

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No.1124 of 2016 (O&M)

Date of Decision : 08.07.2016

M/s SLV Security Services Private Limited

....Appellant

Versus

Presiding Officer, Industrial Tribunal-cum-
Labour Court, Gurgaon and others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE DR.SHEKHER DHAWAN

....

1. Whether Reporters of Local Newspapers may
be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the
Digest?

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Present: Mr.Pawan Kumar Mutneja, Advocate
for the appellant.

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MAHESH GROVER, J.

This appeal is directed against the judgment of the
learned Single Judge dated 25.05.2016.

We may notice the facts in brief. The
workman/respondent No.3 raised an industrial dispute
questioning the termination of his services inter alia on the issue
of violation of Section 25-F of the Industrial Disputes Act. He
had claimed that he had worked with M/s Mark Auto Industries
Limited-respondent No.2 (hereinafter also referred to as

'management') w.e.f. 25.9.1995 as a Driver and his services were abruptly terminated on 12.2.1999. The present appellant was also impleaded as a party respondent before the Labour Court. The management-respondent No.2 had refuted the relationship of employer and employee between the workman and itself and pleaded that his services had been engaged through the present appellant which arrangement was admitted by the appellant when he filed his response to the proceedings before the Labour Court. Despite the admission of the appellant and denial of the Management regarding the relationship of employer and employee between the workman and the management, the Tribunal concluded that he was an employee of M/s Mark Auto Industrial Limited but went on to fasten the liability on both i.e. the management M/s Mark Auto Industries Limited and the appellant.

This finding was not challenged by the appellant and he accepted the liability to satisfy the award whereas the workman approached this Court by way of a writ petition resulting in the impugned judgment. Learned Single Judge concluded in favour of the workman and observed that there was a clear violation of Section 25-F of the Act but did not order the reinstatement but enhanced the compensation from Rs.1 lakh to R.2.5 lakh to be paid by the management.

An application was then moved by the management-respondent No.2 seeking clarification on the issue of satisfaction of the compensatory clause to plead that the Industrial Tribunal had apportioned the liability between the management and the service provider (appellant) which application was accepted to reiterate the apportionment as ordered by the Industrial Tribunal.

The appellant then moved an application seeking modification of the order dated 30.6.2015 to plead that he could not be fastened with any liability as the Industrial Tribunal had recorded a finding of relationship of employer and employee between the management and the workman and exonerated the appellant from the impact of such a finding. This application was declined.

A similar argument has been raised before us where the learned counsel for the appellant contends that in view of the finding recorded by the Industrial Tribunal regarding relationship of employer and employee between the management and the workman, he could not have been saddled with any liability. He further contends that he had satisfied the award of the Tribunal merely to put an end to any further prospects of litigation and this itself should not be interpreted to be an acceptance of the award which he impugns in view of the provisions of Section 2(k) and 2-A. He further contends that once this issue was raised before

the Tribunal, it was also obliged to answer the question of abandonment of services raised by him. Apart from this, a challenge has also been made to the compensation awarded as being excessive.

We have heard the learned counsel for the appellant.

We find that the appellant had candidly conceded to his relationship with the workman. There could have been no better evidence than the admission itself. The Tribunal ought to have been conscious of this fact to have concluded regarding relationship of employer and employee between the appellant and the workman but instead went on to record a finding of the workmen being an employee of M/s Mark Auto Industries Limited and strangely enough while concluding so fastened the appellant also with the liability along with the management represented by M/s Mark Auto Industries Limited.

The appellant never challenged this award, rather accepted it to report compliance. It is the workman who came to the court and whose prayer was accepted. Having waived of his right to impugn the award. It is too late for the appellant to raise the issue of the workman not being its employee, which fact in any case has to be taken with a pinch of salt in view of the admission made by the appellant himself before the Industrial Tribunal.

Learned counsel for the appellant then contends that the grievance would be centered only around the compensation and denial of opportunity to him prior to its assessment as the management made an application seeking clarification of the order dated 30.4.2015, which was accepted without notice to him to fasten the enhanced liability also on the appellant on joint and several terms with the other respondent.

We do not find any reason to interfere with the impugned judgment on this aspect particularly noticing the period of service rendered by the workman from 1995 to 1999. By all the parameters laid down by several judgments of the Hon'ble Supreme Court and this Court, this amount of compensation cannot be held to be excessive considering the period of service and the agony the workman has suffered for all these years. We would thus decline to interfere on this issue.

In so far as the plea of prejudice on account of denial of opportunity of hearing in subsequent application for clarification being disposed of without notice to the appellant is concerned, we find that the effect of prejudice has sufficiently been erased when he himself appeared before the learned Single Judge seeking clarification by moving an application where he had ample opportunity to plead his grievance which he did to find negation in the order of the learned Single Judge dated 25.5.2016.

Consequently, we do not find any reason to interfere with the impugned judgment of the learned Single Judge and the appeal is therefore dismissed.

Delay of 336 days in filing the appeal is, however, condoned in view of the nature of facts pleaded in the application.

(MAHESH GROVER)
JUDGE

08.07.2016
dss

(SHEKHER DHAWAN)
JUDGE