

2023:PHHC:166486

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

CWP-15654-2016

Date of Decision: 11.10.2023

Gaje Singh

..... Petitioner

Versus

Presiding Officer, Labour Court, U.T., Chandigarh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. S.Surjewala, Advocate for
Mr. Sunil K.Nehra, Advocate
for the petitioner.

Mr. Ashish Rawal, Advocate and
Mr. Jaivir Singh, Advocate
for respondent No.2.

HARSH BUNGER J. (ORAL)

1. Petitioner (Gaje Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing impugned award dated 17.08.2015 (Annexure P-1) passed by the learned Industrial Tribunal and Labour Court, Union Territory, Chandigarh (in short 'the Tribunal'), whereby the reference of industrial dispute raised by the petitioner, regarding termination of his

services, has been answered against him.

A further prayer has been made by petitioner for directing respondents No.2 and 3 to reinstate him in service along with all the consequential benefits.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services. The said dispute was referred to the Tribunal below, for adjudication.

3. In the claim statement filed by petitioner, he stated that he was initially engaged by respondent No.2-Management as Safai Karamchari on 20.04.1996 and he continued to work on the said post on daily wages, up to 27.01.2011, when his services were orally terminated by respondent No.2-Management, without following the procedure as laid down under the provisions of the Industrial Disputes Act, 1947 (for short 'the 1947 Act'). As per the petitioner, his work and conduct was satisfactory and there was no complaint against him. Petitioner alleged that after termination of his services, fresh persons had been appointed and even his juniors had been retained in service, therefore, he claimed that his services were terminated in violation of the provisions of Sections 25-G and 25-H of the 1947 Act. Accordingly, petitioner prayed for reinstatement in service along with all the consequential benefits.

3. The aforesaid claim of petitioner was contested by respondent No.2-Management by raising a preliminary objection regarding *locus standi* of the petitioner to file the claim petition as he was neither appointed nor terminated by respondent No.2-Management. It was the categorical case of respondent No.2-Management that petitioner had been employed by the service provider, i.e. M/s Friend Associates (respondent No.3 herein), to whom the contract for providing house keeping and sanitation services in the

management of respondent No.2 was given and they were responsible for the recruitment, control and supervision, payment of wages, postings, administrative suitability and removal of workmen under the terms of contract agreement. It was further stated that petitioner was working as Safai Karamchari on contract basis through the service provider (respondent No.3 herein), therefore for all intents and purposes, petitioner was their employee and not that of respondent No.2-Management. Accordingly, prayer was made for dismissal of the claim of petitioner.

4. On the other hand, no one had appeared for the contractor (respondent No.3 herein) and they were proceeded against *ex parte*.

5. In replication, petitioner raised a plea that the alleged contract between respondent No.2-Management and service provider, i.e respondent No.3 herein, was against the law being a sham transaction.

6. From pleadings of the parties, the Tribunal below framed the issues; and thereafter, both the parties led evidence in support of their respective case. Petitioner examined himself as AW-1. On the other hand, respondent No.2-Management examined Sh. Ram Karan Sharma, Officiating Superintendent as MWQ-1.

7. Upon considering the material/evidence available on record, the Tribunal below rejected the claim of petitioner vide impugned award dated 17.08.2015 (Annexure P-1).

8. Being aggrieved against the aforesaid impugned award, 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 petitioner. It is submitted that petitioner was duly selected and appointed as Safai Karamchari on 20.04.1996, under respondent No.2-Management and

he continued to work as such, till 27.01.2011, when his services were illegally terminated. Learned counsel for the petitioner contends that although petitioner was appointed through contractor but he had been performing his duties under the control and supervision of respondent No.2-Management. It is submitted that even the attendance of petitioner was marked by respondent No.2-Management and his leave was also sanctioned by the said Management. It is further submitted that the alleged contracts executed between respondent No.2-Management and respondent No.3 herein were sham contracts and against the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (for short 'the 1970 Act'). Learned counsel for the petitioner contends that petitioner had worked for more than 240 days in each calendar year, and as such, he is entitled for protection under Sections 25-F and 25-N of the 1947 Act. It is further contended that in case the Tribunal below had returned the finding that petitioner was not employed by respondent No.2-Management then in view of the stand taken by the said Management, the Tribunal below should have returned the finding that services of petitioner had been illegally terminated by respondent No.3.

With the aforesaid submissions, learned counsel for the petitioner has prayed for setting aside impugned award dated 17.08.2015 (Annexure P-1) and grant of necessary relief to the petitioner.

10. Per contra, learned counsel for respondent No.2-Management has opposed the prayer made by learned counsel for the petitioner. It is submitted that the Tribunal below has considered the relevant material/evidence available on record and has passed a well reasoned and justified award, which does not call for any interference by this Court. It is further submitted that petitioner has failed to prove his pleaded case before

the Tribunal below and no evidence was led by him to show the existence of relationship of employee and employer between him and respondent No.2-Management; accordingly, the Tribunal below has rightly declined the claim of petitioner.

With the aforesaid submissions, learned counsel for respondent No.2-Management has prayed for dismissal of the instant writ petition.

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

12. In the instant case, Tribunal below has returned the following findings:-

“9. I have very thoughtfully considered the rival contentions of both the sides. In the present cases, the workman is aggrieved that his services were terminated illegally by management No.1 without complying with provisions of Section 25-F and 25-N of the Industrial Disputes Act whereas it is stand of management no.1 that the workman was never employed and terminated by it and the workman was employee of the service provider, i.e. management No.2. Now first point to be determined by this Court is as to whether the workman has locus standi to file claim statement against management No.1 as management No.1 is alleging that the workman was never employed by it and he was employee of service provider that is management No.2. In this context it is observed that the workman while stepping into the witness box as AW 1 has stated in paragraph No.2 of his affidavit that he was appointed through contractor so the workman himself admitted that he was workman was through the contractor. Even otherwise there is nothing on record to suggest that the workman was appointed by management No.1. Though the workman has stated in cross-examination that he was appointed by Nursing Superintendent is appointing authority any appointment letter and even otherwise Nursing Superintendent is not appointing

authority also the workman has stated in cross examination that his attendance was marked by Sister Incharge but no attendance register has been produced on record to lend force to his stand. Also the workman has stated in cross-examination that his salary was paid to him by Superintendent of management No.1 but further stated that he did not know whose account the payment was credited in his account, if that was so then he could have easily led evidence by tendering his bank statement to show that management no.1 was paying salary to him but no such effort has been made which shows hollowness of his claim. It has been stated by the workman in cross-examination that his services were terminated by Dr. Raj Bahadur but he admitted in cross-examination that no letter was issued to him. The workman is relying upon document Ex. 'W1' and 'W2' which are experience certificate issued by Professor and Head of the Departments of Government Medical College & Hospital to establish the relationship of employee and employer between the workman and management No.1 but perusal of the same reveals that it is specifically mentioned therein that the workman was working on contract basis and even otherwise these documents do not in any way establish that the workman was employee of management. Except for the above experience certificate, which as already discussed does not establish relationship of employee and employer between workman and management No.1 no document has been placed on record by the workman to show that he was employee of management No.1 and that the contract between management No.1 & 2 is a sham contract. Thus, the workman while leading evidence has not been able to prove that the workman was an employee of management no.1 i.e. Director Principal Government Medical College & Hospital through Contractor. The workman has failed to prove that he was employed and terminated by management No.1 and that contract between management No.1 and 2 was sham transaction. There is no material to prove that the workman was ever engaged by management

no.1 as such the workman has no locus standi to file the claim against management no.1 since the workman was not employee of management no.1 so the question of terminating the services of the workman by management no.1 does not arise. In the present case reference received by this Court is as to whether the services of the workman were terminated by the Director Principal, Government Medical College & Hospital, Chandigarh and M/s Friend Associates. This Court has already held that the services of the workman were not terminated by Management No. 1 that is Director Principal Government Medical College & Hospital, Chandigarh. Now as far as the second part of the reference as to whether the services of the workman were terminated by Management No.1 that is M/s Friend Associates is concerned then neither it has been pleaded that nor argued before this Court that management No.2 that is M/s Friend Associates has terminated the services of the workman. Accordingly, both these issues are decided against the workman and in favour of the management.

Relief:

10. In the light of findings on the issues above, this reference is declined and answered against the workman. Appropriate Government be informed. File be consigned to the record room.”

A perusal of the above extracted findings would reveal that in order to substantiate his claim, the petitioner had only examined himself as AW-1 and in his affidavit, he had clearly stated that he was appointed through a contractor, however, neither any appointment letter was produced on record nor any Attendance Register was led in evidence by the petitioner before the Tribunal below. As regards the salary, petitioner had stated in his cross-examination that he did not know as to from whose account the payment was credited in his account, whereby it was held by the learned Tribunal below that petitioner could have easily tendered his bank statement

to show as to whether it was respondent No.2-Management or someone else, who was paying salary to him. Further, petitioner admitted in his cross-examination that no letter regarding termination of his services was given to him. Rather, the only evidence led by petitioner in support of his claim was Ex. W-1 and W-2, which were the Experience Certificates (as issued by the Professor and the Head of Department of Government Medical College & Hospital), wherein it was specifically mentioned that the petitioner was working on contract basis.

Further, no proof of receipt of salary or wages or any record or order in that regard was produced by the petitioner before the Tribunal below nor any co-worker was examined. Petitioner had not led any evidence in the form of attendance sheet or any other document to *prima facie* show that he had worked with respondent No.2-Management. It is improbable that the workman who claimed to have worked under a Management, would not possess any documentary evidence to prove nature of his engagement and the period of work he had undertaken with his employer. In the absence of any such record/evidence, no relief could have been granted to him.

Furthermore, considering the material available on record, the Tribunal below has returned a categorical finding of fact that there is no relationship of employee and employer between the petitioner and respondent No.2-Management.

13. As regards the contention of petitioner that the contract between respondent No.2-Management and service provider, i.e. respondent No.3 herein, was sham and camouflage, it would be apposite to refer to the judgment of the Hon'ble Apex Court passed in "***Workmen of Nilgiri Coop. Mktg. Soc. Ltd. v. State of Tamil Nadu***", 2004(2) S.C.T. 789, wherein it has been observed as under:-

“DETERMINATION OF RELATIONSHIP :

32. Determination of the vexed questions as to whether a contract is a contract of service or contract for service and whether the concerned employees are employees of the contractors has never been an easy task. No decision of this Court has laid down any hard and fast rule nor it is possible to do so. The question in each case has to be answered having regard to the fact involved therein. No single test - be it control test, be it organisation or any other test - has been held to be the determinative factor for determining the jural relationship of employer and employee.

33. There are cases arising on the borderline between what is clearly an employer-employee relation and what is clearly the independent entrepreneurial dealing.

TESTS :

*34. This Court beginning from **Shivanandan Sharma v. Punjab National Bank Limited [1955]1 L.L.J. 688 : AIR 1955 Supreme Court 404** and **Dharangadhara Chemical Works Limited v. State of Saurashtra and others [1957]1 L.L.J. 477 : AIR 1957 Supreme Court 264** observed that supervision and control test is the prima facie test for determining the relationship of employment. The nature or extent of control required to establish such relationship would vary from business to business and, thus, cannot be given a precise definition. The nature of business for the said purpose is also a relevant factor. Instances are galore there where having regard to conflict in decisions in relation to the similar set of facts, the Parliament has to intervene as, for example, in the case of workers rolling bidis.*

35. In a given case it may not be possible to infer that a relationship of employer and employee has come into being only because some persons had been more or less continuously working in a particular premises inasmuch as even in relation thereto the actual nature of work done by them coupled with other circumstances would have a role to play.

*36. In **V.P. Gopala Rao v. Public Prosecutor, Andhra Pradesh***

[1970]2 L.L.J. 59 : AIR 1970 Supreme Court 66, this Court said that it is a question of fact in each case whether the relationship of master and servant exists between the management and the workmen and there is no abstract a priori test of the work control required for establishing the control of service. A brief resume of the development of law in this point was necessary only for the purpose of showing that it would not be prudent to search for a formula in the nature of a single test for determining the vexed question.

RELEVANT FACTORS :

37. The control test and the organisation test, therefore, are not the only factors which can be said to be decisive. With a view of eliciting the answer, the Court is required to consider several factors which would have a bearing on the result : (a) who is the appointing authority; (b) who is the pay master; (c) who can dismiss; (d) how long alternative service lasts; (e) the extent of control and supervision; (f) the nature of the job, e.g. whether it is professional or skilled work; (g) nature of establishment; (h) the right to reject.

38. With a view to find out a reasonable solution in a problematic case of this nature, what is needed is an integrated approach meaning thereby integration of the relevant tests wherefor it may be necessary to examine as to whether the workman concerned was fully integrated into the employer's concern meaning thereby independent of the concern although attached therewith to some extent.

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CAMOUFLAGE :

68. Whether a contract is a sham or camouflage is not a question of law which can be arrived at having regard to the provisions of Contract Labour (Regulation and Abolition) Act, 1970. It is for the industrial adjudicator to decide the said question keeping in view the evidences brought on records.

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92. On the aforementioned backdrop of legal principles, we may now consider the Constitution Bench judgment of this

*Court in Steel Authority of India Limited (supra). The principal question which arose for consideration therein was as to whether having regard to the provisions contained in Section 10 of the Contract Labour (Regulation and Abolition) Act, the workmen employed by the contractors in the event of abolition of contract labour were entitled to be automatically absorbed in the services of the principal employer. While answering the question in the negative the court reversed the earlier decision of this Court in **Air India Statutory Corporation and Others v. United Labour Union and Others, (1997)9 SCC 377**. This Court referring to a large numbers of decisions and tracing the history of the Contract Labour (Regulation and Abolition) Act, noticed that the Industrial Tribunal although prior to coming into force could issue directions for such regularisation but such directions could not be issued after coming into force of the Act. In view of the Constitution Bench decision in **M/s Gammon India Limited and Others etc. v. Union of India and Others, (1974)1 SCC 596**, the Court held that although the principle that a beneficial legislation needs to be construed liberally in favour of the class for whose favour it is intended, the same would not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. Upon analyzing the case law, the categories of cases were sub-divided into three stating:*

"An analysis of the cases, discussed above, shows that they fall in three classes : (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because appropriate Government issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case the

contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances where in the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) wherein discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer."

14. In the case in hand, the petitioner has failed to refer to any material, either before the Tribunal below or before this Court, so as to meet any of the tests as laid down in the case of ***Workmen of Nilgiri*** (supra).

15. In the considered view of this Court, once the petitioner has failed to prove his case within the four corners of any of the tests as laid down in the above referred judgment, no relief could have been granted to him on his mere assertion that the contract between respondent No.2-Management and Service Provider (respondent No.3 herein) was sham and camouflage. Moreover, from a perusal of the judgment rendered in the case of ***Workmen of Nilgiri*** (supra), it would be evident that whether a contract is sham or camouflage, is not a question of law which can be arrived at having regard to the provisions of the 1970 Act. It is for the industrial adjudicator to decide the said question keeping in view the evidences brought on records.

16. I have also considered the contention of learned counsel for the petitioner that in case the petitioner had failed to show the relationship of employee and employer between himself and respondent No.2-Management then going by the stand taken by respondent No.2-Management, some relief was required to be granted to the petitioner as regards the contractor

(respondent No.3 herein); however, I do not find any merit in the same. The Tribunal below has already considered the aforesaid contention of petitioner and has rightly returned a finding that once it is not even the pleaded case of petitioner that his services were terminated by respondent No.3 (M/s Friend Associates), accordingly he is not entitled to claim any relief against the management of respondent No.3 herein, as well. Rather, such a plea appears to be taken by way of an alternative only, therefore, I do not find any merit in the said submission made by learned counsel for the petitioner.

17. 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 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 the light of legal position indicated above, there is no scope for any interference by this Court in the impugned award dated 17.08.2015 (Annexure P-1). Resultantly, the instant writ petition fails and the same is accordingly dismissed.
19. All pending application(s), if any, shall also stand closed.

11.10.2023
Apurva

(HARSH BUNGER)
JUDGE

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