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

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Date of Decision: 21.07.2023

Bhupinder Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Deepanshu Mehta, Advocate
for the petitioner.

HARSH BUNGER, J. (Oral)

1. Petitioner (Bhupinder Singh) has filed the instant Writ Petition under Articles 226/227 of the Constitution of India with the following prayers:-

- (i) a writ, order or direction especially in the nature of Mandamus issuing directions to respondents No.1 to 8 to issue sanction for prosecution under Section 34 of the Industrial Disputes Act, 1947 (in short '1947 Act') and Section 26 of the Contract Labour (Regulation & Abolition) Act, 1970 against respondents No.9 to 11 for committing offence under Sections 25T, 25U, 9A read with Section 33, 25Q of the 1947 Act and Section 23 of the Contract Labour (Regulation & Abolition)

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Act, 1970 on the basis of complaint dated 18.04.2023 (Annexure P-9) and second complaint dated 08.05.2023 (Annexure P-10) and prima facie evidence adduced therein.

(ii) a writ, order or direction especially in the nature of Mandamus issuing directions to respondents No.1 to 8 to revoke and suspend the Contract Labour Licenses under Section 14 (1) (b) of the Act, of respondents No.9 to 11 for committing offending acts in contravention of provisions of the Contract Labour Act, 1970.

(iii) For issuance of appropriate orders issuing interim directions to respondents No.9 to 11 to reinstate the petitioner and the entire workforce during the pendency of the main case, who have been illegally terminated (Mass Illegal Termination) during the pendency of Demand Notice under Section 2K of the 1947 Act, the said mass termination being illegal and arbitrary.

2. Briefly, the petitioner claims to be a representative of Reliance Employees Union Punjab and submits that he was appointed with M/S Reliance Telecom Limited on 16.06.2009 and was promoted on 01.07.2011. Petitioner alleges that despite his best performance, he along with remaining workforce were shown to be shifted on the rolls of one M/s Ericsson Private Limited from the rolls of M/s Reliance Telecom Limited and that too without the consent of the petitioner/other workforce. Petitioner states that M/s Ericsson Private Limited is shown as the contractor of the petitioner and from being a regular employee, the petitioner has been shifted to the status of a contract employee which was totally illegal, arbitrary and an unfair labour practice. Petitioner further alleges that

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he as well as the other workforce were kept below the minimum wage by splitting the basic wage to be less than the minimum wage in gross violation of the notification issued under the Minimum Wages Act. It is stated that w.e.f. October, 2017, the petitioner as well as the other workforce were shown to be terminated from M/s Ericsson Private Limited and their fresh appointments have been shown on the rolls of M/s Partap Technocrats Private Limited. It is alleged that the petitioner and other workforce have not been extended the benefit of Payment of Gratuity Act, 1972 and/or Payment of Bonus Act and other Labour Legislations.

3. It is the case of the petitioner that in order to raise the voice against the illegal, arbitrary and unjust actions as indicated above, the petitioner along with other workforce constituted a union namely Reliance Employees Union which was duly registered under the Trade Unions Act, 1926. It is stated that the aforesaid trade union has already issued a demand notice dated 02.07.2018 under Section 2K of the 1947 Act against the illegal and arbitrary practices of management of M/s Reliance Telecom Limited in collusion with M/s Ericsson Private Limited and M/s Partap Technocrat Private Limited.

4. The aforesaid demand notice is stated to have been referred for adjudication to the Industrial Tribunal under Section 10 of the 1947 Act and the said matter is stated to be pending. Petitioner states that recently, a whatsapp message has been circulated to the petitioner and other workforce indicating that their services will be terminated. According to the petitioner, the aforesaid acts constitute violation of Section 9A read with IV Schedule of the 1947 Act as well as violation of Section 33 of the 1947 Act. Petitioner also alleges violation of Sections 25U and 25T of the 1947 Act.

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5. The petitioner has made other allegations in the petition to state that there have been non-compliance of various statutory provisions which has caused loss to the State Exchequer. It is also submitted that the Union had filed a detailed complaint dated 18.04.2023 to the respondents highlighting the fraudulent activities being undertaken by the Companies-respondents No.9 to 11.

On the basis of the aforesaid submissions, the petitioner has filed the instant Writ Petition before this Court.

6. I have heard learned counsel for the petitioner and perused the paper book.

7. A perusal of the Writ Petition would indicate that the petitioner has made various averments as regards the service conditions of the employees working with the respondent No.9-Company/Contractor and has also alleged various acts on the part of the respondents which, according to the petitioner, are unfair labour practices. It is not disputed that the Union of which petitioner claims himself to be a representative, has already submitted a demand notice under Section 2K of the 1947 Act and since no conciliation could take place, accordingly, the matter has been referred to the Industrial Tribunal, where the matter is still stated to be pending.

8. *Prima facie*, the averments made by the petitioner in the instant petition cannot be accepted as a gospel truth and the same would require some evidence to be led in support thereof. In my considered view, the said exercise cannot be carried out in a Writ Petition under Articles 226/227 of the Constitution of India.

9. Furthermore, as regards the allegation of the petitioner that the conditions of service of the petitioner and other workforce has been changed

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without their consent and therefore, the same is in violation of Section 33 of the 1947 Act; it is observed that as regards contravention of the provisions of Section 33 of the 1947 Act, there is a remedy provided under Section 33A of the 1947 Act, which reads as under:-

“[33A. Special provision for adjudication as to whether conditions of service, etc. changed during pendency of proceeding.- Where an employer contravenes the provisions of section 33 during the pendency of proceedings [before a conciliation officer, Board, an arbitrator, Labour Court, Tribunal or National Tribunal] any employee aggrieved by such contravention, may make a complaint in writing, [in the prescribed manner,-

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly.]”

10. Therefore, once a specific remedy is already provided for adjudication as to whether the conditions of service etc. have been changed, then the petitioner may (if so advised) avail his remedies before the appropriate forum in accordance with law. Concededly, a reference as regards the claims made by the Union under the Industrial Disputes Act is stated to be pending consideration before the Tribunal below.

11. In view of the above, I do not find any merit in the instant Writ

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Petition and the same is accordingly dismissed, however, with liberty to the petitioner to avail/pursue his remedies before the appropriate forum in accordance with the law.

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

21.07.2023
Himani

(HARSH BUNGER)
JUDGE

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