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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-11033-2021
Date of Decision: 13.09.2023

Sandeep

....Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and
others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Anil Kumar Goyat, Advocate
for the petitioner.

Mr. Satish Singla, AAG, Haryana.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Sandeep) has filed the instant Writ Petition under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of Certiorari for quashing the impugned award dated 21.12.2020 (Annexure P-5), passed by learned Industrial Tribunal-cum-Labour Court, Rohtak (in short 'the Tribunal') whereby, the claim statement filed by the petitioner under Section 2A of the Industrial Disputes Act, 1947 (in short '1947 Act') challenging his termination from services; has been rejected.

A further prayer has been made by the petitioner for directing respondents No.2 to 4 (in short 'respondent(s)-Management') to reinstate the petitioner along with back wages, continuity in service and all other statutory benefits.

2. Briefly, the petitioner raised an industrial dispute by filing his claim statement under Section 2A of the 1947 Act, wherein he pleaded that he was appointed by Municipal Corporation, Rohtak in the year 2015 against

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the permanent post of driver. Petitioner stated that he was deputed to drive Garbage Vehicle and was paid monthly salary of Rs.10,000/-. Petitioner further stated that during his service period, there was no complaint against him and his work and conduct remained satisfactory throughout. It was stated by the petitioner that in April 2017, the Management illegally terminated his services without any notice and without any retrenchment compensation. Petitioner claimed that his services have been terminated in violation of Sections 25-F, 25-G and 25-H of the 1947 Act, accordingly he prayed for reinstatement in service with back wages, continuity in service and all other statutory benefits.

3. The aforesaid claim of the petitioner was contested by the respondent(s)-Management *inter alia* on the plea that the claim petition was not maintainable as the petitioner was not appointed by the Municipal Corporation, Rohtak on the post of driver, as claimed by him. It was stated that the petitioner was in fact an employee of a contractor/outsourcing agency and in that capacity he had performed the duty of driver till April 2017. It was further stated that to keep or to remove the employees was in the discretion of the contractor and the Municipal Corporation, Rohtak was having no role in engaging the employees of the contractor. It was next submitted that since the petitioner was not an employee of the Municipal Corporation, Rohtak, therefore, there was no relationship of employment existed between them, thus there was no question of any termination of services of the petitioner by the Municipal Corporation, Rohtak. Accordingly, prayer for dismissal of the claim petition was made.

4. From the pleadings of the parties, the Tribunal framed the following issues :-

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“1. Whether termination of services of the workman is justified and if not to what relief he is entitled? OPW.

2. Relief.”

5. In order to prove his case/claim, the petitioner/workman-Sandeep, examined himself as WW-2 and he deposed by way of his affidavit as Ex. WW2/A. The petitioner also examined Sh. Sukhwinder, Clerk from the office of Oriental Bank of Commerce (OBC), Civil Road Branch, Rohtak as AW1, who proved document/copy of statement of bank account of petitioner as Ex.AW-1/1.

6. On the other hand, the respondent examined Sunder Singh, Sanitary Inspector as MW-1, who tendered his affidavit as Ex. MW-1/A and in documentary evidence he produced Ex.P1, copy of identity card, which was issued to the petitioner.

7. Upon considering the material/evidence available on the record, the Tribunal below rejected the claim of the petitioner vide impugned award dated 21.12.2020 (Annexure P-5).

8. In the aforementioned circumstances, the petitioner has filed the instant Writ Petition before this Court.

9. Learned counsel for the petitioner submits that the Tribunal below has erred in law and fact in rejecting the claim of the petitioner without considering the fact that the petitioner was appointed as a driver in the year 2015 by the Municipal Corporation, Rohtak and he was assigned the duty of driving the Garbage Vehicle. It is submitted that the services of the petitioner were illegally terminated without serving any notice upon him nor paying any retrenchment compensation by the Municipal Corporation, Rohtak. It is further submitted that there is sufficient material on record to indicate that the petitioner was appointed by the Municipal Corporation,

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Rohtak and to substantiate the said plea, learned counsel for the petitioner has placed reliance upon a copy of the identity card (Annexure P-6) and a copy of the bank passbook (Annexure P-8). Learned counsel submits that the petitioner had worked for more than 240 days in the calendar year preceding the date of his termination and therefore, the petitioner was entitled to protection of Section 25-F of the 1947 Act. It is further submitted on behalf of the petitioner that the Municipal Corporation, Rohtak had retained juniors to the petitioner and the respondent(s)-Management has not adopted the procedure of first come last go, therefore, there was violation of the provisions of Sections 25-G and 25-H of the 1947 Act. It is also contended that even if the petitioner is taken as a contractual employee, even then, he cannot be replaced with another contractual employee. With the aforesaid submissions, learned counsel for the petitioner prayed that the impugned award be set aside and necessary relief be granted to him.

10. Per contra, learned counsel appearing for the respondent(s)-Management has opposed the prayer made on behalf of the petitioner by submitting that the Tribunal below has considered the entire material/evidence available on the record and has passed a well reasoned and justified award, which does not call for any interference by this Court. It is submitted that the petitioner had failed to prove that he was appointed by the Municipal Corporation, Rohtak; rather it has been conclusively proved on record that the petitioner was engaged through a contractor/service provider i.e. M/s New Hindustan, accordingly, the Tribunal below has rightly not granted any relief to the petitioner against the respondent(s)-Management. As regards the reliance placed by the petitioner upon the identity card (Annexure P-6) and the bank passbook (Annexure P-8) is concerned, learned

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counsel for the respondent(s)-Management has stated that the identity card itself would not prove the relationship of employee and employer between the parties. In view of the categoric stand of the respondent(s)-Management that the petitioner had been engaged through the contractor/service provider and in order to provide some identity to the workers engaged through the contractor, the identity cards were issued, however, merely upon issuance of the identity card, no relationship of the employee and employer would be created. It is further submitted that a perusal of the bank passbook (Annexure P-8) would clearly indicate that the salary was being paid to the petitioner by M/s New Hindustan only and not by the Municipal Corporation, Rohtak. It is therefore submitted that there is no merit in the instant Writ Petition and prayer for dismissal of the same has been made.

11. I have heard learned counsel for the respective parties and perused the paper book with their able assistance.

12. It is well settled proposition that the onus to prove the issue regarding relationship of employee-employer and/or the issue of proving continuous service by workman under the Management in terms of Section 25-B of the 1947 Act so as to attract the provisions of Section 25-F of the 1947 Act, rests upon the workman.

13. It is well settled law that the onus to prove existence of relationship of employer and employee between the parties is upon the workman. In ***“Workman of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu and Ors.”***, (2004) 3 SCC 514, Hon'ble Supreme Court held as under:-

“47. It is a well-settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him.

48. In N.C. John v. Secretary Thodupuzha Taluk Shop and

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Commercial Establishment Workers' Union and Others, 1973 LIC 398, the Kerala High Court held :

"The burden of proof being on the workmen to establish the employer employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer employee relationship."

49. In Swapan Das Gupta and Others. v. The First Labour Court of West Bengal and Others, 1975 LIC 202, it has been held :

"Where a person asserts that he was a workmen of the Company, and it is denied by the company, it is for him to prove the fact. It is not for the Company to prove that he was not an employee of the Company but of some other person."

50. The question whether the relationship between the parties is one of the employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse... "

It is also well settled law that the onus to prove that the workman has rendered continuous service in terms of Section 25-B of the 1947 Act, i.e. the workman has worked under the Management for 240 days in twelve months preceding the date of termination, is also on the workman. It is further well settled that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. In this regard, reference can be made to the cases of ***“Municipal Corpn. v. Siri Niwas”, 2004(4) S.C.T. 211*** and ***“Surendranagar District Panchayat v. Dahyabhai Amarsinh”, 2005(8) SCC 750.***

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14. In the instant case, the petitioner had filed his claim petition before the Tribunal below on a categorical plea that he was appointed by the Municipal Corporation, Rohtak, however, on the other hand, the said fact was denied by the respondent(s)-Management by categorically stating that the petitioner was engaged through the contractor/service provider and therefore, he was not an employee of the Municipal Corporation, Rohtak. In view of the aforesaid stand taken by the respective parties, it was upon the petitioner to prove on record that there was relationship of employee and employer between him and the Municipal Corporation, Rohtak.

15. The Tribunal, vide the impugned award dated 21.12.2020 (Annexure P-5); has returned the following findings:-

“9. After going through the respective pleadings, evidence adduced and contentions raised for the parties the position which is emerging is that petitioner rendered his services as Driver with respondent No.3, however, from the written statement stage onwards it has come up with the plea that petitioner was not directly employed by it rather he served in the capacity of an employee of contractor. It is pertinent to discuss here that though name of said contractor was not disclosed in the written statement but during his evidence Sunder Singh, Sanitary Inspector (MW1) deposed that M/s New Hindustan Company, Sampla was the contractor.

10. In the circumstances, as petitioner has pleaded his regular appointment with the respondent No. 3/management whereas it is the categorical stand of respondents that petitioner was an employee of contractor, not directly engaged, it is to be seen as to whether both the sides have been able to substantiate their respective version.

11. Petitioner in order to prove his case himself

appeared as WW-2 and in examination-in-chief reiterated his pleadings as mentioned in the claim statement to the extent that he was appointed as Driver on regular basis by respondent No.3, he joined in the year 2015 and was removed in April 2017. Petitioner also got the record summoned from OBC Bank Civil Road Branch, Rohtak to prove his saving account where salary used to be deposited. An official of the bank (AW-1) proved statement as Ex. AW-1/1 and for the sake of convenience it will be referred a litter later. No other evidence was led by the petitioner.

12. From the spelled out version and evidence led by petitioner nowhere it transpires that he was an employee of respondent No.3. Not even a single document is there on record to establish his regular employment with the respondent No. 3. Petitioner apart from his oral evidence has relied upon bank statement Ex.AW-1/1, which reveals that he was having saving bank account with OBC branch, Rohtak. Also it is evident that every month a fixed amount used to be deposited in his account by M/s New Hindustan. These deposits started since March 2016 and last deposit was in March 2017. This bank statement is not reflecting any entry showing salary paid to him by respondent No.3. Rather bank statement shows that salary for one year during March 2016 till March 2017 was paid by the contractor (M/s New Hindustan). This document has demolished the claim of the petitioner that he was a regular employee with the respondent No.3. Even otherwise had petitioner been a regular employee he should have some genuine documents with him to prove his employment.

In the course of argument, Ld. AR for the petitioner has relied upon copy of Identity Card (Ex.P1) issued by respondent No.3 and stated that same was issued to petitioner being its employee. In view of this court in the

absence of any other documentary evidence mere copy of identity card can not become the basis to establish regular employment of the petitioner with respondent No.3 especially when MW-1 has explained that said identity card was issued being employee of contractor.

13. *One more plea taken by the petitioner that he joined in the year 2015 and was relieved in April 2017 is also devoid on merit. Apart from his pleadings and solitary statement in evidence no other evidence to this extent was led. Bank statement Ex. AW-1/1 relied upon by the petitioner clearly reveals that he got salary from contractor only during the period starting from March 2016 till March 2017. No other document is there to establish his employment prior to that. Not only that vide application for summoning of his bank statement petitioner sought record only for the period March 2016 to April 2017. Had he been working prior to that and getting salary/wages he would have got summoned that record also from the bank. This circumstance also proved that petitioner rendered his service for one year only through contractor and he had not worked since the year 2015 as pleaded by him.*

The law cited in Umed Singh's case supra is of no help for the petitioner, from the perusal of the same it reveals that a new contractor was engaged by Municipal Corporation, Rohtak and writ petitioner was directed to be engaged afresh on contract basis with said new contractor. In this case no evidence is led to show as to whether in place of M/s New Hindustan Company, Sampla any new contractor was engaged.

14. *Petitioner in the circumstances who during the period March 2016 till March 2017 had worked for more than 240 days through contractor, it is to be seen as to whether contractor is liable for committing violation of provisions of the Act. As per Section 25F of the Act no*

workman employed in an industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the workman has been given one month's notice in writing indicating the reasons qua retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice and further the workman has been paid compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months and notice in the prescribed manner is served on the appropriate government. Further, as defined under Section 25B Sub Clause (2) of the Act, a workman shall be deemed to be in continuous service under an employer for a period of one year, if the workman during a period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days. As discussed earlier petitioner has cleared this benchmark by working since March 2016 till April 2017.

15. The question which arises for determination is as to whether while terminating the services of the petitioner provisions contained under Section 25F of the Act were complied with or not. The answer to this question is in negative because it appears at the time of terminating the services of the petitioner by his employer/contractor he was neither given one month's notice mentioning the reasons for retrenchment nor was paid wages in lieu of notice period nor compensation as provided under said Section. Respondent No. 3 was not the employer of the petitioner, as such it has not violated the provisions of Section 25F of the Act. For violation of Section 25F of the Act there is no impunity even for contractor i.e. M/s New Hindustan who as per bank statement (Ex. AW-1/1)

paid salary to petitioner for one year. The statutory provision of Section 25F of the Act was required to be complied with even by the contractor. Therefore it can be inferred that termination of service of the petitioner was bad in law for violation of provisions contained under Section 25F of the Act. Now it remains to be seen as to for what relief petitioner is entitled for violation of Section 25F of the Act by the contractor.

Respondent from the very beginning has come up with the plea that petitioner was an employee of contractor and in the course of proceedings the name of said contractor came on record as Ms New Hindustan. Once it so happened, to array it as necessary party for just and proper decision of the case was the bounden duty of petitioner. Not only that to controvert the written statement of respondent, in rejoinder petitioner has not clarified anything with regard to his status being an employee of contractor. No effort was made to implead it as necessary party. As such once contractor is not before this Court as a contesting party no liability for violation of Section 25F of the Act can be fastened upon it at its back. However before parting with the order it is made clear that petitioner if so advised can seek appropriate legal remedy (subject to law of limitation) against the contractor for violation of his rights as per the provisions of Section 25F of the Act.

Before parting with the order it is relevant to discuss that though the petitioner has also alleged violation of provisions contained under Sections 25-G & 25-H of the Act submitting that while terminating his services employees juniors to him were retained and re-employment was undertaken by the employer, but to prove the same petitioner did not lead any evidence. Therefore, the violation of provisions contained under Sections 25-G & 25-H of the Act is not proved.

This issue is thus decided accordingly.

Issue No.2 (Relief):

16. In view of my findings on issue No.1, the present reference stands answered accordingly. File be consigned to records after due compliance.”

16. A perusal of the above extracted findings would show that the petitioner failed to prove on record his regular employment with the Municipal Corporation, Rohtak. The bank statement of the petitioner reveals that the salary of one year i.e. from March 2016 till March 2017 was paid by the contractor (M/s New Hindustan). The Tribunal below has further observed that in the absence of any documentary evidence led by the petitioner to show his employment with Municipal Corporation, Rohtak, it was held that mere identity card cannot become the basis to establish the regular employment of the petitioner with the Municipal Corporation, Rohtak. It has further been held that in fact the petitioner had rendered service only for one year through the contractor and that he had not worked since the year 2015 as was claimed by the petitioner in the claim petition.

17. The Tribunal below has also considered the plea of the petitioner that he had worked for more than 240 days during the period March 2016 till March 2017 and has held that although the petitioner has cleared this benchmark by working from March 2016 to April 2017, however, since Municipal Corporation, Rohtak was not the employer of the petitioner, as such it has not violated the provisions of Section 25-F of the 1947 Act. It has been further observed that as regards violation of Section 25-F of the 1947 Act, there is no impunity even for the contractor i.e. M/s New Hindustan, who as per the bank statement (Ex.AW-1/1) paid salary to the petitioner for one year. It has been stated that the statutory provisions

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of Section 25-F of the 1947 Act was required to be complied with even by the contractor and therefore, the termination of services of the petitioner was bad in law for violation of the provisions contained under Section 25-F of the 1947 Act, however, the question remains as to what relief can be granted to the petitioner for violation of Section 25-F of the 1947 Act by the contractor. The Tribunal below after considering the aforesaid plea has returned the finding that despite the plea being raised before the Tribunal that the petitioner was an employee of the contractor, no effort whatsoever was made by the petitioner to implead the contractor as a necessary party to the proceedings and since the contractor was not before the Tribunal as a contesting party, accordingly no liability for violation of Section 25-F of the 1947 Act can be fastened upon it at its back.

18. Learned counsel appearing for the petitioner has failed to dislodge the aforesaid finding returned by the Tribunal below. Evidently, the bank passbook (Annexure P-8) clearly indicates that the salary was being paid to the petitioner by the contractor (M/s New Hindustan) and in the absence of any evidence available on the record to show that the petitioner was engaged by the Municipal Corporation, Rohtak; in my considered view, the Tribunal below has rightly declined the relief to the petitioner.

19. It is apposite to state here that the Tribunal below has protected the right of the petitioner to avail his legal remedy against the contractor for violation of his rights as per the provisions of Section 25-F of the 1947 Act and in view thereof, no further orders are required to be passed in this regard.

20. As regards the plea of the petitioner regarding violation of the provisions of Sections 25-G and 25-H of the 1947 Act, it is observed that

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once the petitioner has failed to prove on record that there was any relationship of employer and employee between the Municipal Corporation, Rohtak and the petitioner, therefore, there is no question of any violation of the provisions of Sections 25-G and 25-H of the 1947 Act by the respondent(s)-Management. Moreover, it has also come on record that the petitioner has not led any evidence to prove the violation of Sections 25-G and 25-H of the 1947 Act.

21. Furthermore, the parameters for exercise of jurisdiction by the High Court under Article 226 of the Constitution of India in cases involving challenge to the award passed by the Labour Court/Industrial Tribunal and orders passed by other judicial and *quasi-judicial* bodies are well defined. A writ of *certiorari* can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals. A writ can also be issued where in exercise of jurisdiction conferred on it, the Court or the Tribunal acts illegally or improperly i.e. it decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of *certiorari* is a supervisory jurisdiction and not appellate one. This necessarily means that the finding of fact reached by the inferior Court or Tribunal, as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. This is the abstract statement of law, but the vexed question is as to what is an error of law apparent on the face of the record and in what circumstances a finding of fact recorded by an inferior Court or Tribunal or a *quasi-judicial* authority

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can be corrected. Broadly speaking, an error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or *quasi-judicial* authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of *certiorari*. A finding of fact recorded by an inferior Court or Tribunal can be corrected only if it is shown that in recording the said finding the Court or the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as an error of law which can be corrected by a writ of *certiorari*. However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or the *quasi-judicial* authority cannot be gone into by the High Court while considering the prayer for issuance of a writ of *certiorari*. Likewise, the mere, possibility of forming a different opinion on re-appreciation of evidence by the parties is not sufficient for issue of a writ of *certiorari* *Syed Yakoob v. K.S. Radhakrishnan and others, AIR 1964 Supreme Court 477; Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others, AIR 1970 Supreme Court 61; Jitendra Singh Rathor v. Sh. Baidyanath Ayurved Bhawan Ltd. and another, AIR 1984 Supreme Court 976; R.S. Saini v. State of Punjab and others, 1999(4) RCR (Civil) 253 (SC) : J.T. 1999(6) S.C. 507 and Mohd. Shahnawaz Akhtar and another v. Ist A.D.J. Varanasi and others, J.T. 2002(8) S.C. 69.*

22. Considering the totality of circumstances in the light of legal

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position indicated above, there is no scope for any interference by this Court in the impugned award dated 21.12.2020 (Annexure P-5), passed by the Tribunal below. Resultantly, the instant writ petition fails and the same is accordingly dismissed.

23. All pending application/s, if any, shall also stand closed.

13.09.2023
Himani

(HARSH BUNGER)
JUDGE

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|------------------------------|---|--------|
| 1. Whether speaking/reasoned | : | Yes/No |
| 2. Whether reportable | : | Yes/No |