

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

CWP No. 16979 of 2017(O&M)

DATE OF DECISION: 22.04.2021

RBG Security Solutions Pvt. Ltd.

...Petitioner

Versus

Presiding Officer, Industrial Tribunal, Gurdaspur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

**Argued by: Mr. Dinesh Mahajan, Advocate,
for the petitioner.**

**Ms. Paramjit Kaur Deol, Advocate,
for respondents No. 2 and 3.**

**Mr. Deepak Arora, Advocate,
for respondent No. 5.**

(Presence marked through Video Conferencing)

ARUN MONGA, J.

1. Grievance of the petitioner company, a security agency providing guards, is qua impugned award dated 01.06.2007, rendered by Industrial Tribunal, Gurdaspur (for brevity, Tribunal), whereby reference under adjudication was decided in favor of the workman and against the petitioner. While allowing the reference, workman-respondent No. 5 has been ordered to be reinstated into service of petitioner-company with 50% back wages and consequential benefits.

2. Grounds of challenge to the award, *inter alia*, are that there exists no master-servant relationship between workman/respondent No. 5 and the security agency/petitioner-company; and on his own the workman

neither made security agency a party before the Tribunal nor even any relief was sought against it.

3. Brief factual narrative first, as noticed by the Tribunal in its award. Workman claimed that pursuant to the recommendations of Deputy Director, Soldier Welfare Office, Gurdaspur, he was inducted in service of respondent Bank as Security Guard in an interview held on 03.02.2004. However, for no valid reason, the services of workman were terminated on 25.06.2007. Stand of the Bank is/was that respondent No.5 did though join as Security Guard on temporary basis on 03.02.2004, but he left the job of the Bank on or about 30.04.2004 to join the security agency M/s P. Checkmate-respondent No. 4. Respondent No. 5 never worked for 240 days in the preceding 12 calendar months. No claim against the Bank was thus sustainable

4. On the other hand, plea of the Security Agency is/was that it had originally entered into a contract for providing services of security guard to respondent Bank. Pursuant thereto, services of respondent No. 5 were deployed at the Bank on 03.02.2004. He worked as such till 25.06.2007 when his services were directly terminated by the Bank itself. As such, respondent Bank just to avoid its liability, had shifted the burden on Security Agency, by claiming that respondent No. 5 was not in its service and was an employee of Security Agency. Accordingly, respondent No.5 had rightly raised the claim against the Bank before the Industrial Tribunal challenging termination of his services w.e.f. 25.06.2007, by the Gurdaspur Central Coop. Bank/respondent No. 2.

5. Bank as well as Security Agency thus resisted the claim of the workman asserting that there existed no employer-employee relationship.

6. It is apposite to mention here that concededly M/s P. Checkmate Security Solutions/respondent no.4 later merged its business with the petitioner company-RBG Security Solutions (P) Ltd. Both the entities had same promoter/Director and were thus under control of the same person/management.

7. Perusal of the impugned award dated 01.06.2007, would reveal that Learned Tribunal framed the following issues:-

- “1. Whether the termination of services of workman is unjustified and illegal? If so, what benefit workman is entitled for?”*
- 2. Whether there exists relationship of employer and employee in between parties?*
- 3. Whether the workman has not come to the Court with clean hand?*
- 4. Relief.*
- 4(A) Whether there is relationship of employer and employee in between the party No.3 and 4?*

After appreciation of the evidence adduced, Tribunal came to following conclusions :-

- (a) that workman had worked with respondent Bank with effect from 03.04.2004 to 25.06.2007;*
- (b) that services of workman were being provided by M/s P. Checkmate Security Solutions, Pathankot, which later merged in M/s RBG Security Solutions(P) Limited and both the firms were owned by one person;*
- (c) that the workman was an employee of M/s RBG Security Solutions on the day his services were terminated by respondent Bank without any valid ground and hence Security Agency is bound to take back him in service;*

In totality, the termination of workman was held illegal.

Reference was answered in favor of the workman. Security Agency has been directed to reinstate him in service with 50% back wages from the date of

demand notice i.e. 20.08.2012, till reinstatement and consequential benefits.

Aggrieved, Security Agency has preferred the writ petition before this court.

8. In the return filed by respondent-Bank, as before, master-servant relationship between the respondent Bank and respondent No.5 has been denied. It is averred that though services of respondent No.5 were engaged as Security Guard with respondent Bank on 09.02.2004, but he worked for only two months. On introduction of Bank policy to engage Security Guards through Security Agencies, a contract was awarded to M/s P. Checkmate Security Solutions. Respondent No.5 on his own volition quit his job with respondent Bank on 30.04.2004 to join the services of said Security Agency, who had provided the Security Guards, including respondent No.5, to the respondent Bank with effect from 30.04.2004. From 01.05.2004 to 30.06.2007, bills for Security Guards deployed were raised by security agency and accordingly paid. Later, on the verbal instructions of principal employer/security agency, the bank discontinued the services of the respondent No.5. Learned Tribunal thus rightly directed the principal employer i.e. petitioner to reinstate the workman in service, is the defense.

9. I have heard learned counsel for the parties and perused the paper-book. I shall now proceed with my discussion and out come thereof.

10. To begin with, it would be pertinent to first refer to the relevant provisions of sub-sections (1) and (2) of Section 11 of the Industrial Disputes Act, 1947, which are as under:

“11. Procedure and power of Conciliation Officers, Boards, Courts and Tribunals -

(1) Subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit.

xxx

xxx

xxx

xxx

xxx

*(2) A conciliation officer or a member of a Board, or Court or the Presiding Officer of a Labour Court, Tribunal or National Tribunal may for the purpose of **inquiry** into the existing or apprehended industrial dispute, after giving reasonable notice, enter the premises occupied by any establishment to which the dispute relates. “*

A perusal of above would show that the proceedings before the Tribunal for adjudication of disputes, are in the nature of inquiry and for such adjudication, Tribunal can follow such procedure as it may think fit. It seems that the scope of inquiry is wider than the trial of a civil suit.

11. To my mind, to arrive at the truth by way of an inquiry precursor to adjudication, learned Tribunal can travel beyond the pleadings, unlike a Civil Court which has to follow the procedure prescribed in the Code of Civil Procedure and stay confined to the pleadings and evidence adduced in conformity with the pleadings, for adjudication of cases.

12. Herein, no doubt, the workman had originally filed the case against the respondent Bank. Later on, the learned Tribunal impleaded the petitioner/security agency as a party to the case. The petitioner then filed its independent written statement (Annexure P-3). Impugned award shows that the petitioner had duly cross-examined the workman and the witness produced by the Bank. Further, it shows that the petitioner had also led its own evidence. In the premise, the impugned award against the petitioner cannot be said to be bad in law merely because in the statement of claim, the workman had claimed the relief only against the Bank and not against the petitioner.

13. It is not disputed between the petitioner and the Bank that initially the workman was appointed as a direct employee of the Bank w.e.f.

03.02.2004. Agreement dated 28.04.2004 (Annexure P-5), operative for one year, was later executed between the Bank and respondent No. 4 / M/s P. Checkmate Security Solutions, for providing security guards to the Bank. The workman then left the services of the Bank. He joined employment under respondent No. 4. / M/s P. Checkmate Security Solutions w.e.f. 28.04.2004. Respondent No. 4 in turn deputed him with the Bank from the same date. Later, respondent No. 4 merged its business with the petitioner herein.

14. The stand of the petitioner is that on expiry of the term of agreement on 27.04.2005, for providing security guards to the Bank, the workman became a direct employee of the Bank. Per contra, case of the Bank is that even after 27.04.2005, the workman continued to be the employee of the petitioner.

15. The aforesaid *inter se* blame game controversy has been dealt with, by the learned Tribunal in paras 15 to 18 of the impugned award. The relevant text thereof is as under:

“15. It is established by letter Ex-RX-1 that Lt. Col. Rajinder Singh (Retd.) as proprietor of M/s P. Checkmate Security Solutions had submitted quotation for providing security services to the District Manager, Cooperative Bank, Gurdaspur with list of existing guards as Ex-RX-3 wherein name of Kulwant Singh workman is also mentioned and his quotation was accepted and an agreement was inked between M/s P. Checkmate Security Solutions and Gurdaspur Central Cooperative Bank through its District Manager, copy of which is Ex-RX-2 and this agreement has come into existence on 28.4.2004 which is actual date of this dispute.

16. There is an affidavit proved as well as admitted (Ex-R2) duly sworn by Kulwant Singh, whereby he has stated that he has left the job of respondent No.1 & 2 and joined M/s P. Checkmate Security Solutions, Pathankot and through that agency, he had been providing services of security guard/ gunman with bank respondent No.2.

17. *Lt. Col. Rajinder Singh Retd. (RW-1) admits all documents i.e. Ex-RX-1 to Ex-RX-10, which are comprised of payment vouchers and list of security guards provided by his firm in terms of agreement. Through these documents, he has received payment for providing services of security guards to respondent No.1 & 2 and repeatedly while drawing bills, name of Kulwant Singh figured in the list whereby an instruction has been issued to Manager, Gurdaspur Central Cooperative Bank, Pathankot to credit a sum of Rs.3,000/- in the name of Kulwant Singh as salary along with Wassan Singh, Makhan Singh and Satnam Singh. Ultimately, a letter Ex-R 15 was issued by M/s RBG Security Solutions (P) Ltd. Defence Road, Mamoon Cantt. Pathankot to District Manager, Gurdaspur Central Cooperative Bank, Gurdaspur with the contents that vide letter No. RBG/GSP Coop. Bank dated 12.6.2007, M/s RBG Security Solutions (P) Ltd. had requested the bank to give sanction to claim salary of Gunmen conforming to labour laws and statutory dues w.e.f. 1-7-2007. It is further mentioned in this letter that on Manager's telephonic message, the period was extended to 31-7-2007, however, they have not received any communication from Bank. It has further been mentioned that decision of the bank is in negative then they shall be unable to provide Guards beyond 31-7-2007. After letter dated 12-6-2007 bad day of Kulwant Singh had started because he was relieved from service by bank on 25-6-2007.*

18. *It is thus established on record that services of Gunmen/ Security Guards were being provided by M/s P. Checkmate Security Solutions, Pathankot, which stood merged in M/s RBG Security Solutions (P) Ltd, and both the firms were owned by one and the same person and Kulwant Singh was the employee of M/s RGB Security Solutions (P) Ltd. on the day, when he was relieved from duty by respondent No.2."*

16. On appreciation of respective evidence adduced, the learned Tribunal thus gave cogent reasons and returned a firm finding that it was established on record that the workman (Kulwant Singh-respondent No. 5) was an employee of M/s RBG Security Solutions (P) Ltd./petitioner, on the day when he was relieved from duty by the Bank (respondent No. 2).

17. It was argued by the learned counsel for the petitioner that this finding of the learned Tribunal is erroneous, as agreement between the petitioner and the Bank for providing security guards had expired on 27.04.2005.

There was no extension, renewal or fresh agreement between the petitioner

and the bank for providing guards after 27.04.2005. Thereafter, the workman was, thus, in direct employment of the Bank till his discharge.

18. I am unable to accept the afore noted contentions. There is nothing on record to reflect or to urge or contend that a written agreement was *sine qua non* for providing guards by the security to the Bank. Especially, when the bills/payment vouchers of security agency providing the guards have been proved, which proof flies in the face of said contention. The aforesaid evidence/overwhelming material on record referred to by the Tribunal, in my opinion, was/is sufficient and reliable for holding that the workman was the employee of security agency, during the term of the agreement (from 28.04.2004 till 27.04.2005), even after 27.04.2005 and also on 25.06.2007, when he was relieved from duty by the Bank on the petitioner's request, vide its letter dated 12.06.2007 (referred as Ex. R-15 in the award). Absence of any written extension, renewal or fresh agreement between the petitioner and the bank for providing guards after 27.04.2005, would not be fatal to the finding returned by the Tribunal. I am, therefore, inclined to uphold the said finding of the learned Tribunal.

19. As an upshot of the above discussion and reasons contained therein, the petition is dismissed.

20. Pending civil miscellaneous applications, if any, are also disposed of accordingly.

April 22, 2021
Pkapoor

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No