

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

CWP No.15120 of 2009 (O&M)

Date of Decision: 30.1.2017

Rangers Protection Private Limited

... Petitioner

Versus

Presiding Officer, Labour Court and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Rajesh Punj, Advocate for the petitioner

Mr.Mayank Sharma, Advocate for respondent no.2

RAJIV NARAIN RAINA, J.

1. Heard the matter for final disposal at motion stage by consent of counsel.

2. The writ is against an award dated 1st January, 2009 passed by the Presiding Officer, Labour Court, Ambala in Reference No.278 of 2006. The termination has been set aside as illegal and null and void and the petitioner-Management has been directed to reinstate the workman alongwith consequential benefits with continuity of service and full back-wages. The Labour Court has recorded a finding that there is violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short "the Act"). The termination has been brought about by abuse of power

3. The facts are that the workman was appointed as Security Guard by the petitioner-Management on 1st February, 2005 and worked till his termination on 15th February, 2006. The finding that the workman had worked continuously for 240 days in the preceding 12 calendar months prior to termination is based on the admission by the MW-1 K.S.Rawat in his deposition recorded in the witness box. It is common ground that the petitioner-Management is a supplier of work force [labour contractor] under contract with BSNL to guard its Model Town Telephone Complaint Office, Ambala City and the Khudda Telephone Centre under an agreement signed between the General Manager, Telephone Department, Ambala on behalf of the BSNL, Ambala and the Management as a Contractor. The Management held a labour licence under the Contract Labour (Regulation & Abolition) Act, 1972. The agreement was operative for two years w.e.f. 1st February, 2005 to provide Security services in different premises of BSNL located in Ambala SSA. The agreement dated 28th January, 2005 was exhibited before the Labour Court and has been placed on record as Annex. P-1. Clause 7 of the agreement is the moot point raised by the Management in this petition in challenge to the award rendered against it. This recital of the agreement reads as follows:-

“7)The Security Agency will provide minimum 90% of the Security Guards as Ex-serviceman. In case it is not possible to muster required number Ex-servicemen, relaxation to the extent of 49% civilian in place of ESM will be obtained from the DGR.”

4. The acronym “DGR” stands for Director General Resettlement. Payments to the Security Guards employed through contractor were to be made exclusively by cheque issued by the Security Agency by the 7th of each

month to the workers, as per the wage formula formulated by the Director General Resettlement under the Minimum Wages Act, 1948. The Security Agency was responsible to deposit PF/EPF and ESI contributions to the departments concerned and supply proof of such deposits of previous months to be submitted by the Security Agency at the time of submission of the bills. Minimum bonus of 8.33% was liability to be paid to the security staff deployed as per the provisions of Bonus Act, 1965 by the contractor.

5. In challenge to the award the petitioning Management pleads that the contract with BSNL ended on 30th July, 2007. But while saying so it has not pleaded that the business of the Management was closed down. There is no dispute that the workman was not an Ex-serviceman at the time of engagement. He was a civilian. The Management urged that when Ex-serviceman became available, then the civilian security guards had to be replaced. But the Management has not named the persons who became available from the Ex-serviceman quota either in the pleadings before the Labour Court or in this petition. The written statement filed before the Labour Court is dated 11th April, 2007 (Annex. P-5). The plea taken in the writ petition is that the contract with BSNL came to an end on 30th July, 2007. In the list of events, the date 30th July, 2007 is mentioned, but in the evidence of MW-1, the date is 30th September, 2007. These are discrepancies in the case which are unexplained. It is admitted in the cross-examination that the workman was not appointed against an appointment letter. The engagement was oral.

6. In addition to the dispute in the reference order as framed, the Labour Court has struck seven issues for trial on 18th July, 2007. The Management did not claim the issue that the business of the Management

of the assertion. Clearly, the Management avoided to meet this crucial point, and therefore, it is not proper for this Court to form any opinion on the aspect of closure of business. If an appointment order was not issued to the workman, then it would also not be safe to conclude that he was engaged only under contract with BSNL as though that was the only business the petitioner was engaged in. The Management did not disclose the establishments other than BSNL to which it may have supplied manpower as Security Guards. If the position is left vague on record, then the workman was on the pay roll of the Management without reference to the contract with BSNL which is axiomatic and worth credence unless there was documentary evidence to the contrary and not dependant merely on a bald statement made for the first time in deposition before the Labour Court that the Management had closed down on 30th September, 2007.

7. On the other hand, the workman appeared as his own witness numbered WW-1 and deposed that he did not know that the Management was under an agreement with the Ministry of Defence and that the latter will employ only ex-serviceman and not civilians. He denied the suggestion that the Management used to employ Ex-serviceman. He asserted that persons appointed later on i.e. Maya Ram and Baldev were still working in the Management.

8. There is no gainsaying that there are no absolutes in paragraph 7 that only Ex-serviceman could be engaged for the job. There was 90% of the workforce prescribed for filling from the Ex-serviceman quota, but the Management was left free to relax the required number of Ex-serviceman to the extent of 49% in place of ESM. But for this condition the relaxation had to be granted by Director General Resettlement, Delhi. No facts were

was, to the effect as to whether the relaxation was accorded or not or whether the workman fell under the available 10% civilian quota. Even this aspect is not clear on record. It may be recorded that I have entered debate on this point with the counsel for the petitioner [although not pressed before the Labour] since it has been strenuously pressed by Mr.Rajesh Punj, learned counsel appearing for the Management-petitioner that this would tilt the case in favour of the management. I believe not.

9. Next, management's facile defence is that the name of the workman was not sponsored by the Employment Exchange nor an employment notice was issued and put in public domain, and therefore, the appointment is illegal. Sorry to say that this is hardly a valid defence to attach any weight to since the management cannot be heard to criticize its own acts in offering employment to the respondent workman. The defence is unconscionable to the hilt and deserves only to be noticed and rejected. Besides, there is no written word conveyed to the respondent-workman that he would be relieved when an Ex-serviceman was available. Therefore, there is reason to believe that the story cooked by the Management as an afterthought was genuine and to the contrary is per se false and fabricated only to avoid the law and the liability. The jurisdiction of this Court in writ proceedings while reviewing an award of the Tribunal is restricted to the limitations described in Syed Yakoob v. K.S. Radhakrishnan and others, AIR 1964 SC 477 which are well known and need not reiteration to support the conclusion. I, therefore, find no perversity, legal error or fundamental flaw in the award of the Labour Court warranting interference in writ proceedings.

10. Still further, when notice of motion was issued on 25th

continued to operate till date giving rise to liability under Section 17-B of the Act. The workman filed an affidavit on 7th January, 2011 as required by the provision claiming last drawn wages, which prayer has been resisted for the last five years and the amounts remain unpaid. Those dues will stand merged with the back-wages granted by the Labour Court, but no longer limited to last drawn wages for the liability period when the petition remained pending in this Court on account of full back-wages having been granted by the Labour Court which directive will continue to operate till realization.

11. For the foregoing reasons and subject to as above in paragraph 10, the award is upheld and this petition is dismissed as devoid of merit.

30.1.2017
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No