

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CM-550-CWP-2018 in/and
CWP-23180-2015
Date of Decision: 20.11.2023

Longshree

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-III, Faridabad
(Haryana) and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Rajesh K.Kataria, Advocate
for the non-applicant/petitioner.

Mr. Vikas P.Singh, Advocate
for applicant/respondent No.2.

HARSH BUNGER J. (ORAL)

1. Petitioner (Longshree) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of Certiorari for setting aside of impugned award dated 08.07.2015 (Annexure P-4) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-III, Faridabad (Haryana) (for short 'the Tribunal'), whereby the reference of industrial dispute raised by petitioner, regarding termination of

her services, has been decided by holding that she was not an employee of respondent No.2 – M/s National Thermal Power Corporation (hereinafter to be referred as the ‘NTPC’) rather she was an employee of the contractors, i.e. respondents No.3 and 4 herein, namely M/s Greenways Nursery and M/s Flora Horticultural Services, respectively, who had been directed to pay an amount of Rs.5,400/- to the petitioner with 9% interest w.e.f. 13.10.2003 along with costs of Rs.2,100/- within two months of passing of the award.

A further prayer has been made by the petitioners to direct the respondents to reinstate the petitioner with continuity in service and to grant all other consequential benefits.

2. Briefly, the petitioner raised an industrial dispute, with regard to termination of her services, which was referred to the Tribunal below, for adjudication.

3. The demand notice was considered as the claim statement on behalf of the petitioner; wherein she stated that she was appointed by respondent No.2 – M/s National Thermal Power Corporation through M/s Greenways Nursery (respondent No.3 herein) in February, 2002 on the post of Mali on permanent basis. As per the petitioner, her work and conduct were satisfactory and she was getting salary of Rs.2,160/- per month. Petitioner claimed that her services were illegally terminated on 13.10.2003 without assigning any reason and also without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 Act (for short ‘the 1947 Act’). Accordingly, petitioner prayed for reinstatement in service and grant of all other consequential reliefs.

4. The aforesaid claim of petitioner was contested by respondent No.2-NTPC on the plea that she had to prove the fact of rendering

continuous service under the NTPC before invoking the provisions of the 1947 Act. It was further submitted that since petitioner was never employed by the NTPC, therefore, the reference made by the Government were ultra vires to the provisions of the 1947 Act. It was stated that since petitioner was never employed by the NTPC, therefore, there was no question of termination of her services. The remaining allegations levelled by petitioner were denied by respondent No.2-NTPC and prayer was made for dismissal of the claim of petitioner.

5. It is apposite to state here that initially the demand was raised by the petitioner only against respondent No.2-NTPC, however, during pendency of the reference, respondents No.3 and 4 herein were impleaded as parties at the instance of petitioner. However, since they did not appear, accordingly respondents No.3 and 4 were proceeded against *ex-parte* on 04.11.2014 and 21.01.2013, respectively.

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

- “(i) Whether the relationship of employee and employer existed between the claimant and respondent No.1, if not its effect? OPWM*
- (ii) If the services of the claimant were terminated by the management of respondent No.3 and whether the claimant is entitled to reinstatement as against the respondent No.1 on the ground as averred in the amended claim statement or not.*
- (iii) Whether the claimant had completed a period of continuous service of 240 days with either of the respondents, if so, its effect?*
- (iv) Relief.”*

7. Thereafter, both the parties led evidence in support of their case. Petitioner examined herself as WW-1. On the other hand, respondent No.2-NTPC examined Sh. A. Katoch as MW-1 and further examined one Sh. Sriprakash Rai as MW-2.

8. The Tribunal below rejected the claim of petitioner vide award dated 08.07.2015 (Annexure P-4).

9. Being aggrieved against the said award, petitioner has filed the instant writ petition before this Court.

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

11. In the instant case, the primary contention of petitioner is that her services have been terminated without payment of retrenchment compensation to her, and therefore, there was violation of Section 25-F of the 1947 Act. It is further submitted that respondent No.2-NTPC is a principal employer and it had given the contract to one Utility Power Tech Limited, who had further engaged respondents No.3 and 4 herein for labour jobs in the premises of respondent No.2-NTPC, so as to frustrate the rights of workers. In essence, the petitioner seeks to raise a plea that the contract between respondent No.2-NTPC and the contractors (respondents No.3 and 4 herein) was a camouflage and a sham.

12. The Tribunal below has returned the following findings:-

“Issues No. 1, 2 & 3

11. All these issues are inter-related and inter-connected. Hence they are taken up together. Shri Ashok Sharma, AR for the claimant has stated that Longshree was appointed by the respondent No.1 in the February 2000 and her services were terminated on 13.10.2003 and while terminating her services she was not given any retrenchment compensation. Her last drawn salary was Rs.2160/- P.M. Her identity card Ex. W1 which was given by the claimant while appearing as WW1. She has given complaint to the labour inspector and has stated that her attendance was marked by Mr. Soni and Mr. Mishra. In her examination in chief she has admitted that the contractor

*used to make the list of workers and used to give this list to the security personnel. In cross-examination she has admitted that she has no record relating to the direct employment with respondent No.1. She has also admitted in cross examination that her attendance was not directed by respondent No.1 or she was paid salary directly by respondent No.1. Her self-admission is the best evidence. For this Shri M.L. Gautam, Advocate, AR for respondent No.1 placed reliance upon authority cited as **Uttam Singh Dugal and Company limited versus Union Bank of India and others 2001(2) PLR 6904** in which it has been observed by Hon'ble High Court that object of the order 12 Rule 6 is to obtain speedy judgment where other party has made a plain admission entitling the former to succeed. Order 12 Rule 6 states that where admission of fact have been made either in the pleading or otherwise, whether orally or in writing the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order to give such judgment as it may think fit having regard to such admissions. Since the claimant Longshree has made self admission that she has no proof regarding direct relationship between respondent No.1 NTPC and her and there is further self admission of claimant that the contractor used to make a list of workers along with her and contractor used to give this list to security personnel for their gate entry to the premises of NTPC. Hence it is clear from the self admission of claimant she was not directly employed by respondent No.1 rather she was working with the contractor respondent No.2 and 3. Shri M.L. Gautam, AR for respondent has stated that after 2003 respondent No.2 and 3 also left their contract with respondent No.1 and new contractors have come to serve with respondent No.1. The claimant had also not produced any information regarding the continuity of existence of contractor No.2 and 3 with respondent No.1. Hence the case of claimant falls under the*

provisions laid down in section 25-F of I.D. Act, 1947 and section 2-C of Contract Labour (Regulation & Abolition) Act, 1970 contractor is covered under the definition of industry u/s 2(j) of I.D. Act, 1947. Section 25-FFF is applicable where an undertaking is closed down. In the present case the tenure of contractor is over then it shall be termed as closure down of undertaking. As contractor also falls under the category of industry u/s 2(j) of I.D. Act, 1947 and section 2-c of Contract Labour (Regulation and Abolition)A Act, 1970. Therefore, findings of issue No.1 are answered to the effect that the claimant was working under the contractor/respondent No.2 & 3 and not under respondent No.1. So issue No.1 is decided against the claimant holding that she was not an employee of respondent No.1 NTPC rather she was an employee of contractor i.e. respondent No.2 & 3 and her services were terminated due to expiry of contract of respondent No.2 & 3 without paying any retrenchment compensation u/s 25-F of the Act. Hence issue No.2 & 3 are decided in favour of claimant holding that Respondent No.2 & 3 shall be jointly liable to pay her the retrenchment compensation equal to 15 days average pay on every completed year. Hence the claimant is entitled for Rs. 2160+2160+1080= Rs.5400.00.

Relief

12. This petition is allowed. Respondent No.2 and 3 are directed to pay the aforesaid amount of Rs. 5400/- to the claimant with 9% interest w.e.f. 13.10.2003 along with costs of Rs. 2100/- within two months of passing of this award. Copies of award be sent to the authorities concerned and the file be consigned to records after due compliance.”

13. A perusal of the above extracted findings would indicate that petitioner admitted during her cross-examination that she had no record relating to her direct employment by respondent No.2-NTPC. Petitioner further admitted that her attendance was not directed by respondent No.2-NTPC nor she was paid salary directly by NTPC. It has further come on

record by way of statement of the petitioner that it was the contractor, who used to make the list of workers and give the same to security personnel for their gate entry to the premises of NTPC.

Considering the aforesaid admissions of the petitioner, Tribunal below has held that she was not directly employed by respondent No.2-NTPC rather she was working with contractors, i.e. respondents No.3 and 4 herein. Learned counsel for the petitioner is unable to dislodge the aforesaid findings returned by learned Tribunal below.

14. As regards the other contention of petitioner that the contract between respondent No.2-NTPC and contractors was a camouflage and a sham, I do not find any merit in the same.

15. In ***“Workmen of Nilgiri Coop. Mktg. Soc. Ltd. v. State of Tamil Nadu”***, 2004(2) S.C.T. 789, Hon'ble Apex Court 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 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."

From a perusal of the judgment rendered in the case of

Workmen of Nilgiri (supra), it would be evident that 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.

16. Apparently, in the instant case, no plea was raised by the petitioner before the Industrial Adjudicator that the contract between respondent No. 2 – NTPC and the contractors was only a paper transaction and a camouflage. Since no such plea was raised before the Tribunal below, there is also no evidence on record to that effect and in the absence of the same, the said plea cannot be considered.

The Tribunal below has considered the material/evidence available on record and has returned a finding of fact that the petitioner was an employee of the contractor and not that of respondent No. 2 – NTPC.

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. No other point has been urged.

19. When the facts and circumstances of this case and also the findings returned by the Tribunal below are considered in the light of legal position indicated above, I do not find any illegality or infirmity with impugned award dated 08.07.2015 (Annexure P-4), which may call for any interference by this Court, while exercising its writ jurisdiction. Resultantly, the instant writ petition fails and the same is accordingly dismissed.

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

20.11.2023
Apurva

(HARSH BUNGER)
JUDGE

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