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

CWP-15785-2013

Date of Decision: 03.07.2023

Ram Lal

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal, Bathinda and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Ramesh Sharma, Advocate
for the petitioner.

Mr. Aayush Arora, Advocate
for respondents No.2 to 4.

HARSH BUNGER J. (ORAL)

1. Ram Lal (petitioner) has filed the present petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing of award dated 05.04.2013 (Annexure P-4) passed by the Presiding Officer, Industrial Tribunal, Bathinda, vide which reference has been held against the petitioner/workman.

2. Briefly, the petitioner claims to have been appointed as a Chowkidar on 14.06.2000 by respondent No.4 (Inspector, Punjab Agro Food Grain Corporation, Fazilka Road, Abohar, District Fazilka) and he claims to have worked up to 30.08.2003 at a salary of Rs.1,800/- per month. As per the petitioner, his services were terminated, w.e.f. 30.08.2003, without issuance of any charge-sheet, show cause notice or inquiry. Thereafter, the petitioner is stated to have submitted Demand Notice dated 08.09.2003

(Annexure P-1) under Section 2-A of the Industrial Disputes Act and the matter was referred for adjudication to the Industrial Tribunal, Bathinda. The petitioner submitted Statement of Claim dated 25.08.2004 (Annexure P-2) before the Industrial Tribunal, Bathinda and the said claim was contested by the respondent-Management by filing its written statement (Annexure P-3). The aforesaid reference came to be rejected/declined vide award dated 05.04.2013 (Annexure P-4) passed by the Presiding Officer, Industrial Tribunal, Bathinda by holding that the petitioner failed to establish the relationship of employer and employee. It was further held that the petitioner was an employee of M/s Terrier Utility Services Pvt. Ltd., Chandigarh, which was engaged by Punjab Agro Industrial Corporation Limited for doing the work and the petitioner was an employee of that Company and therefore, claim of the petitioner regarding his reinstatement with continuity of service and full back wages was without any merits.

3. Being dissatisfied with the aforesaid award dated 05.04.2013 (Annexure P-4), the petitioner filed the instant writ petition by submitting that the learned Industrial Tribunal, Bathinda has wrongly rejected his claim and that too without considering the document Ex. W-1 (Annexure P-5), vide which the Punjab Agro Industrial Corporation, Ferozepur deposited the Employee's Provident Fund of the petitioner before the Employees' Provident Fund Commissioner, Bathinda, which shows that the petitioner was an employee of the Punjab Agro Industrial Corporation, Ferozepur. It is claimed that had the petitioner not been the employee of the said Corporation then the Employee's Provident Fund would not have been deposited by the Corporation. It is claimed that the petitioner was appointed by the Corporation and he worked as a Chowkidar from 14.06.2000 to 30.08.2003 and thus, the Tribunal had committed a grave error by declining

the reference of the petitioner. It is also claimed that the petitioner was never named as an employee of the M/s Terrier Utility Services Pvt. Ltd., Chandigarh. Accordingly, it is prayed that the present writ petition be allowed by quashing award dated 05.04.2013 (Annexure P-4) passed by the Presiding Officer, Industrial Tribunal, Bathinda and consequential relief be granted to the petitioner.

4. Upon issuance of notice in this case, reply has been filed on behalf of respondents No.2 to 4, which is already on record, wherein it is stated that the respondents had engaged a contractor, i.e. M/s Terrier Utility Services Pvt. Ltd., Chandigarh, by executing an agreement, whereunder the contractor company was to provide the labour for the prescribed work and for that purpose, the respondent was to make the payment to the contracting company and none of the employees of the contracting company was ever recruited by respondents No.2 to 4. It is categorical stand of respondents No.2 to 4 that they were making payments to the contracting company after deducting the Provident Fund Amount and depositing the same with the Employee's Provident Fund and the same cannot be made a basis by the petitioner to claim that he was an employee of the respondents. It is submitted that the petitioner had failed to prove or bring on record anything to show that the respondents were the employer of petitioner. It is claimed that even in his cross-examination, the petitioner himself admitted the fact that he was never issued any Admit Card/I-Card from respondents No.2 to 4. It is stated that there was no employer-employee relationship between respondents No.2 to 4 and petitioner and merely because the respondents deposited the amount in petitioner's Provident Fund, it does not prove that the petitioner was an employee of respondents No.2 to 4. It is also claimed that before the Industrial Tribunal, the petitioner did not file any

replication/rejoinder to the reply filed by the respondents, wherein the specific objection was taken that the petitioner is an employee of M/s Terrier Utility Services Pvt. Ltd., Chandigarh. It is submitted that the Industrial Tribunal has rightly held that there exists no relationship of employer and employee between respondents No.2 to 4 and petitioner and the claim of petitioner was rightly rejected. Accordingly, prayer for dismissal of the instant writ petition has been made.

5. I have heard learned counsel for the parties and perused the paper book as well as the written statement filed on behalf of respondents No.2 to 4.

6. Claim of the petitioner is that he was appointed as a Chowkidar by respondent No.4 (Inspector, Punjab Agro Food Grain Corporation, Fazilka Road, Abohar, District Fazilka) and was drawing a salary of Rs.1,800/- per month. The petitioner claims that he worked at the said post upto 30.08.2003, on which date, his services were terminated without issuance of any charge-sheet, show cause notice or inquiry, which is illegal in the eyes of law. The petitioner claims that before termination of his services, neither any notice nor any compensation was given to him, which is in violation of Section 25-F of the Industrial Disputes Act, 1947, accordingly, he raised a claim praying for reinstatement of his services and full back wages. On the other hand, it is the stand of respondents No.2 to 4 that there is no relationship of employer and employee between respondents No.2 to 4 and petitioner. It is the further stand of respondents that the petitioner was an employee of M/s Terrier Utility Services Pvt. Ltd., Chandigarh and the same was never refuted by petitioner before the Tribunal. It is the stand of respondents No.2 to 4 that merely depositing of the amount in the account of petitioner's Provident Fund by them does not

prove that he is an employee of respondents No.2 to 4. It is further stated by respondents No.2 to 4 that the petitioner has not placed on record any document to prove the employer-employee relationship between them.

7. During the course of arguments, learned counsel for the petitioner has admitted that apart from Annexure P-5, which is a copy of Form No.19 under the Employee's Provident Fund Scheme, 1952, there is no other document to prove that the petitioner was employed by respondent No.4.

8. So far as depositing of Provident Fund by the respondents qua the petitioner is concerned, in my considered view, the same does not create the employer-employee relationship between respondents No.2 to 4 and petitioner. Here, it would be apposite to refer to Section 2(f) of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952, which reads as under:-

"2(f) 'employee' means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person,-

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961) or under the standing orders of the establishment;"

The aforesaid definition does not create the relationship of employer and employee under the Industrial Disputes Act, 1947 and is meant for the limited purpose of The Employees Provident Funds and Miscellaneous Provisions Act, 1952. The contractor's employees are deemed to be the employees of the principal employer for the purposes of the

Employees Provident Funds and Miscellaneous Provisions Act if they satisfy the attributes as defined in Section 2(f) of the aforesaid Act.

9. Further, Section 6 of The Employees Provident Funds and Miscellaneous Provisions Act, 1952 provide that the employer shall remit the provident fund contribution in respect of the employees employed by him directly or by or through a contractor. Section 6 of the aforesaid Act is reproduced herein under:

"6. Contributions and matters which may be provided for in Schemes - The contribution which shall be paid by the employer to the Fund shall be ten percent of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees whether employed by him directly or by or through a contractor, and the employees contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding ten percent of his basic wages, dearness allowance and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section...."

10. Further, paragraph No. 30 of The Employees Provident Funds Scheme, 1952 (hereinafter referred as 'Scheme') is reproduced herein under:

"30. Payment of contributions. - (1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).

(2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as

the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted together with an equal amount of contribution (in this Scheme referred to as the employer's contribution) and also administrative charges.

(3) It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges."

Paragraph No.30 of the aforesaid scheme clearly indicates that it shall be the responsibility of the principal employer to pay both the contributions payable by himself in respect of employees directly employed by him and also in respect of employees employed by or through a contractor.

11. The Employees Provident Funds and Miscellaneous Provisions Act, 1952 and The Employees Provident Funds Scheme, 1952 cast the responsibility and statutory obligation on the principal employer to remit the PF contributions even in respect of contractor's employees. Mere remittance of the provident fund by the management, i.e., the principal employer *ipso facto* does not create any employer-employee relationship between the management and petitioner-workmen. In this regard, I draw support from the judgment rendered by Hon'ble Delhi High Court in case of ***"Ranbir Singh Vs. M/s Sh. Ganga Ram Hospital", 2015 (23) S.C.T. 904.***

12. Learned Industrial Tribunal, Bathinda while declining the reference of the petitioner, vide award dated 05.04.2013 (Annexure P-4), held as under:

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11. I have considered the evidence produced before me and I have also gone through the documents on record. Ram Lal

workman claimed himself to be employee of respondent/Management. He claimed that he was appointed as Chowkidar on 14.6.2000 and his service were terminated on 30.8.2003 without notice, charge sheet, inquiry or compensation. On the other hand, respondents/Management have denied the relationship of employer and employee. The onus is heavily on the workman to establish this relationship. Ram Lal workman failed to lead any evidence on record to show that he was ever engaged as Chowkidar by the respondent/Management. He admitted in his cross examination as WW-2 that he does not possess any appointment letter or termination order. On the other hand, plea taken by the respondents/Management is proved on file by Lal Chand MW-1, who has placed on record agreement Ex.M-1, vide which, M/S Terrier Utility Services Pvt. Ltd. was engaged by Punjab Agro Industrial Corporation Limited for doing work. Said M/s Terrier Utility Services Pvt. Ltd. is not made party in the present reference. In the absence of any evidence on record, workman cannot claim himself to be employee of respondent/Management. Therefore, workman has miserably failed to establish the relationship of employer and employee with the respondent. Therefore, claim of the workman regarding his reinstatement with continuity of service and full back wages is without merits. With the observations, issue No.1 is decided against the workman, whereas issue No.2 is decided in favour of the respondent/Management.

12. Respondent/Management has established on record that there existed no relationship of employer and employee between the parties. Therefore, workman has no locus standi or cause of action to file this reference against the Management and the reference is not maintainable. Reference preferred by the workman is bad for non joined of necessary party, i.e. M/s Terrier Utility Services Pvt. Ltd., Chandigarh. With this observation, these three issues are, accordingly, decided in favour of the Management/respondents and against

the workman.

RELIEF

13. In view of my above findings, reference preferred by the workman is without merits and the same is, accordingly, declined leaving both the parties to bear their own costs.

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13. The perusal of findings returned by learned Industrial Tribunal, Bathinda would show that the same have been given as per evidence and law. In no way, the finding can be held to be perverse, more so when the petitioner had failed to discharge the onus of proving the relationship of employer and employee between him and respondents No.2 to 4.

14. No other point has been argued.

15. In view of the aforesaid discussion, I do not find any merit in the present writ petition. Accordingly, the same is dismissed.

16. All pending application(s), if any, shall also stand disposed of.

03.07.2023

Apurva

**(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No