

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-26407-2015
Date of Decision: 22nd December, 2023

Shyam Lal
..... Petitioner

Versus

M/s V.E. Commercial Vehicles Ltd. and others
..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Ashwani Bakshi, Advocate
for the petitioner.

Mr. Anish Gautam, Advocate
for respondent No.1.

HARSH BUNGER J. (ORAL)

1. Petitioner (Shyam Lal) has filed the instant writ petition under Article 226 of the Constitution of India seeking quashing of impugned award dated 19.01.2015 (Annexure P-6) passed by respondent No.3 – the Presiding Officer, Industrial Tribunal-cum-Labour Court-1, Gurgaon (hereinafter referred to as 'the Tribunal'), whereby the reference under Section 10-(I)(c) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the 1947 Act') regarding termination of services of the petitioner has been decided against him.
2. Briefly, the petitioner raised an industrial dispute with regard to

termination of his services by serving demand notice dated 20.01.2010 (Annexure P-1) against respondents No.1 and 2 herein, which was referred to the Tribunal below, for adjudication.

3. As per the claim of petitioner, he joined respondent No.1 - M/s V.E. Commercial Vehicles Ltd. on the post of Driver, w.e.f. 01.01.1998. It was stated that his services were illegally terminated on 01.06.2009; and at the that time, he was getting the salary of Rs.7,000/- per month. Petitioner claimed that his services were terminated against the principles of natural justice and no retrenchment compensation was given to him, accordingly the claim statement was submitted by the petitioner with the prayer that he be reinstated in service along with full back wages and other benefits.

4. On the other hand, the aforesaid claim of petitioner was opposed by respondent No.1 herein (M/s V.E. Commercial Vehicles Ltd.) by submitting that there was no relationship of employee and employer between the petitioner and respondent No.1. It was specifically stated that petitioner was deputed in the establishment of respondent No.1 by the contractor, namely M/s Swarna Motors, (respondent No.2 herein). It was denied that services of the petitioner were terminated by respondent No.1 herein at any stage. It appears that respondent No.2 herein did not appear before the Tribunal below, and was accordingly, proceeded against *ex parte*.

With the aforesaid submissions, prayer for dismissal of claim of the petitioner was made.

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

“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 service 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. Thereafter, both the parties led their respective evidence before the Tribunal below. Petitioner, in order to prove his claim, examined himself as PW-1 and on the other hand, respondent No.1 herein examined Sh. Ajay Kumar as RW-1.

7. Upon considering the material/evidence available on record, Tribunal below answered the reference against the petitioner vide award dated 19.01.2015 (Annexure P-6) by holding that petitioner had failed to prove the fact that he had worked for 240 days in the twelve months preceding the date of termination of his services. 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 the onus to prove that petitioner was not an employee of respondent No.1 and rather he was an employee of some contractor, was on respondent No.1 herein, which it clearly failed to discharge before the Tribunal below. It is stated that the Tribunal below has wrongly not considered the document (Exb. P-2) on the ground that the original thereof was not produced. Learned counsel for the petitioner contends that the contract system as propounded by respondent No.1 herein was a sham and camouflage and actually the petitioner was an employee of respondent No.1. It is next contended that respondent No.1

failed to produce any Registration Certificate evidencing its registration under the provisions of the Contract Labour (Regulations & Abolition) Act, 1970 (hereinafter referred to as 'the 1970 Act') nor any license was shown to have been issued to respondent No.2 (contractor). Accordingly, the impugned award dated 19.01.2015 (Annexure P-6) is not sustainable.

9. With the aforesaid submissions, learned counsel for the petitioner has prayed for allowing the instant writ petition by setting aside award dated 19.01.2015 (Annexure P-6) passed by the Tribunal and further directing the respondents to reinstate the petitioner in service and to grant all the consequential benefits to him.

10. Per contra, learned counsel for respondent No.1 has opposed the prayer made by learned counsel for the petitioner by submitting that the Tribunal below has passed a well reasoned and justified Award, which does not call for any interference by this Court. Learned counsel for respondent No.1 submits that the onus to prove that there was a relationship of employee and employer between the petitioner and respondent No.1 herein and that the petitioner had continuously worked for 240 days in the twelve months preceding the date of his alleged termination, was on the petitioner, which he failed to discharge, and accordingly, he was not entitled to any relief. Learned counsel for respondent No.1 next submits that the petitioner cannot seek any benefit merely on the grounds of non-production of Registration Certificate under the 1970 Act in the name of respondent No.1 herein and/or non-production of license in favour of respondent No.2 herein; more so, when it is not the case of petitioner before the Tribunal below that the contract between respondent No.1 and respondent No.2 herein was a sham and camouflage. Accordingly, learned counsel for respondent No.1 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. Before considering the case in hand, it would be apposite to refer to a few judicial pronouncements.

13. In the case of “[Range Forest Officer v. S.T. Hadimani](#)”, [2002\(3\) SCT 382 \(SC\)](#), Hon'ble Apex Court held as under:-

“2. In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10th August, 1998, came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days, the Tribunal stated that the burden was on the Management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in an year.

3. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in [State of Gujarat v. Pratam Singh Narsinh Parmar, 2001\(2\) SCT 1081 \(SC\) : JT 2000\(3\) SC 326](#). In our opinion the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any

Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in an year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside.

14. It is thus well settled that the burden of proof that a workman had worked for 240 days in the relevant period in terms of Section 25-B of the 1947 Act; was on the workman. It is also well settled that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days during the relevant period.

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

“11. At the outset, the workman claims to be an employee of respondent no.-I. However, the respondent no.-I has strongly contested the above said claim made by the workman. It is settled law that the onus to prove a fact is upon the party that pleads the existence of such fact. Accordingly, the onus was upon the workman to prove his above said claim by cogent evidence. It is necessary to refer to the evidence adduced by the workman in this behalf.

12. The workman Shyam Lal examined himself as PW-1 in support of his case. Appearing as a witness, he has reiterated the averments as made by him in his claim statement. However, the workman is a highly interested witness. He is bound to depose in his own favour. Accordingly, his deposition can be relied upon only if the same is corroborated by some independent cogent evidence

13. Further, the workman has relied upon the photocopies of some letters written by respondent no.-II to M/s Eicher Motors Ltd. and some letters written to the respondent no-I (collectively exhibited as P-2) However, the workman has not

produced the original documents of the above said photocopies before the Court to prove the genuineness of above said photocopies. No explanation; has been furnished by the workman for withholding the original documents in respect of above said photocopies. Accordingly, in the absence of original documents, the above said photocopies produced by the workman cannot be relied upon by the Court.

14. Thus, it would be seen that the workman has not adduced any cogent evidence to prove that he had remained under the employment of respondent no-I as claimed by him. Consequently, the workman miserably fails to prove that he had remained under the employment of respondent no.-I at any stage.

15. Admittedly, it is not the case of the workman had he had remained under the employment of respondent no.-II at any stage. Even otherwise as discussed above, the workman has not produced any original documents before the Court to prove that he had remained under the employment of respondent no.-II at any stage. Thus, the workman has also absolutely failed to prove that he had remained under the employment of respondent no.-II at any stage.

16. Law is well settled on the point that it is the duty of the workman to prove that he had remained under the employment of his employer for more than 240 days in the twelve months preceding the date of termination of his services. As discussed in the forgoing paragraphs, the workman has failed to produce any cogent evidence to prove that he had remained under the employment of respondents no. I & II at any stage. In this background, the workman miserably fails to explain as to how he is entitled to any relief as prayed by him.

17. Accordingly, issues no. 1 to 3 stand answered in terms of the observations made above.

Issue No. 4 (Relief)

18. Hence, the present reference is ordered to be decided in terms of the observations made above.”

16.

When the above extracted findings are considered in the light of

the legal position indicated above, it is manifest that the petitioner has failed to prove its pleaded case before the Tribunal below. Apart from the self-serving statement of petitioner, neither any co-worker has been examined nor any other evidence has been placed on record to indicate the relationship of employee and employer between the petitioner and respondent No.1 herein. Further, the petitioner has sought to place reliance upon photostat copies of some letters, which has rightly not been considered by the Tribunal below; more so, when no explanation has been given for not producing the original of the documents, in this regard reference can be made to the judgment passed by the Hon'ble Supreme Court of India in ***“Makhan Singh Vs. Narainpura Co-operative Agricultural Service Society Limited”, 1987(3) SCC 571.***

17. As regards the plea of petitioner that neither respondent No.1 was registered under the 1970 Act nor any license was produced in favour of respondent No.2 herein (contractor), 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 by authoritative judgment 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.”

18. 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...”

19. In **“Kirloskar Brothers Limited v. Ramcharan”, 2023(1) SCC 463**, Hon'ble Supreme Court held as under:-

“4.5 Thus, as observed and held by this Court, neither Section 10 of the CLRA Act nor any other provision in the Act,

expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or any other work in any establishment and consequently, the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned. It has further been observed and held by this Court in the aforesaid decision that on issuance of prohibition notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labour or otherwise, in case of 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 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 with various beneficial legislations so as to deprive the workers of the benefits thereunder.

4.6 In the present case, neither any notification under Section 10(1) of the CLRA Act has been issued prohibiting the contract labour, nor there are allegations and/or even findings that the contract is sham and bogus and/or camouflage.

XXX XXX XXX

4.8 Applying the law laid down by this Court in the aforesaid two decisions to the facts of the case on hand and in the absence of any notification under Section 10 of the CLRA Act and in the absence of any allegations and/or findings that the contract was sham and camouflage, both the Industrial Tribunal as well as the High Court have committed a serious error in reinstating the contesting respondents and directing the appellant - principal employer to absorb them as their employees. The parties shall be governed by the CLRA Act and relief, if any, could have been granted under the

provisions of the CLRA Act and not under the MPIR Act.”

20. In view of the aforesaid authoritative pronouncements, it is well settled that mere non-registration under the 1970 Act is of no consequence and only on that basis, it cannot be held that contract executed between respondent No.1 and respondent No.2 herein (contractor) was a sham and 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 No.1.

21. Moreover, 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”.

22. Considering the totality of circumstances in the light of legal principles indicated above, there is no scope for any interference in the findings/Award rendered by learned Tribunal below. Resultantly, the instant writ petition fails and the same is dismissed.

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

22nd December, 2023
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No