

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

CWP-23630-2015 (O&M)
Date of Decision: 15.12.2023

M/S VARSED DETECTIVES & SECURITIES (P) LTD.
THROUGH ITS DIRECTOR, MALTI DEVI.

...Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT-1, GURGAON, HARYANA AND
OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sunil Kumar, Advocate
for the petitioner.

Mr. Amandeep Rana, Advocate
for respondent No.2.

Mr. J.S. Yadav, Advocate
for respondent No.3.

HARSH BUNGER, J. (ORAL)

Petitioner [M/s Varsed Detectives and Securities (P) Ltd.] has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of *certiorari* for setting aside the impugned Award dated 02.07.2015 (Annexure P-9) passed by the Industrial Tribunal-cum-Labour Court-1, Gurgaon (here-in-after referred to as 'the Tribunal'); whereby the industrial dispute raised by respondent No.2 (Dheeraj Singh) regarding termination of his services, has been answered in his favour and he was ordered to be reinstated in service with 40% back wages w.e.f. 26.11.2008, onwards.

2. Briefly, respondent No.2 raised an industrial dispute regarding termination of his services, which was referred for adjudication to the Tribunal below. Respondent no.2 claimed that he joined the respondents i.e M/s Rico Auto Industries Limited/M/s Varsed Detective and Security Service, in 19.05.2006 on the post of Security Guard and was drawing salary of Rs.6,500/- p.m. Respondent no.2 claimed that his services were terminated in an illegal manner on 26.11.2008, although his service record was good. Respondent no.2 claimed that his services have been terminated without serving any charge-sheet or holding any domestic enquiry nor paying any retrenchment compensation, as required under Section 25-F of the Industrial Disputes Act, 1947 (for short 'the 1947 Act'). Accordingly, respondent No.2 prayed for reinstatement in service along with back wages.

3. The afore-said claim of respondent No.2 was contested by respondent No.3, herein (M/s Rico Auto Industries Limited) on the plea that there existed no relationship of employee and employer between respondent No.2 and respondent No.3, herein. It was stated that respondent No.2 was employed by an independent contractor i.e. M/s Varsed Detective and Security Service, Plot No.60, 1st Floor, Sector-18, Maruti Industrial Area, Gurgaon, who was engaged by respondent No.3-company, under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (for short 'the 1970 Act'). It was stated that the contractor was the real employer of respondent No.2 and in the absence of any relationship of employee and employer, there was no question of any termination of services of respondent No.2 or for payment of any retrenchment compensation by respondent No.3-company. Accordingly, prayer was made for dismissal of the claim against respondent No.3, herein.

4. The petitioner herein did not appear before the Tribunal and was accordingly proceeded against *ex-parte*.

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

“1. Whether there is relationship of employee and employer between the parties to the dispute? OPW

2. If issue no.1 is proved in affirmative, whether the services of workman were dispensed with in an illegal manner and he is entitled to reinstatement with back wages? OPW

3. Whether the reference is not maintainable in the present form? OPM

4. Relief?”

6. In order to prove his case/claim, the respondent No.2/workman-Dheeraj Singh, examined himself as PW-1 and relied upon the documents Ex. PW-2 and Ex. PW-3, in his documentary evidence.

7. On the other hand, respondent No.3 examined Sh. Shyam Kumar as RW-1 and has adduced documents Ex. MW-1/1 to Ex. MW-1/4 in his documentary evidence.

8. Upon considering the material/evidence available on the record, the learned Tribunal below answered the reference in favour of respondent No.2 by directing that respondent No.2 be reinstated in service by petitioner with 40% back wages w.e.f. 26.11.2008, onwards.

9. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition before this Court.

10. Learned counsel for the petitioner submits that the impugned Award dated 02.07.2015 (Annexure P-9) passed by the learned Tribunal below, is wholly illegal, arbitrary and unsustainable as against the petitioner and therefore, the same is liable to be set aside. Learned counsel for the

petitioner further submits that no notice or registered letter were ever served upon the petitioner-company and therefore, it had no knowledge, whatsoever, regarding the pendency of the industrial dispute raised by respondent No.2-workman. It is stated that respondent No.2-workman had given a wrong name and address of the petitioner-company i.e. Manager, M/s Varsed Detective and Security Service, Plot No.60, 1st Floor, Sector 18, Maruti Industrial Area, Gurgaon; whereas according to the petitioner, the correct name and address of the petitioner-company is M/s Varsed Detectives and Securities (P) Ltd., Plot No.61, First Floor, Maruti Industrial Area, Sector 18, Gurgaon, Haryana. It is submitted that even the service was made on the wrong address and the petitioner came to know about the award only when it received notice for implementation of the award by the Labour Department and therefore, the instant petition has been filed before this Court.

11. Learned counsel for the petitioner further submits that respondent No.2-workman had never worked with the petitioner-company at any stage, rather, he was working with Versed Consultant, B-87, Shopping Complex, Opposite R.H.B. Bhiwadi, District Alwar, Rajasthan, which is stated to be a separate entity and has separate offices. It is stated that respondent No.3, herein (M/s Rico Auto Industries Ltd.) had entered into a contract for supplying of workmen with the afore-said Versed Consultant and not with the petitioner-company. It is submitted that the afore-said fact has not been considered by the learned Tribunal below and a totally unjustified award has been passed against the petitioner. It is further submitted that the documents placed on the record do not show the relationship of

employee and employer between respondent No.2 and the petitioner-company; therefore, the impugned Award be set aside.

12. On the other hand, the learned counsel appearing for respondent No.2 as well as respondent No.3, have opposed the afore-said submissions/prayer made on behalf of the petitioner, by submitting that the petitioner is a contractor, providing services of manpower to various companies in Gurgaon region in the name of M/s Varsed Detectives & Securities (P) Ltd. and M/s Varsed Consultants. It is stated that one Mr. Vikram Singh is the Managing Director of M/s Varsed Detectives & Securities (P) Ltd. and he is also the proprietor of M/s Varsed Consultants. It is further stated that another such industrial dispute bearing Reference No.124/2009 was filed by one Manoj Kumar Mishra, in similar circumstances against M/s Rico Auto Industries Limited as well as M/s Varsed Detectives and Security Service, as in the instant case. In the said reference, appearance was made on behalf of M/s Varsed Detectives and Security Service and after filing the written statement, it absented and accordingly, it was proceeded against *ex-parte* and thereby, leading to the passing of an award dated 25.04.2014; whereby, the claimant-Manoj Kumar Mishra, was ordered to be reinstated in service by respondent No.2 in the said reference i.e. Manager, M/s Varsed Detective & Security Service, with full back wages w.e.f. 02.05.2008, onwards. It is submitted that the afore-said award dated 25.04.2014 (Annexure R-3/3) was passed against M/s Varsed Detective and Security Service; however, the same was challenged by the present petitioner-company [M/s Varsed Detectives and Securities (P) Ltd.] by way of filing **CWP-14235-2014**; however, the same was dismissed by this Court vide order dated 05.09.2014 (Annexure R-3/4)

and even a subsequent intra-court appeal i.e. ***LPA No.1775 of 2014*** was also dismissed on 31.10.2014 (Annexure R-3/5). It is submitted that the address of M/s Varsed Detective and Security Service, is Plot No.60, 1st Floor, Sector-18, Maruti Industrial Area, Gurgaon; whereas, the address of M/s Varsed Detectives & Securities (P) Ltd. is Plot No.61, First Floor, Sector 18, Maruti Industrial Area, Gurgaon. It is submitted that the petitioner-company was duly served in the instant matter and was very well aware of the pending proceedings and it had intentionally stayed away from the proceedings and now, it cannot be permitted to raise a plea before this Court that it has not been served. It is stated that all the said companies/firms/proprietorship concerns are owned by one and same person Mr. Vikram Singh. It is also submitted that in case, the petitioner was aggrieved against the impugned *ex-parte* award, then in that eventuality, he had a remedy of seeking setting aside of the said *ex-parte* award by approaching the Tribunal below; however, no such steps were taken.

13. Respondent no.3, herein has further stated in its written statement before the Tribunal below as well as before this Court that respondent No.2-workman was engaged by the contractor namely, M/s Varsed Detective and Security Services, who was engaged as a contractor by respondent No.3-company (M/s Rico Auto Industries Ltd.) under the provisions of the 1970 Act. It is submitted that the learned Tribunal below has correctly appreciated the material/evidence available on the record and has rightly held that the respondent No.2 was an employee of M/s Varsed Detectives & Security Service. Accordingly, it is submitted that there is no merit in the writ petition and the same may be dismissed.

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

15. In the instant case, the learned Tribunal below has held that respondent No.2-workman was an employee of M/s Varsed Detective and Security Service, Gurgaon and while answering the reference in favour of respondent No.2-workman, a direction has been issued for reinstatement of respondent No.2 in service with 40% back wages. The said award has been challenged by the petitioner i.e. M/s Varsed Detective and Securities (P) Ltd; by way of instant writ petition. In case, the petitioner has no concern with M/s Varsed Detective and Security Service, in that eventuality, there was no occasion for it to have challenge the impugned Award before this Court.

16. In fact, on an earlier occasion as well, in the case of Manoj Kumar Mishra; wherein also, a similar award was passed in favour of the workman (Manoj Kumar Mishra) against M/s Varsed Detective and Security Services, it is the present petitioner who had challenged the said award before this Court by way of **CWP-14235-2014**, which was dismissed on 05.09.2014 and even the intra-court appeal filed by the present petitioner i.e. **LPA-1775-2014** was dismissed on 31.10.2014.

17. Evidently, in the proceedings before the learned Tribunal below, M/s Varsed Detective and Security Services, was impleaded as a party respondent and since, it did not put in appearance before the learned Tribunal below; accordingly, it was proceeded against *ex-parte* and on the basis of the evidence/material on the record, especially the stand taken by respondent No.3, herein (M/s Rico Auto Industries Ltd.); wherein, it was categorically stated that the respondent No.2- workman was employed by M/s Varsed Detective and Security Services, in their premises; a finding of

fact has been returned by the learned Tribunal below that there was a relationship of employee and employer between respondent No.2-workman and M/s Varsed Detective and Security Services. The relief granted by the Tribunal below against M/s Varsed Detective and Security Service is being challenged by present petitioner i.e. M/s Varsed Detectives and Securities (P) Ltd; as was done by the petitioner against Award dated 25.04.2014 (Annexure R-3/3) in the case of Manoj Kumar Mishra (Ref. No.124/2007) by filing CWP-14235-2014 and LPA-1775-2014, which were both dismissed by this Court vide order dated 05.09.2014 (Annexure R-3/4) and 31.10.2014 (Annexure R-3/5), respectively.

Furthermore, the petitioner has placed reliance upon licence issued to the petitioner under the 1970 Act to say that the petitioner is a separate entity with different addresses; however, the said document i.e. Annexure P-6 cannot be considered for the simple reason that the said licence is dated 11.11.2014 whereas the reference of industrial dispute was made by the appropriate Government vide Reference order dated 26.06.2012 (Annexure P-3). Additionally, it is observed from the emails reflected on the letter head of petitioner-company, which is annexed with the writ petition as Annexure P-1; that there are various companies by name of “Varsed” and it appears that there is a Varsed Group of Companies.

18. Be that as it may, the petitioner has not disputed the stand taken by respondent Nos.2 and 3, herein in their written statement. The petitioner has not referred to any material/evidence before this Court to indicate that before terminating the services of respondent No.2, the provisions of Section 25-F of the 1947 Act, were complied with.

19. In the afore-mentioned circumstances, no fault can be found

with the findings returned by the learned Tribunal below, holding that the contractor was the real employer.

20. In my considered view, the learned Tribunal below, has rightly placed reliance upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors., 2013(10) SCC 324*** and holding the respondent No.2 entitled to reinstatement in service with 40% back wages.

21. In such circumstances, there is no scope for any interference in the impugned Award passed by the learned Tribunal below, in exercising of writ jurisdiction by this Court; resultantly, the instant writ petition fails and the same is accordingly dismissed.

22. All pending application/s, if any, shall also stand closed.

December 15, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No