section 30 (6)

(b) & (c) of the Act of 1960 which reads as follows: -

“(6) It shall be the duty of the Labour Officer--

(a) *** *** ***

(b) to investigate the grievances of employees and represent to employers such grievances and make recommendations to them in consultation with the employees concerned for their redress;

(c) to report to the State Government the existence of any industrial dispute of which no notice of change has been given, together with the names of the parties thereto:

Provided that the Labour Officer shall not--

(i) appear in any proceeding in which the

employees who are parties thereto are represented by a Representative Union;”

11. A meaningful reading of the provisions of aforesaid clauses would show that the legislature has consciously only conferred the power of investigation of the grievances of employees to the Labour Officer by representing to the employer such grievances raised by the employees and ultimately, if he finds that some grievance subsists then he has to make recommendations in consultation with the employees concerned for their redressal to the State Government the existence of any industrial dispute of which no notice of change has been given. The language of aforesaid provisions are absolutely plain and clear with no ambiguity. There is no adjudicatory power expressly or impliedly conferred to the Labour Officer to adjudicate the grievances of employees like reinstatement etc., or any other grievances. Therefore, duty of the Labour Officer is only to investigate the grievances of employees.

12. By the impugned order Annexure P-1, respondents No.1 & 2 not only investigated the grievances of respondent No.4 but also proceeded further to adjudicate and hold that the Chhattisgarh Industrial Employment (Standing Orders) Act, 1961, has not been complied with by the petitioner while terminating the services of respondent No.4 and, therefore, in exercise of power under Section 30 (6) (b) of the Act of

1960, respondents No.1 & 2 directed for reinstatement of respondent No.4 on the post of Security Guard. The order of respondents No.1 & 2 directing reinstatement is without jurisdiction and without authority of law, as Section 30 (6) (b) of the Act of 1960, concedely does not confer adjudicatory power to the Labour Officer to adjudicate the dispute.

13. A Division Bench of this Court in the matter of **Bharat Aluminium Mazdoor Sangh (INTUC) and another v. Managing Director, Bharat Aluminium Company Limited (BALCO) and others**¹ while dealing with identical provisions contained in Section 15 (2) of the Chhattisgarh Industrial Employment (Standing Orders) Act, 1961 has clearly held that “Inspector” under the Act of 1961 has no jurisdiction to adjudicate the dispute by holding as under: -

“10. It is a settled principle of law that if a particular provision has been enacted by the Legislature for doing a particular act, in a particular manner, the said act shall be done in accordance with the particular provisions meant for it and not by any other strange device for the same, because in that situation any such act which goes against the specified provision would be without authority of law because the law has provided an authority for it. Had the powers of the Inspector which have been derived from sub-sections (2) and (3) of the Act would have been adjudicatory, there would have been some communication for it in the Act itself, which is not there and at the same time, a provision in the Act has been given by Section 13 for reference of a dispute, in which, a question arises as to the application or implementation of Standing Order. A conjoint reading of Sections 13, 15 and 17 of the

1 2009(1) M.P.H.T. 79 (CG)

Chhattisgarh Industrial Employment (Standing Orders) Act, 1961 makes it amply clear that the powers of Inspectors under the said Act are not adjudicatory and the Inspectors are not authorized to undertake the exercise of adjudication of the disputes, particularly the disputes regarding application and interpretation of the Standing Orders.”

14. Thus, in view of the statutory provisions as contained in Section 30 (6) (b) of the Act of 1960, which only confers the power of investigation on the Labour Officer, and in view of the law laid down in the afore-cited case, I am unhesitatingly of the opinion that the order Annexure P-1 passed by respondents No.1 & 2 directing reinstatement of respondent No.4 on the post of Security Guard is without jurisdiction and without authority of law in absence of adjudicatory power vested with respondent No.2 and, therefore, the order Annexure P-1 is quashed accordingly.

15. Determination of aforesaid issue brings me to the consequential order Annexure P-2 passed by respondents No.1 & 2, whereby finding that the order Annexure P-1 is not implemented, respondents No.1 & 2 have forfeited the security deposit of Rs.25,000/- and issued order for compliance of order dated 1-3-2012 (Annexure P-1). Such a power has been exercised under Section 14 of the Contract Labour (Regulation and Abolition) Act, 1970 (for short 'the Act of 1970'). Section 14 (1) of the Act of 1970 states as under: -

“14. Revocation, suspension and amendment of licences.--(1) If the licensing officer is satisfied, either on a reference made to him in this behalf or otherwise, that--

(a) a licence granted under section 12 has been obtained by misrepresentation or suppression of any material fact, or

(b) the holder of a licence has, without reasonable cause, failed to comply with the conditions subject to which the licence has been granted or has contravened any of the provisions of this Act or the rules made thereunder,

then, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the licensing officer may, after giving the holder of the licence an opportunity of showing cause, revoke or suspend the licence or forfeit the sum, if any, or any portion thereof deposited as security for the due performance of the conditions subject to which the licence has been granted.”

16. A bare perusal of the order impugned Annexure P-2 would show that there is no finding that under Section 14 (1) (a) & (b) of the Act of 1970 license has been obtained by misrepresentation or suppression of material fact or that the petitioner has failed to comply with the licence or has contravened any of the provisions of the Act of 1970 or the Rules made thereunder. Consequently, the order Annexure P-2 passed by respondents No.1 & 2 imposing penalty of forfeiting security deposit and issuing order for compliance of order Annexure P-1 becomes without jurisdiction and without authority of law. Accordingly, the order Annexure P-2 passed by respondents No.1 & 2 also stand quashed. However, respondent No.4 would be at liberty to proceed in

accordance with law and avail remedy available under the law.

17. Consequently, the writ petitions are allowed. Order Annexure P-1 dated 1-3-2012 and order Annexure P-2 dated 7-5-2013 in W.P.(L)No.117/2013 are hereby quashed. Simultaneously, orders Annexure P-1 dated 1-3-2012 in W.P.(L)Nos.123/2013 and 124/2013 are also hereby quashed.

18. There shall be no order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (L) No.94 of 2013

ISS SDB Security Services Pvt. Ltd.

- Versus -

Assistant Labour Commissioner, Korba and others

Writ Petition (L) No.117 of 2013

Peregrine Guarding Private Ltd., and another

- Versus -

Assistant Labour Commissioner, Korba and others

Writ Petition (L) No.123 of 2013

ISS SDB Security Services Pvt. Ltd.

- Versus -

Assistant Labour Commissioner, Korba and others

AND

Writ Petition (L) No.124 of 2013

Peregrine Guarding Private Ltd., and another

- Versus -

Assistant Labour Commissioner, Korba and others

HEAD NOTE

Labour Officer under the Chhattisgarh Industrial Relations Act, 1960 has no jurisdiction to adjudicate the rights of employee under Section 30 (6) (b) of the Act.

छत्तीसगढ़ औद्योगिक सम्बन्ध अधिनियम, 1960 के अधीन नियुक्त श्रम अधिकारी को उक्त अधिनियम की धारा 30 (6) (ख) के अन्तर्गत कर्मचारी के अधिकारों के न्याय—निर्णयन का श्रेत्राधिकार नहीं है।