

229 **IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-10267-2016

Date of Decision: 09.10.2023

The District Manager, Food Corporation of India and another

..... Petitioners

Versus

M/s Bright Security Service and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. K.K. Gupta, Advocate
 for the petitioners.

Mr. Vishal Sodhi, Advocate
for respondents No.2 to 5, 8, 13, 16, 17, 24, 26, 29,
31, 33, 35, 37, 42 and 46.

HARSH BUNGER J.

1. Petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of Certiorari for quashing *ex parte* order dated 29.09.2011 (Annexure P-5) read with order dated 01.01.2016 (Annexure P-8) passed by the Presiding Officer, Industrial Tribunal, Amritsar (hereinafter referred as 'the Tribunal').

2. Briefly, respondents No.2 to 63 filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 (in short 'the 1947 Act') on the plea that they were employed by respondent No.1 – M/s Bright Security Service (hereinafter referred as 'respondent No.1-Company'), who runs and operates security service and the said respondents

No.2 to 63 were supplied by respondent No.1-Company to Food Corporation of India (petitioners herein), and were deputed at various godowns, plinth and premises at Jandiala Guru under their supervision. The aforesaid respondents No.2 to 63 claimed that respondent No.1-Company paid them the salary @ Rs.68/- per day, after collecting the same from the petitioners herein and by charging its commission separately. Respondents No.2 to 63 claimed that they were not being paid their salary for the following period:-

<i>Period</i>	<i>Total days</i>	<i>Rate per day</i>	<i>Amount</i>
<i>April, 1998</i>	<i>30</i>	<i>Rs.69/-</i>	<i>Rs.2,040/-</i>
<i>November, 1998</i>	<i>30</i>	<i>Rs.68/-</i>	<i>Rs.2,040/-</i>
<i>December, 1998</i>	<i>31</i>	<i>Rs.68/-</i>	<i>Rs.2,108/-</i>
<i>January, 1999</i>	<i>31</i>	<i>Rs.68/-</i>	<i>Rs.2,108/-</i>
<i>February, 1999</i>	<i>28</i>	<i>Rs.68/-</i>	<i>Rs.1,904/-</i>
<i>March, 1999</i>	<i>31</i>	<i>Rs.68/-</i>	<i>Rs.2,108/-</i>
<i>1st to 12th April, 1999</i>	<i>12</i>	<i>Rs.68/-</i>	<i>Rs.816/-</i>
			<i>Rs.13,124/-</i>

Accordingly, respondents No.2 to 63 claimed a total amount of Rs.8,13,688/-.

3. The aforesaid claim of respondents No.2 to 63 was contested by the respondent No.1-Company raising a preliminary objection regarding maintainability of the application filed under Section 33-C(2) of the 1947 Act; and a further plea was taken that whatever payments are due to be paid to respondents No.2 to 63 herein, the same are to be paid by the petitioners-Food Corporation of India. Respondent No.1-Company further stated that the present petitioners had illegally deducted the payments of Rs.4,02,490/- and Rs.5,16,590/- from its payments, and therefore, the Company was unable to make the payments to respondents No.2 to 63 herein. It was further stated that as soon as the Company would receive the payments from the petitioners-Food Corporation of India, it would be ready to make the payments to respondents No.2 to 63 herein.

4. On the other hand, the present petitioners also opposed the application under Section 33-C(2) of the 1947 Act, filed by respondents No.2 to 63 herein, by raising a preliminary objection regarding maintainability of the application and the claim being time barred; and further denying the relationship of employee and employer between respondents No.2 to 63 and petitioners-Food Corporation of India. Petitioners herein further denied their liability to pay to respondents No.2 to 63 herein. A categorical stand was taken by the petitioners that it had paid each and every penny to respondent No.1-Company as per Agreement dated 01.04.1998 and after making adjustments as per the terms and conditions settled in the said agreement. It was stated that if any amount was due to be paid to respondents No.2 to 63, respondent No.1-Company would be liable to pay the same. Accordingly prayer for dismissal of the claim of respondents No.2 to 63 was made.

5. From pleadings of the parties, following issues were framed by the Tribunal:-

“(i) At what rate and for what amount the claim is liable to be computed?

(ii) Whether the application is not maintainable?

(iii) Whether the application is bad for mis-joinder of parties?

(iv) Whether the claim is time barred?

(v) Relief”

6. It appears that when the case was fixed for evidence before the Tribunal below, petitioners-Food Corporation of India along with respondent No.1-Company was proceeded against *ex parte*.

7. In the *ex parte* evidence, one Sh. Balwinder Singh appeared as AW-1 in support of the claim of respondents No.2 to 63.

8. Thereafter, upon considering the material/evidence available on

record, the Tribunal below proceeded to allow the application under Section 33-C(2) of the 1947 Act filed by respondents No.2 to 63 herein vide its order dated 29.09.2011 (Annexure P-5).

9. It appears that the petitioners-Food Corporation of India filed an application before the Tribunal below seeking setting aside of *ex-parte* order dated 29.09.2011 (Annexure P-5), however, the same was dismissed vide order dated 01.01.2016 (Annexure P-8) by holding as under:-

“11. the present application has been filed by Food Corporation of India on 21.11.2011 for setting aside the ex-parte order dt.29.9.2011. Perusal of the main file shows that application under Section 33-C (2) of the Industrial Disputes Act, 1947 was filed on 20.12.2005 and it was adjourned to 14.2.2006. On 14.2.2006, Sh. Ashok Kumar Arora Advocate has appeared on behalf of Food Corporation of India. Sh. Ashok Kumar Arora continued to appear for more than 40 opportunities and he was proceeded against ex-parte on 21.7.2011. On 21.7.2011, case was adjourned to 16.9.2011. After 16.9.2011, it was adjourned to 21.9.2011. On 21.9.2011, application of the applicants was allowed. No application was filed by authorized representative for Food Corporation of India before the learned Presiding Officer, where the main application was pending. So, now the applicants/respondents No.2 and 3 cannot say that they were not in the knowledge of the case pending before this Tribunal, as their authorized representative continued to appear for more than five years and no effort was made by authorized representative for the applicants-respondents No.2 and 3 to file an application for setting aside the ex-parte order before the learned Presiding Officer. So, it is clear that the ex-parte order is not liable to be set aside. Accordingly, issue No.1 is held against the applicants-respondents No.2 and 3 and in favour of the respondents-applicants.

Relief.

12. In view of the above discussion made on issue No.1, the application is dismissed being devoid of merits. File be consigned to record room.”

10. In the aforementioned circumstances, petitioners have filed the instant writ petition before this Court.

11. Learned counsel for the petitioners submits that the Tribunal below has erred in law and fact in allowing the application filed under Section 33-C(2) of the 1947 Act, without appreciating the fact that there was no relationship of employee and employer between respondents No.2 to 63 and the petitioners. It is submitted that in fact respondents No.2 to 63 were engaged by respondent No.1-Company and the petitioners had already cleared all the dues of respondent No.1-Company; and in case any amount is due to be paid to respondents No.2 to 63 then respondent No.1-Company would be liable to pay the same, however, liability has been wrongly fastened upon the petitioners-Food Corporation of India. Accordingly, prayer for setting aside *ex parte* order dated 29.09.2011 (Annexure P-5) and order dated 01.01.2016 (Annexure P-8) has been made.

12. Per contra, learned counsel for respondents No.2 to 5, 8, 13, 16, 17, 24, 26, 29, 31, 33, 35, 37, 42 and 46 has opposed the prayer made on behalf of the petitioners by submitting that Tribunal below has passed a justified order, which does not call for any interference by this Court. It is submitted that the petitioners, despite being aware of the proceedings pending before the Tribunal below, chose not to appear therein nor they led any evidence; accordingly, the evidence led by the workers remained unrebutted and by considering the same, Tribunal below granted the necessary relief to respondents No.2 to 63. It is submitted that the said respondents are the poor workers and they are entitled to the amount, as claimed by them, as they had rendered services to the petitioners-Food

Corporation of India through respondent No.1-Company. Accordingly, prayer for dismissal of the instant writ petition has been made.

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

14. Concededly, petitioners herein had appeared before the Tribunal below in the proceedings initiated in an application under Section 33-C(2) of the 1947 Act filed by respondents No.2 to 63 herein, however midway, the petitioners chose not to appear before the Tribunal below; nor any evidence was led on their evidence, whereupon Tribunal below proceeded to decide the matter on the basis of unrebutted evidence of respondents No.2 to 63 and held them entitled to the amount claimed.

15. The Tribunal below vide its order dated 29.09.2011 (Annexure P-5) returned the following findings:-

“Issue No.1.

8. Issue No.1 is whether the claim of applicants is liable to be computed and at what rate. The claim of 62 applicants is that they were employed by respondent No.1, who runs and operates security service and they further rendered the services with respondents No.2 and 3. Against services, the applicants were being paid at the rate of Rs.68/- per day by respondent No.1 on collecting from respondents No.2 and 3. The arrears, as pleaded in para No.1, are still due. On the other hand, the respondents contested the claim of 62 applicants. Respondent No.1 took the stand that respondents No.2 and 3 are liable to pay, while respondents No.2 and 3 pleaded that respondent No.1 is liable to pay. The payment is not denied by the three respondents, who levelled allegations against the co-respondents.

9. So far the services rendered by 62 applicants is not denied by the respondents in their written statements. More so, during proceedings, respondents absented and were proceeded

against ex-parte on 21.7.2011. applicants led the ex-parte evidence and has examined Balwinder Singh one of the applicant, who proved his claim and of other co-applicants.

10. I have closely scrutinized the pleadings and evidence, then given by thoughtful consideration to the arguments advanced by A.R. for the applicants. It is ex-parte case. 62 applicants claimed the arrears of Rs.13,124/- each total in all Rs.8,13,688/-. To prove this version, one of the applicants, namely, Balwinder Singh has appeared into the witness box. Claim of the applicants is unrebutted. Respondents not dared to rebut the evidence adduced by the applicants.

11. After perusing the statement of applicant Balwinder Singh AW1, it is proved that 62 applicants were working with the respondents and their arrears to the tune of Rs.13,124/- each, total in all Rs.8,13,688/- were due against the respondents and, as such, applicants are entitled to receive these arrears from the respondents, which the respondents are liable to pay jointly and severally. Accordingly, Issue No.1 stands determined in favour of the applicants and against the respondents.

ISSUES No.2, 3 AND 4.

12. All these issues are inter connected and are taken up together for discussion and decision. These issues were settled on behalf of respondents as per their claim. Respondents are ex-parte, then there is nobody to press these issues. Accordingly, all these issues stand determined in favour of the applicants and against the respondents.

RELIEF

13. Keeping in view the ex-parte evidence produced on file by applicants, which is un-rebutted, the application stands allowed ex-parte, with the observation that all the 62 applicants are entitled to receive the arrears of Rs.13,124/- each, total in all Rs.8,13,688/- from the respondents along with interest at the rate of 8% per annum from the date of filing the application till realization. File be consigned.”

A perusal of the aforesaid findings would show that the petitioners along with respondent No.1 herein have been held liable to pay jointly and severally the claimed amount to respondents No.2 to 63.

16. In my considered view, respondents No.2 to 63, who are the workers, cannot be left at the mercy of contractor, i.e. respondent No.1-Company, and/or the principal employer, i.e. petitioners-Food Corporation of India, who had chosen not to participate in the proceedings and show their *bona fides* before the Tribunal below.

17. Further, once the petitioners chose not to appear/participate in the aforesaid proceedings under Section 33-C (2) of the 1947 Act and/or to lead any evidence to show that the amount being claimed by respondents No.2 to 63 has already been disbursed to respondent No.1-Company, no fault can be found with the findings returned by the Tribunal below, more so, when the petitioners have been held jointly and severally liable to pay the said amount.

18. Keeping in view the aforesaid observations, I do not find any merit in the present writ petition and the same is accordingly dismissed.

19. All pending application(s), if any, shall also stand closed.

09.10.2023

Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No