

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

+ Judgment delivered on: August 28, 2015

% **W.P.(C) No. 2167/2004**

RANBIR SINGH

..... Petitioner

Through: Mr. Pankaj Singh and Mr. Pradeep Kr.
Arya, Advocates

versus

M/S. SH. GANGA RAM HOSPITAL.

.....Respondent

Through: Mr. Alok Bhasin and Ms. Poonam Das,
Advocates.

AND

+ **W.P. (C) No. 6922/2004**

NAFE SINGH

..... Petitioner

Through: Mr. Pankaj Singh and Mr. Pradeep Kr.
Arya, Advocates

versus

M/S. SH. GANGA RAM HOSPITAL.

.....Respondent

Through: Mr. Alok Bhasin and Ms. Poonam Das,
Advocates.

CORAM:

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. The petitioners, i.e., Shri Ranbir Singh in W.P. (C) No. 2167/2004 and Shri Nafe Singh in W.P. (C) No. 6922/2004 have preferred the present Writ Petitions under Articles 226 and 227 of the Constitution of India for quashing the impugned Awards dated 10.04.2003 and 08.04.2003 passed in I.D. no. 199/94 and I.D. no. 179/94 respectively by Presiding Officer, Labour Court – II, Karkardooma Courts, Delhi.
2. The brief facts are that the petitioner-workmen, Shri Ranbir Singh and Shri Nafe Singh, have alleged that they were employees of the respondent, i.e., Ganga Ram Hospital (*hereinafter referred to as 'management no. 1'*), and were later shown to be employees of M/s. Rama Security Services (*hereinafter referred to 'management no. 2'*) under the garb of an alleged sham and bogus agreement executed between management no. 1 and management no. 2. Subsequently, management no. 1 terminated their services w.e.f. 28.07.1992. The termination of the services of petitioner-workmen from the employment of management no. 1 is alleged to be a result of an oral general demand made by the petitioner-workmen to the management no. 1. The subsequent transfer of the petitioner-workmen from management no. 1 to management no. 2 was allegedly done through a sham and bogus agreement used by the management no.1 as a tool to escape the legal obligations under the

Industrial Disputes Act, 1947. It is further alleged that the petitioners are the employees of management no. 1 and non-giving of employment to them w.e.f. 28.07.1992 amounts to illegal termination of their employment for no fault on their part. The petitioners i.e., Shri Ranbir Singh and Shri Nafe Singh raised their issues before the competent authority and the same were referred by the Secretary (Labour), Government of NCT of Delhi for adjudication to the Labour Court vide notification no. F.24. (1476)/93-Lab./12046-52 and notification no. F.24 (1474)/93-Lab./12032-38 respectively, dated 30.03.1994, which are as under:

“Whether the services of Sh. Ranbir Singh 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?”

“Whether the services of Sh. Nafe Singh 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?”

The petitioners in their statement of claim pray that they be reinstated w.e.f. 28.07.1992 with continuity in service and full back-wages. The management no. 1 in its written statement had denied that the management no. 1 had ever given any employment to the petitioners and asserted that there was no employer-employee relationship at any point of time between the management no. 1 and the petitioners. It is stated that the management no. 2, i.e., M/s. Rama Security Services was providing

security services to management no. 1, i.e., Ganga Ram Hospital till 22.07.1992. The security guards were deployed by M/s. Rama Security Services alone. The aforesaid agreement was terminated w.e.f. 23.07.1992. The contract between management no. 1 and management no. 2 was an independent contract. It is further alleged that management no. 2, i.e., M/s. Rama Security Services was paying wages to its employees including the petitioners and also exercised supervision and control over them and thereafter, the petitioners were gainfully employed elsewhere. M/s. Rama Security Services too had filed written statement and stated that the management no. 2, i.e., M/s. Rama Security Service had closed down their business on 23.07.1992 and the same was informed to the petitioner-workmen vide notice dated 24.06.1992 and the reference made by the government is incompetent. Management no. 2 prays for dismissal of claim of the petitioners, rejoinder to written statement filed, and reaffirm the averments made to the statement of claim.

Issues in both the petitions were framed on 12.12.1996. Thereafter, both the petitioners examined themselves as WW-1 and relied upon the documents as stated in their affidavit. The management no.1 examined itself as MW-1 and relied upon documents as stated in its affidavit.

After completion of the pleadings and the evidence, the impugned Awards dated 10.04.2003 and 08.04.2003 were passed. Aggrieved by the

impugned Awards, both the workmen preferred their respective Writ Petitions i.e., W.P. (C) No. 2167/2004 and W.P. (C) No. 6922/2004.

3. The learned counsel appearing on behalf of the petitioner-workmen submitted that Shri Lala Ram Yadav was the proprietor of M/s. Rama Security Services and he too was an employee of the management no. 1. The learned counsel further submits that management no. 1 used to pay the salary of the employees and management no. 1 was in financial control and was also having supervision over its employees. The learned counsel further submitted that management no. 1 used to remit the PF as employer of the petitioners. The learned counsel further submitted that the I-Cards were issued by the management no. 1 and the attendance records of the employees were maintained by management no. 1. Therefore, the petitioners were employees of management no. 1 and they be reinstated with continuity in service and full back-wages.
4. The learned counsel, Shri Alok Bhasin, causing appearance on behalf of management no. 1, has drawn the attention of this Court to the fact that the petitioner-workmen were never in the employment of management no.1. Therefore, the relief as claimed in the statement of claim cannot be given to the petitioners.
5. The whole dispute hinges around the question as to whether there was any employer-employee relationship between the petitioners and the management no.1.

To determine whether there was a relationship of employer and employee between the petitioners and the management no. 1, the Apex Court in para 125(5) of the case titled as ***Steel Authority of India Ltd. and Ors. vs. National Union Water Front Workers and Ors., (2001) 7 SCC 1***, has laid down the test, which is as under:

“(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if

otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.” (Emphasis Supplied)

6. The Apex Court while laying down the aforesaid test directed the industrial adjudicator to determine the genuineness of the contract executed between the principal employer and the contractor. The contract executed between the principal employer and contractor should be of such a nature that the executed contract, meets the aims and objectives of the Industrial Disputes Act, 1947, it should not be a sham and bogus contract, to escape the liability, imposed upon the employer under the Industrial Disputes Act, 1947.

7. In the instant case, the alleged illegal termination of the petitioner-workmen by the principal employer, i.e., management no. 1 is dated 28.07.1992. In order to prove the allegation of illegal termination of the petitioner-workmen by the management no. 1, it is imperative that the petitioner-workmen first establish the relationship of employer and employee between themselves and the management no.1.

The petitioner-workmen either have to prove that they were working with the management no. 1 and were issued their respective appointment letters or place on record other documents by which they could show that they had completed 240 days of continuous service in a

calendar year with the management no. 1. The workmen while discharging this burden of proof, that, they were employed by management no. 1, as security guards, since their dates of appointment i.e. 01.11.1986 and 10.03.1985 on a monthly salary of Rs. 958/- have examined themselves as WW-1 and their statements lack confidence without supporting appointment letters or other documents pertaining to their employment with the management no. 1 for a continuous period of 240 days in a calendar year.

8. The petitioner-workmen filed their respective statement of claim against management no. 1, i.e., Ganga Ram Hospital as employer and M/s. Rama Security Services as management no. 2 and further alleged that the contract executed between management no. 1 and management no. 2 is sham and bogus and the same has been executed as a device to escape liability under the Industrial Disputes Act, 1947.

9. The onus to prove that the petitioner-workmen were employees of management no. 1, too, was upon the petitioner-workmen. It is an admitted fact that the petitioner-workmen were never issued an appointment letter by management no. 1 at any point of time since the date of their appointments i.e., 01.11.1986 and 10.03.1985 respectively till the date of their termination i.e., 28.07.1992. As per the allegation of the petitioner-workmen, they were employed with the management no. 1 and their services were terminated on 28.07.1992 but the workmen were

unable to produce salary slips of management no. 1 to prove that management no. 1 paid their salaries from their respective dates of appointment i.e. 01.11.1986 and 10.03.1985 till the date of their termination i.e. 28.07.1992. As per the allegation, the petitioner-workmen worked with the management no. 1 for a period of more than five years. There is no allegation till date on behalf of the petitioner-workmen that their salaries for the aforesaid period is due against the management no. 1 which means that either the petitioner-workmen are not coming to this Court with clean hands or they are hiding something which they should not have.

10. The management no. 2, M/s. Rama Security Services claims that after the closure notice dated 24.06.1992, dues in all respects have been paid to the petitioner-workmen and nothing is due against the management no.2 in favour of the petitioner-workmen.
11. Further, what is to be seen is whether the contract executed between management no. 1 and management no. 2 is genuine or sham and bogus i.e., whether it is a device to avoid the legal obligations under the Industrial Disputes Act, 1947.

The petitioner-workmen mainly alleged that Shri Lala Ram Yadav was an employee of Ganga Ram Hospital. The petitioner-workmen further stated that Shri Lala Ram Yadav, as per the contract, is the proprietor of M/s. Rama Security Services. The PF is also remitted by

management no. 1 and not by M/s Rama Security Services which otherwise means that M/s. Rama Security Services was acting as agent of management no. 1. Therefore, the contract executed between the management no. 1 and management no. 2 was not a genuine contract but factually a camouflage, sham and bogus contract.

12. The management no. 1 outsourced the security services of Ganga Ram Hospital vide agreement dated 10.05.1988 with M/s. Rama Security Services and thereafter similar agreements were executed between the parties in subsequent years, the last one executed on 01.04.1992. The contractor, Shri Lala Ram Yadav was a licensed contractor and his firm M/s. Rama Security Services (H. No. 1619, Sector 4, Gurgaon) had been registered with the Delhi Government on 30.06.1988 vide license no. CLA/C/989/88/LC and, therefore, he was authorised to enter into agreements with any of the principal employers in outsourcing of security services.

13. The bank vouchers dated 03.05.1990, 04.06.1990, 02.07.1990, 01.08.1990, 04.09.1990, 05.10.1990, 01.11.1990, 01.12.1990, 01.01.1991, 02.02.1991, 01.03.1991, 02.04.1991, 06.05.1991, 06.06.1991, 03.07.1991, 03.08.1991, 05.09.1991, 03.10.1991, 01.11.1991, 03.12.1991, 03.01.1992, 06.02.1992, 04.03.1992, 01.04.1992, 04.05.1992, 03.06.1992, 06.07.1992, and 01.09.1992,

indicate the making of payments in respect of outsourced security services to management no.2 by management no.1.

So far as the depositing of provident fund by management no. 1 *qua* against the petitioner-workmen and other employees is concerned, the same does not create the relationship of employer and employee between management no. 1 and the petitioners.

Section 2(f) of *The Employees' Provident Funds and Miscellaneous Provisions Act, 1952* is reproduced hereinunder:

*“2(f) ‘employee’ means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages **directly or indirectly from the employer**, and includes any person,-*

*(i) **employed by or through a contractor in or in connection with the work of the establishment;***

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961) or under the standing orders of the establishment;”

(Emphasis Supplied)

The aforesaid definition does not create the relationship of employer and employee under the *Industrial Disputes Act, 1947* and is meant for the limited purpose of *The Employees' Provident Funds and Miscellaneous Provisions Act, 1952*. The contractor's employees are deemed to be the employees of the principal employer for the purposes of the *Employees' Provident Funds and Miscellaneous Provisions Act* if they satisfy the attributes as defined in Section 2(f) of the aforesaid Act.

14. Further, Section 6 of *The Employees' Provident Funds and Miscellaneous Provisions Act, 1952* provide that the employer shall remit the provident fund contribution in respect of the employees employed by him directly or by or through a contractor. Section 6 of the aforesaid Act is reproduced hereinunder:

“6. Contributions and matters which may be provided for in Schemes. – The contribution which shall be paid by the employer to the Fund shall be ten percent of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees **whether employed by him directly or by or through a contractor**, and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding ten percent of his basic wages, dearness allowance and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section....”
(Emphasis Supplied)

15. Further, Para 30 of *The Employees' Provident Funds Scheme, 1952* is reproduced hereinunder:

“30. Payment of contributions. - (1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the **member employed by him directly or by or through a contractor**, the contribution payable by such member (in this Scheme referred to as the member's contribution).

(2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as the member's contribution) and shall pay to the principal employer the amount of member's contribution so

deducted together with an equal amount of contribution (in this Scheme referred to as the employer's contribution) and also administrative charges.

*(3) It shall be the responsibility of the **principal employer** to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the **employees employed by or through a contractor** and also administrative charges.”*
(Emphasis Supplied)

Para 30 of the aforesaid scheme clearly indicates that it shall be the responsibility of the principal employer to pay both the contributions payable by himself in respect of employees directly employed by him and also in respect of employees employed by or through a contractor.

16. *The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and The Employees' Provident Funds Scheme, 1952 cast the responsibility and statutory obligation on the principal employer to remit the PF contributions even in respect of contractor's employees.*

Mere remittance of the provident fund by the management no. 1, i.e., the principal employer *ipso facto* does not create any employer-employee relationship between the management no. 1 and petitioner-workmen.

17. The plea of the petitioners in respect of I-Cards and attendance records loses its significance in the presence of financial and monetary transactions between management no. 1 and management no. 2 and further, in presence of the bank vouchers dated 03.05.1990, 04.06.1990,

02.07.1990, 01.08.1990, 04.09.1990, 05.10.1990, 01.11.1990,
01.12.1990, 01.01.1991, 02.02.1991, 01.03.1991, 02.04.1991,
06.05.1991, 06.06.1991, 03.07.1991, 03.08.1991, 05.09.1991,
03.10.1991, 01.11.1991, 03.12.1991, 03.01.1992, 06.02.1992,
04.03.1992, 01.04.1992, 04.05.1992, 03.06.1992, 06.07.1992, and
01.09.1992, issued by management no.1 in favour of management no. 2.
The I-Cards and attendance records do not show that the same have not
been maintained by management no. 2.

- 18.** In the instant case, the contractor is a registered licensed contractor vide license no. CLA/C/989/88/LC. The agreement executed between management no. 1 and management no. 2 cannot be said to be camouflage, bogus and sham merely on ground that the principal employer has deposited the PF of the contractor's employees i.e., the petitioner-workmen, which duty was cast upon the management no.1 under The Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The aforesaid bank vouchers are an evidence of genuine execution of contract between the management no. 1 and management no. 2. The failure on part of the petitioner-workmen in producing the appointment letters or any other document of their engagement with the management no. 1 for a continuous period of 240 days disentitles them to be a workmen under Section 2(s) of the Industrial Disputes Act, 1947.

19. As discussed above, this Court while exercising its power of judicial review finds no illegality and perversity in the impugned Awards dated 10.04.2003 and 08.04.2003.
20. Consequently, both the Writ Petitions, i.e. W.P. (C) No. 2167/2004 and W.P. (C) No. 6922/2004 are dismissed. No order as to costs.
- One copy of this judgment be placed on the file of the W.P. (C) No. 6922/2004.

I.S.MEHTA, J

AUGUST 28, 2015

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