

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-16400-2014
Date of Decision: 14th December, 2023

Mahender Kumar
..... Petitioner

Versus

State of Haryana and others
..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Vikas Kuthiala, Advocate
for the petitioner.

Mr. Praveen Chander Goyal, Addl. A.G., Haryana.

Mr. Jasmeet Singh Bedi, Advocate
for respondents No.2 and 3.

HARSH BUNGER J. (ORAL)

1. Petitioner (Mahender Kumar) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking setting aside of award dated 13.01.2014 (Annexure P-2) passed by learned Industrial Tribunal-cum-Labour Court, Hisar (hereinafter referred to as 'the Tribunal'), whereby the reference of industrial dispute raised by petitioner, regarding termination of his services, has been decided against him.

A further prayer has been made for directing the respondents to take back the petitioner in service and to grant all the consequential benefits

to him.

2. Briefly, the petitioner raised an industrial dispute with regard to termination of his services by serving demand notice dated 15.05.2012 and upon failure of the conciliation proceedings, the same was referred to the Tribunal below for adjudication.

3. As per the claim of petitioner, he was appointed as a Fireman in the Office of Market Committee, Fatehabad, after following the proper procedure. Petitioner claimed that he was appointed on contract basis through placement/outsourcing agency, namely M/s Millennium Manpower Agency (respondent No.5 herein), and he worked continuously from 03.11.2006 to 31.07.2011 in the Office of Market Committee, Fatehabad under the supervision and control of Market Committee, Fatehabad, M/s Narwal Super Security and M/s Millennium Manpower Agency. It was stated that the petitioner was being paid the wages as fixed by the Deputy Commissioner from time to time under the Minimum Wages Act. Petitioner further claimed that his services were terminated w.e.f. 01.08.2011, in violation of the provisions of Sections 25-N, 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the 1947 Act').

4. On the other hand, the aforesaid claim of petitioner was opposed by the respondent-Department, i.e. Haryana State Agricultural Marketing Board/Market Committee (respondents No.1 to 3 herein) by raising a preliminary submission that the Committee was not an 'Industry' nor the petitioner was a 'workman' in terms of Sections 2(j) and 2(s) of the 1947 Act, respectively. On merits, the respondent-Department stated that the petitioner was appointed as a Fireman in the Office of Market Committee, Fatehabad through a placement/outsourcing agency, however, it was further submitted that the petitioner was not appointed only through

M/s Millennium Manpower Agency (respondent No.5), rather he was engaged through different placement/outsourcing agencies, i.e. M/s Dahiya Security and Placement Services, Hisar, M/s Shree Ganesh Security, Jind, Vikram Security, Hisar, M/s Sandhu Security, Panchkula and M/s Millennium Manpower Agency. It was explained by the respondent-Department in its reply that from 01.02.2010 up to 31.08.2010, the petitioner was paid salary directly by the Board as during the said period, M/s Sandhu Security, Panchkula was blacklisted for non-payment of wages to the persons engaged by it. It was also the stand of respondent-Department that the petitioner had worked only up to 31.03.2011 through placement/outsourcing agencies and not up to 30.07.2011, as claimed by him. It was further clarified that after 31.03.2011, the petitioner was not engaged as the contract of the Board with M/s Millennium Manpower Agency (respondent No.5 herein) had expired and thereafter w.e.f. 01.10.2011, another placement/outsourcing agency, i.e. Eagle Eye Security, was provided the contract.

With the aforesaid submissions, the stand was taken by the respondent-Department that there was no relationship of employer and employee between the Department and the petitioner. Accordingly, prayer for dismissal of claim of the petitioner was made.

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

- “1. Whether the petitioner was the employee of Haryana State Agricultural Marketing Board or of the Contractor? OP Parties.*
- 2. If it is found that the petitioner was the employee of Haryana State Agricultural Marketing Board, whether termination of his services was illegal, if so, to what relief he is entitled to? OP Parties.*
- 3. Relief”*

6. Thereafter, both the parties led their respective evidence before the Tribunal below. Petitioner, in order to prove his claim, appeared himself as WW-1 and on the other hand, respondent-Department examined Sh. Gandhi Lal, Assistant Fire Station Officer, Market Committee, Fatehabad as MW-1.

7. Upon considering the material/evidence available on record, Tribunal below answered the reference against the petitioner vide award dated 13.01.2014 (Annexure P-2) by holding that he was not entitled to any relief. Accordingly, petitioner filed the instant writ petition before this Court.

8. Learned counsel for the petitioner submits that the Tribunal below has erred in law and fact in rejecting the claim of petitioner and answering the reference against him, without appreciating the material/evidence available on record. It is submitted that there was sufficient material available on record to show that the petitioner was in fact an employee of the respondent-Department (respondents No.1 to 3 herein). It is further submitted that even if it is presumed that the petitioner was appointed by the respondent-Department through the contractor even then the total supervision and control over the petitioner was of respondent No.3 – Market Committee, Hisar; accordingly, the relationship of employer and employee between the respondent-Department and the petitioner was established, however, the same was wrongly not considered by the Tribunal below. Learned counsel for the petitioner contends that neither the Market Committee, Hisar (respondent No.3) nor the contractors were registered under the provisions of the Contract Labour (Regulations & Abolition) Act, 1970 (hereinafter referred to as 'the 1970 Act'), accordingly, the impugned award dated 13.01.2014 (Annexure P-2) is not sustainable.

With the aforesaid submissions, learned counsel for the

petitioner has prayed for allowing the instant writ petition by setting aside award dated 13.01.2014 (Annexure P-2) passed by the Tribunal and further directing the respondents to take back the petitioner in service and to grant all the consequential benefits to him.

9. Per contra, learned State counsel appearing for respondents No.1 to 3, has opposed the prayer made by learned counsel for the petitioner by submitting that the Tribunal below has passed a well reasoned and justified order, which does not call for any interference by this Court. Learned State counsel submits that the petitioner was engaged through an outsourcing agency, for which agreement was executed between the Department and the contractor, which was a genuine contract; and accordingly, it was submitted that there was no relationship of employer and employee between the Department and the petitioner. Accordingly, learned State counsel has prayed for dismissal of the instant writ petition.

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

11. In the instant case, the Tribunal below while deciding the reference vide award dated 13.01.2014 (Annexure P-2) held as under:-

“22. After hearing the Ld ARs of the parties and going through the evidence on the file. I am the view that the only question for determination in this case is whether the alleged contractual system was merely a ruse/camouflage or sham to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder or it was genuine. It is well settled that if this court finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment benefits to the employee and that there was in fact a direct employment, it can give relief to the employee by holding that the workman is the direct employee of the

principle employer and to do so it can lift the veil. The two well recognized tests to find out whether the contract labour is the direct employee of the principle employer are:- i) whether the principal employer pays salary instead of contractor, and ii) whether the principal employer controls and supervises the work of the employee as laid down by the Hon'ble Apex Court in Bharat Lal's Case (supra) In this case both the tests are satisfied.

23. It is proved from the evidence that the salary to the petitioner except during the period from 01.02 2010 to 31.08.2010 when salary to him was paid by the Board directly as the outsourcing agency namely M/s Sandhu Security, Panchkula through whom he was employed during said period was blacklisted on account of non payment of wages to the staff employed by the said agency was being paid by ine contractors. This fact is admitted by the petitioner in his statement as WW1 and his further proved from the statement of MW1 Sh. Gandhi Lal, Assistant Fire Station Officer whose statement on said point was not challenged in his cross examination. The control and supervision on the work of the petitioner as defined in International Airport Authority of India's case (supra) was also of the contractors.

24. The next question which arises for determination is whether the contractions namely M/s Shree Ganesh Security, Jind Vikram Security Hisar, M/s Sandhu Security, Panchkula and M/s Millennium Manpower, Agency (respondent no 5) were registered under the Contract Labour (Regulation & Abolition) Act 1970 or not, if not the consequences thereof. No document has been placed on the file to prove that the contractors M/s Shree Ganesh Security, Jind Vikram Security, Hisar, M/s Sandhu Security, Panchkula and M/s Millennium Manpower, Agency (respondent no. 5) were registered under the Contract Labour (Regulation & Abolition) Act 1970 as the licensed contractors, but in absence of any other evidence this fact alone does not lead to the conclusion that the Contract Labour system was a sham or a camouflage as held by the

Hon'ble Apex Court in Municipal Corporation of Greater Mumbai's case (supra).

25. Having been arrived at the conclusion that the petitioner was not employed by respondents no 1 to 3 directly and there was no relationship of master and servant between the respondents no 1 to 3 and the petitioner and further having being arrived at the conclusion that the petitioner was in fact employed by respondent no. 3 through placement/outsourcing agencies namely M/s Shree Ganesh Security, Jind, Vikram Security, Hisar, M/s Sandhu Security Panchkula and M/s Millennium Manpower. Agency (respondent no 5) for the period from 01.04.2008 to 30.04.2008, 03.05.2008 to 31.08.2009, 01.09.2009 to 31.08.2010 and 13.09.2010 to 31.03.2011, the petitioner is not entitled to any relief as he was relieved of his duty only after the completion of the contract of respondent no 5 with respondent no 3 and he had not completed more than 240 days during his employment with respondent no. 3 through respondent no 5. Had he completed more than 240 days and the contract of respondent no. 3 with respondent no. 5 would have been in existence, the matter would have been otherwise. Therefore the violation of provisions contained under Section 25-F is not proved.

26. The petitioner has also alleged violation of provisions contained under Sections 25-G and 25-H of the Act submitting that at the time his services were terminated, junior employees to him were retained and thereafter new recruitment to the post was made without affording him an opportunity of re-employment, but he did not lead any evidence to prove said fact. He did not disclose the name of any person who according to him was junior to him and was retained at the time of terminating his services or was recruited thereafter by respondent no 5 the last placement/outsourcing agency through whom he was employed. Therefore, violation of provisions contained under Sections 25-G and 25-H of the Act is not proved. This issue is, therefore, decided against the petitioner.

RELIEF

27. For the reasons discussed hereinbefore, the petitioner has not been found entitled to any relief and, therefore, reference made to this court stands decided accordingly against the petitioner.”

12. A perusal of the above extracted findings would manifest that upon consideration of the material/evidence available on record, it has been held by the Tribunal below that the salary of petitioner was being paid directly by the outsourcing agency, namely M/s Sandhu Security, Panchkula, through whom the petitioner was employed (except for the period 01.02.2010 up to 31.08.2010, when the said M/s Sandhu Security, Panchkula was blacklisted on account of non-payment of wages to its staff). The said fact was admitted by the petitioner in his statement and the same was further substantiated by the statement of Sh. Gandhi Lal, Assistant Fire Station Officer, Market Committee, Fatehabad (MW-1). It has further been held that control and supervision on the work of the petitioner was of the contractors. As regards the plea of petitioner that neither the respondent-Department (respondents No.1 to 3 herein) nor the contractors were registered under the 1970 Act, therefore, the contract system was a sham and camouflage; suffice it to say that the said issue is no more *res integra* as the position stands settled by the Hon'ble Supreme Court in the case of “**Steel Authority of India Ltd. v. National Union Water Front Workers**”, 2001(4) SCT 1, wherein the following findings were returned: -

“124. The upshot of the above discussion is outlined thus :

(1) (a) Before January 28, 1986, the determination of the question whether Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under

consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry; or the establishment of any railway, cantonment board, major port, mine or oil field or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government.

(b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause (a) of Section 2 of the Industrial Disputes Act, if (i) the concerned Central Government company/undertaking or any undertaking is included therein eo nomine, or (ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by railway company; or (c) by specified controlled industry, then the Central Government will be the appropriate Government otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2) (a) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in the any establishment has to be issued by the appropriate Government :

(1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and;

(2) having regard to

(i) conditions of work and benefits provided for the contract labour in the establishment in question; and

(ii) other relevant factors including those mentioned in sub-section (2) of Section 10;

(b) inasmuch as the impugned notification issued by the Central Government on December 9, 1976 does not satisfy the aforesaid requirements of Section 10 it is quashed but we do

so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment.

(4) We over-rule the judgment of this court in Air India's case (supra) prospectively and declare that any direction issued by any industrial adjudicator/any court including High Court, for absorption of contract labour following the judgment of in Air India's case (supra), shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of the having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be

treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation of other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.”

13. Still further, the effect of non-registration of contractor under the 1970 Act was considered by a Division Bench of this Court in **“Balwinder Singh v. Punjab State Electricity Board”, 2011(4) S.C.T. 231**, wherein it was observed as under:-

“6. The absence of any registration of the labour contractor under the provisions of the Act, in our considered view, will not alter the situation. The same may make the labour contractor liable for penal and other action contemplated by the provisions of the Act. The absence of any such registration of the labour contractor cannot obliterate the engagement of workmen by the contractor; neither the said fact can alter the status of the workmen to one of regular employees under the principal employer...”

14. In view of the aforesaid legal position, mere non-registration under the 1970 Act is of no consequence and only on that basis, it cannot be

held that contract executed between the Department and the contractor was a sham and a camouflage, more so when the petitioner has failed to produce any notification under Section 10 of the 1970 Act, prohibiting the labour contract in the establishment of respondent-Department.

15. As regards the submission of petitioner that his services have been terminated in violation of the provisions of the 1947 Act is concerned, it is observed that the petitioner was employed through different placement/outsourcing agencies, regarding which a further finding has been returned by the Tribunal that petitioner had not completed more than 240 days of work with the respondent-Department through the contractor, and accordingly, there was no violation of the provisions of Section 25-F of the 1947 Act. It has come on record that the petitioner was relieved from his duty only after completion of the contract of the outsourcing agency, i.e. Millennium Manpower Agency (respondent No.5).

16. Further, as regards the plea of petitioner regarding violation of Sections 25-G and 25-H of the 1947 Act is concerned, it is observed that petitioner had failed to lead any evidence to show that which junior employee to him was retained in service and which employee was freshly recruited to the post after termination of his services. The details of such persons were not provided by the petitioner and in the absence of material particulars and the relevant evidence, no finding could have been returned by the Tribunal below that there was violation of Sections 25-G and 25-H of the 1947 Act.

17. Further, 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 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 issue 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*”.

18. Considering the totality of circumstances in view of the legal principles indicated above, I am of the considered view that there is no scope for any interference with the findings/Award rendered by learned Tribunal below; resultantly, the instant petition fails and the same is dismissed.

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

14th December, 2023

Apurva

(HARSH BUNGER)

JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No