

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

LPA No.333 of 2019(O&M)

Date of decision: 08.04.2019

Moti Chand

... Appellant

Versus

The Senior Divisional Manager, LIC of India, Jeevan Prakash Building,
Sector 17B, Chandigarh and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present: Mr. Ravi Kant Sharma, Advocate, for the appellant.

ARUN PALLI, J.

This is an intra-court appeal under Clause X of the Letters Patent against an order and judgment dated 02.08.2018 rendered by the learned Single Judge, vide which the writ petition preferred by the appellant against the award passed by Labour Court, dated 08.11.2013, declining his claim has since been dismissed.

In brief, the case set out by the appellant has been that he joined the respondent-Corporation as Caretaker pursuant to a letter of appointment dated 12.06.1989. Initially, he was posted at LIC Guest House, Sector 8, Chandigarh, but after a period of 10 years, he was transferred to another Guest House of the respondent-Corporation in Sector 15D, Chandigarh. To begin with, he was appointed at a consolidated salary of Rs.700/- per month, which was subsequently enhanced to Rs.2000/- in the year 1999. To circumvent the laws, as also to deprive the appellant of his rights that had since accrued while in service, a fresh appointment letter dated 01.06.2000

was issued by the respondent-Corporation which was nothing but a camouflage, to show that appellant was not its employee but merely a Contractor. In fact, to adjust one Surinder Singh Rana, the appellant was first transferred to LIC Guest House in Sector 15, Chandigarh and subsequently to accommodate his brother Sanjay the services of the appellant were terminated. Thus, apparently termination of services of the appellant was violative of the provisions of Sections 25F, 25G and 25H of the Industrial Disputes Act and, therefore, he was entitled to reinstatement with continuity of service and full back wages.

In defence, it was pleaded by the respondent(s) that there never existed any relationship of an employee and an employer between the parties, for the appellant was merely a caretaker Contractor to whom the contract of attending the Guest House of the Corporation was awarded on a monthly payment of Rs.700/-. To begin with, the contractual period was 12 months, which was extended from time to time. And, subsequently, he was assigned a contract in respect of another Guest House of the Corporation in Sector 15, Chandigarh. The contract between the parties was last extended on 01.06.2000 for a period of 12 months, which expired on 31.05.2001. In fact, inspection of the Guest House was conducted by the Committee on 27.05.2000 and since the appellant was found to have breached the terms of the contract and had committed serious irregularities, he was served with a show cause notice dated 31.05.2000 as to why his contract be not cancelled. And after obtaining his reply, which was not found to be satisfactory, a conscious decision was taken not to extend his contract after 31.05.2001.

Upon a consideration of the matter, the Labour Court reached a conclusion that although the appellant claimed to have been appointed as a

Caretaker, pursuant to the letter of appointment dated 12.06.1989, but a perusal thereof showed that it was only a contract for attending the Guest House for a specific period on a consolidated amount of Rs.700/- per month. Further, in terms of the said letter, he was required to attend the Guest House at all times and in his absence to depute some dependable person to remain in attendance. The claim of the appellant that vide letters Ex.M2 to Ex.M15, he had applied for leave on different occasions, which had since been granted by the respondent-Corporation, proved that he was in its employment, was hardly of any consequence as on each occasion he provided a substitute to attend the Guest House. Thus, in the circumstances, even if his leave was sanctioned that would not mean that he was an employee of the respondent-Corporation. The plea set out by the appellant that he was paid salary at DC rates was also rejected, as the documents on record showed that he was merely paid fixed consolidated amount of Rs.700/-, which was raised to Rs.2000/- on 01.06.2000. Further, just because subsequently the appellant was awarded a contract to look after the Guest House at Sector 15, it could not be termed as transfer from Guest House in Sector 8 to the Guest House in Sector 15. Thus, for the relationship of an employer and employee between the parties remained unproved, vide award dated 08.11.2013, the Labour Court declined the claim of the appellant.

Being aggrieved, the appellant assailed the award vide a writ petition, referred to above, but the learned Single Judge, upon an analysis of the matter and the material on record concluded that the findings recorded by the Labour Court were based upon evidence and, thus, no exception could be taken thereto. Accordingly, the writ petition was dismissed. Thus, this appeal.

We have perused the records and heard learned counsel for the appellant, who merely reiterated the submissions that were advanced before the learned Single Judge and rejected upon a due consideration. Reliance was also placed upon the decisions of the Hon'ble Supreme Court in Chintaman Rao and another v. State of Madhya Pradesh, 1958 II L.L.J. 252; and Devinder Singh v. Municipal Council, Sanaur, AIR 2011 SC 2532, in support of the claim of the appellant.

Ex facie, the short issue that required determination all through the proceedings was: **If pursuant to the letter dated 12.06.1989 (Ex.W1) the appellant was indeed appointed as Caretaker and he remained in the employment of the Corporation as such till his services were terminated?**

For the case of the appellant is predicated upon the letter dated 12.06.1989, it indeed would be expedient to refer to a few of the clauses thereof, which read thus:

“ **LIFE INSURANCE CORPORATION OF INDIA**
Northern Zone, Divisional Office,
Post Box No.42,
Jeevan Parkash, Sector 18-B, Chandigarh
Ph.28555, 28384, 21278, 28807, 41265

Ref. No.Personnel /-

Dated: 12-6-89

Sh. Moti Chand
H.No.81,
Sector 16,
Panchkula.

Dear Sir,

Re: CONTRACT FOR ATTENDING TO LIC GUEST
HOUSE AT CHANDIGARH.

This has reference to your letter dated 25.5.89 requesting to award you the contract for attending LIC Guest House at Chandigarh.

It has been decided to award you the contract for attending the Guest House on the following terms and conditions:-

1. The period of contract on the first instance will be for 12 months.
2. The consolidated amount of Rs.700/- per month will be payable to you as contractual monthly amount. The payment of this contract monthly amount will be made to you in the first week of the following month on the strength of Certificate from our Estate Section.
3. You will be required to contact our Estate section of OS Deptt. daily. It would be your exclusive responsibility to attend the Guest House at all times. You will also make arrangements to depute some other dependable and responsible person to attend the Guest House in your absence as and when you would be compelled due to certain unavoidable circumstances not to attend the Guest House. The necessary suitable arrangement for deputing such a person will be made by you at your own cost.

4to10. xxx xxx xxx xxx

11. LIC authorities reserve the right to terminate the contract at their discretion at any time without assigning any reason thereof.

If you are agreeable to the above terms and conditions, please let us have your consent on the enclosed copy of this letter.

Yours faithfully,

Sd/-

Divisional Manager.”

A bare analysis of the letter referred to above, irresistibly show that the appellant was merely a caretaker Contractor to whom the contract for upkeep and maintenance of the LIC Guest House, to facilitate the stay of the officers/officials of the respondent-Corporation, was awarded. **Clause 3** of the alleged letter of appointment is crucial and rather vitiates the claim of the

appellant, for it required the appellant to attend the Guest House at all times, and in his absence to provide a dependable/responsible substitute. Further, not only the responsibility for deputing a substitute exclusively lay upon him, but even the cost for making any such arrangement was to be borne by him. Further, in terms of **clause 11**, the respondent-authorities reserved the rights to terminate the contract assigned to the appellant at their discretion at any time. The consent of the appellant was specifically sought if he was willing to execute the contract upon the terms set out in the letter dated 12.06.1989, and it is obvious that having consented thereto he was awarded the contract. Under the service rules of the respondent-Corporation, a specific procedure was required to be adhered to for making appointments to the post of Caretaker and this was not the case of the appellant that he was appointed in sync with those. Rather, the case set out by the appellant himself has been that the salary admissible to the post of Caretaker was much higher, whereas he was merely paid a consolidated amount of Rs.700/- per month, which was later enhanced to Rs.2000/- per month in 1999. Nothing was brought on record to show that he was ever paid any wages/salary by the respondent-Corporation. Concededly, he was never granted any increments either to justify his claim of being in the employment of the respondent-Corporation. Upon being pointedly asked, learned counsel for the appellant fairly conceded that there was nothing on record to show if the name of the appellant was borne on the muster roll of the respondent-Corporation and/or he ever contributed to the Employees' Provident Fund and/or the respondent-Corporation ever deposited any ESI contributions qua him. Likewise, this was not his case that he was ever paid bonus or other allowances/increments. The factor that assumes significance at this juncture is: that if the appellant was actually employed with the respondent-Corporation then why all these years he never expressed his grievance and/or claimed the benefits he was entitled to being in service of the Corporation. Not

just that, a reference to the letter dated 07.08.2001, at page 68 of the paper-book, issued by the respondent-Corporation to the appellant, reveals:

**“Sh. Moti Chand
Caretaker
LIC of India,
Guest House
3026, Sector 15-D
Chandigarh.**

Dear Sir,

Re: CONTRACT FOR ATTENDING TO LIC GUEST HOUSE AT SECTOR 15-D, CHANDIGARH

Please refer to your communication dated 3.8.01 in response to our letter dt. 28.7.01, whereby you have requested us to renew your contract for running Guest House w.e.f. 1.6.01. The matter has been examined thoroughly; and consequently, it has not been found possible by the competent authority to accede to your request for renewal of the contract.

As such, please hand-over charge of the above Guest House as per Inventory as indicated in our above-referred letter dated 28.7.01 by 10.8.2001.

**Yours faithfully,
Sd/-
Sr. Division Manager”**

From a bare reading of the afore-reproduced letter, it appears that post 31.05.2001, when the respondent resolved not to award any further contract to the appellant, he rather represented to the Corporation for its renewal, but the competent authority did not accede to his request. Thus, in the wake of the position, as sketched above, the only and the inevitable conclusion that could be reached: the appellant failed to prove that he was appointed as a Caretaker and ever remained in service/employment of the respondent-Corporation as such. Therefore, the reliance placed by learned counsel for the appellant upon the decision of the Hon’ble Supreme Court in Chintaman Rao’s case (supra) is wholly misplaced owing to the factual position obtaining in the matter at hands.

Likewise, the decision in Devinder Singh’s case (supra) would also not advance

the case of the appellant any further, as the issue involved in the said matter was if a part-time employee could be said to be a workman in terms of the provisions of Section 2(s) of the Industrial Disputes Act. Whereas, the question for consideration in the present proceedings has been, if there indeed was any relationship of an employer and an employee between the parties.

In view of the above, we are dissuaded to interfere with the award passed by the Labour Court as also the impugned order and judgment rendered by the learned Single Judge. The appeal being devoid of merit is accordingly dismissed.

(Krishna Murari)
Chief Justice

(Arun Palli)
Judge

08.04.2019

Rajan

Whether speaking / reasoned:
Whether Reportable:

YES
NO