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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-7275-2016 (O/M)

Date of decision : 19.09.2023

Deepak Puri

..... Petitioner (s)

Versus

M/s Marathan Electric India Pvt. Ltd. and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ravinder Malik, Advocate
for the petitioner.

Mr. S.S. Saini, Advocate
for respondent No. 1.

Mr. Laxman Choudhary and Mr. Yajit Kaushik, Advocate (s)
for respondent No. 3.

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HARSH BUNGER, J.

1. Petitioner (Deepak Puri) has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking writ in the nature of certiorari for quashing the Award dated 11.12.2014 (Annexure P-4), passed by Industrial Tribunal-cum-Labour Court, Circle-I, Faridabad (hereinafter referred to as 'Tribunal below'), whereby the reference of industrial dispute raised by the petitioner regarding termination of his services has been answered against him.

Petitioner further seeks quashing of order dated 31.08.2015 (Annexure P-7), passed by the Tribunal below, whereby his application for

review of award dated 11.12.2014 (Annexure P-4) was also dismissed.

2. Briefly, the petitioner raised an industrial dispute regarding termination of his services by M/s Marathan Electric India Pvt. Ltd. (hereinafter referred to as 'respondent No. 1'). The said dispute was referred for adjudication to the Tribunal below. The petitioner claimed that he was appointed as a Canteen Man on 21.07.2007 by respondent No. 1 and was working under its control and his last drawn salary was Rs. 4,589/- per month, which was stated to be less than the minimum wages. The petitioner stated that he was not given any appointment letter, attendance card, leave book, over time, ESI and PF etc. The petitioner further claimed that there were 2100 workers but respondent did not maintain the record of muster roll and respondent No. 1 kept on changing its names. It was stated by the petitioner that his name was wrongly and illegally shown with respondents No. 2 and 3, namely, BVIHR Practice Pvt. Ltd and Teamlease Services Pvt. Ltd. (hereinafter referred to as 'respondent No. 2' and 'respondent No. 3'). The petitioner claimed that his services were wrongly and illegally termination on 28.04.2009 when he demanded his legal dues. Accordingly, prayer was made for reinstatement and for grant of all other consequential benefits.

3. The aforesaid claim of petitioner was contested by respondent No. 1 on the plea that there was no relationship of master and servant between the parties. It was categorically stated by respondent No. 1 that the petitioner was never employed by it and it was maintaining the record including muster roll in respect of its employees. It was stated that the

petitioner himself admitted that he was an employee of respondent No. 2 and respondent No. 3. The other averments made by the petitioner were denied by respondent No. 1.

4. Respondent No. 3 submitted its separate reply on the ground that there was no industrial dispute between the parties. It was stated that the total working days of the petitioner were less than 240 days and no relief has been claimed by petitioner against them. Respondent No. 3 stated that the petitioner had joined its services w.e.f. 01.11.2008 as a Helper and his services were deputed in the premises of respondent No. 1 as a contractual employee and all the facilities were provided to him and it maintained computerised record of all the employees. It was categorically stated by respondent No. 3 that it was the petitioner who left the job on 26.04.2009 on his own and nothing was due to him. It was stated that the services of petitioner were never terminated by respondent No. 3.

Respondent No. 2 was proceed ex-parte before the Tribunal below.

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

- “1. Whether there is relationship of master and servant between the claimant and respondent No. 1 ? OPW*
- 2. If issue No. 1 is proved whether the services of the claimant were terminated illegally ? If so to what effect ? OPW*
- 3. Whether there is no industrial dispute between the parties ? OPM*
- 4. Relief.”*

6. In support of its claim, petitioner examined himself as WW1 and on the other hand, respondent examined Shri Vijay Panday, as MW1, Shri Mukesh Kumar as MW2, Shri Anchal Pal as MW3 and Shri Ashish Mishra as MW4 and tendered some documents. It appears that MW2 and MW3 did not come present for cross examination.

7. After considering the material/evidence available on record, the Tribunal below, vide impugned award, answered the reference against the petitioner and rejected his claim.

8. In the aforementioned circumstances, the petitioner has filed the instant writ petition before this Court.

9. Learned counsel for petitioner submits that the Tribunal below has erred in law and facts in rejecting the claim of the petitioner. It is submitted that the petitioner was an employee of respondent No. 1, whereas respondents No. 2 and 3 are dummy agents/contractors, who are falsely created by respondent No. 1 to defeat the claim of the petitioner. Learned counsel for petitioner submits that the alleged contract between respondent No. 1 and respondents No. 2 and 3 is a mere camouflage. As regards the agreement with the contractors, it was stated that the licence (Mark 'B') was issued on 25.09.2009 and the same was valid only till 31.12.2009. It is next submitted that the worker employed in the canteen becomes employee of the management notwithstanding the fact that they were engaged by the contractor or otherwise. Learned counsel for petitioner contends that the Tribunal below has wrongly held that the petitioner had not completed 240 days prior to his termination, therefore, he is not an employee of principal

employer. It is submitted that since the Tribunal below has not considered all the arguments and law points raised by the petitioner, therefore, he filed a review application before the Tribunal below, however, the same was also wrongly rejected by the Tribunal below, vide order dated 31.08.2015 (Annexure P-7). With the aforesaid submissions, learned counsel for petitioner prays for quashing of the impugned award dated 11.12.2014 (Annexure P-4) and order dated 31.08.2015 (Annexure P-7) and for issuing necessary directions for reinstatement of petitioner in service and for grant of other consequential benefits.

10. Per contra, learned counsel for respondent No. 1 as well as learned counsel for respondent No. 3 have opposed the prayer made on behalf of the petitioner by submitting that the Tribunal below has passed a well reasoned and justified award by appreciating the material/evidence available on record and no interference is required to be made in the said award. Learned counsel for respondent No. 1 submitted that the petitioner was employed by M/s BVIHR Practice Pvt. Ltd. (wrongly mentioned as B. Bihar Practice Pvt. Ltd. in the writ petition), which is a licenced labour contractor under the Contract Labour (Regulation and Abolition) Act, 1970. It is stated that the petitioner had worked with M/s BVIHR Practice Pvt. Ltd. from 21.07.2007 to 31.09.2008 and thereafter, he left the service of this contractor of his own. It is submitted that the petitioner himself produced in evidence before the Tribunal below his wage slips for the period from December 2007 to September, 2008 as Ex. W2 to Ex. W11, which clearly show that he was engaged by M/s BVIHR Practice Pvt. Ltd. It is further

submitted that the petitioner has also produced wage slips from November, 2008 to March, 2009 as Ex. W11 to Ex. W16 before the Tribunal below, a perusal of which would indicate that the petitioner was engaged by Teamlease Services Pvt. Ltd. (respondent No. 3). It is next submitted that the petitioner had further placed on record Ex. W17 to Ex. W19, which is information supplied to him under the Right to Information Act by Regional Provident Fund Commissioner, Faridabad (Annexure R-1/18 to Annexure R-1/20) and a perusal thereof reveals that the petitioner had never been member of Provident Fund in respondent No. 1-company i.e. M/s Marathan Electric India Pvt. Ltd. It is submitted that respondent No. 3 is a licenced contractor and even respondent No. 1 as a principal employer has registration certificate under the Contract Labour (Regulation and Abolition) Act, 1970. It is stated that the petitioner was an employee of respondent No. 3, where the petitioner had only worked for 176 days, which was much less than 240 days. Therefore, petitioner did not render continuous service in terms of Section 25-B of 1947 Act so as to attract the provisions of Section 25-F of 1947 Act. It is therefore submitted that the petitioner is not entitled to any relief whatsoever. It is also submitted that the petitioner is a worker under the Factories Act as he had worked in the canteen and there was no relationship of master and servant between respondent No. 1 and petitioner. It is contended that the petitioner failed to prove its pleaded case before the Tribunal below and his claim has been rightly rejected. Accordingly, prayer for dismissal of the instant civil writ petition has been made.

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

12. It is well settled law that the onus to prove existence of relationship of employer and employee between the parties is upon the workman. In *Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu and Ors.*, (2004) 3 SCC 514, Hon'ble Supreme Court held as under:-

"47. It is a well-settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him.

48. In N.C. John v. Secretary Thodupuzha Taluk Shop and Commercial Establishment Workers' Union and Others, 1973 LIC 398, the Kerala High Court held :

"The burden of proof being on the workmen to establish the employer-employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer-employee relationship."

49. In Swapan Das Gupta and Others. v. The First Labour Court of West Bengal and Others, 1975 LIC 202, it has been held :

"Where a person asserts that he was a workmen of the Company, and it is denied by the company, it is for him to prove the fact. It is not for the Company to prove that he was not an employee of the Company but of some other person."

50. The question whether the relationship between the parties is one of the employer and employee is a pure question of fact and ordinarily the High

Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse...”

It is also well settled law that the onus to prove that the workman has rendered continuous service in terms of Section 25-B of 1947 Act i.e. the workman has worked under Management for 240 days in 12 months preceding the date of termination is also on the workman. It is further 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 in a given year. In this regard, reference can be made to the case of *Municipal Corpn. v. Siri Niwas*, 2004(4) S.C.T. 211 and *Surendranagar District Panchayat v. Dahyabhai Amarsingh*, 2005(8) SCC 750.

13. In the instant case, the Tribunal below, while rejecting the claim of petitioner, vide impugned award, has returned the following findings :-

“11. The claimant has claimed his appointment with respondent No. 1 in his canteen on regular basis w.e.f. 21.07.2007 whereas this is disputed by respondent No. 1 and it is specifically denied that he was appointed by the respondent No. 1 and he worked under supervision and control of the respondent No. 1. The respondent No. 3, the contractor has admitted that claimant joined him on 01.11.20008 as Helper and his services were deputed at the premises of respondent No. 1 as a contractor's employee. The respondent No. 2 is exparte. The respondent No. 1 has, thus, denied any relation with the claimant.

12. It is settled law that in order to succeed the

claimant has to not only prove his relationship of employer and employee between the parties but also a service of not less than 240 days in the relevant year. The claimant apart from his oral evidence is relying on documentary evidence. Ex. W-2 to Ex. W-11 are pay slips of claimant from December, 2007 to September, 2008 issued by respondent No. 2. In these pay slips date of joining is 21.09.2007. Ex. W-12 to Ex. W-16 are pay slips from November, 2008 to March, 2009 and in these pay slips date of joining of claimant with respondent No. 3 is 01.09.2008. Ex. W-17 is letter dated 01.06.2012 from Sh. T.C. Aggarwal, Assistant PF Commissioner to claimant Sh. Deepak Puri with regard to his complaint against respondent No. 1. Perusal of the same shows that the claimant has been informed by Assistant PF Commissioner that he had never been member of PF of Respondent No. 1 but a member of PF of respondent No. 2 from 21.09.2007 to 31.10.2008 and then with respondent No. 3 from 01.11.2008 to 26.04.2009. From the documents of the claimant himself it is clear that he was not an employee of respondent No. 1 but worked with respondent No. 2 and 3 for different periods and was paid by them and his PF etc. Were also deducted.

13. The claimant has alleged that he worked only with respondent No. 1 whereas ESI and PF was also deducted but his documents show otherwise. He has stated that pay slips Ex. W-2 to Ex. W-16 were issued to him every month and he received the payment. He is 8th pass but never raised any objection with regard to the these slips issued by respondent No. 2 and 3. He

specifically deposed that he worked with Marathan Electric India P. Ltd. (respondent No. 1) and wants reinstatement there and he has no concern with the contractors (respondent No. 2 and 3). Meaning thereby he claims no relief against respondent No. 2 and 3. From the record produced on the file, it is clear that the claimant was an employee of contractors and not of the respondent No. 1.

14. Learned AR for the claimant referred Balwant Rai Saluja and Anr. V/s Air India Ltd. and Ors. 2014 LLR 1009 and Tamil Manila Thozhilalar Sangam V/s Chairman, T.N. Electricity Board and others 1998 (80) FLR 658 to contend that the worker to of canteen would be employee of the factory and not of the contractor. There is no dispute as to the law lay daown in these authorities but the same are not applicable to the facts of the present case. In Balwant Rai Saluja and Anr. V/s Air India Ltd. and Others 2014 LLR 1009 it has been held by Hoble Supreme Court that even when an employer is obliged to provde a cantee to his employees under Factory Act and the canteen is runby contractor, being an independent entity, the worker of the contractor cannot claim to be worker of the principal employer. In this case, the claimant has not been able to prove that he worked under supervision and control of respondent No. 1 or was ever paid by it. Rather the documents produced by the claimant himself show that he was an employee of the contractor. Mark-B is a license of rspondent No. 3 for doing the work of labour for canteen in the establishment of respondent No. 1. So, the claimant cannot claim reinstatement with

respondent No. 1.

15. Respondent No. 2 and 3 are contractors. The claimant has not completed 240 days of working with respondent No. 3 prior to his alleged termination. At the time of alleged termination the claimant was not in the employment of respondent No. 2 with whom he appears to have completed 240 days as thereafter he had joined respondent No. 3. Even otherwise, he has categorically stated that he has no concern with the contractors (respondent No. 2 and 3) and wants reinstatement with respondent No. 1. The relief claimed in facts and circumstances of the case, cannot be granted to claimant as he has failed to prove his case. So, both these issues are decided against the claimant.

Issue No. 3

16. In view of my above finding on issue No. 1 and 2 this issue is decided in favour of the respondent and against the claimant.

Relief:

In view of my above finding, the present reference is answered against the claimant. Award is passed accordingly. File be consigned to record room after due compliance.”

A perusal of the above extracted findings would clearly indicate that the petitioner had failed to prove its pleaded case before the Tribunal below. The evidence produced by petitioner as Ex. W-2 to Ex. W-11 indicates that the same have been issued by respondent No. 2, whereas other wage slips Ex. W-12 to Ex. W-16 are pay slips from November, 2008 to March, 2009, which have been issued by respondent No. 3. Even the Assistant Provident Fund Commissioner had provided information that the

petitioner was not a member of respondent No. 1 but that of respondent No. 2 from 21.09.2007 upto 31.10.2008 and then with respondent No. 3 from 01.11.2008 to 26.04.2009. Evidently, it was duly proved on record that the petitioner was not an employee of respondent No. 1 but he had worked with respondents No. 2 and 3 for different periods and his provident fund etc. was also deducted by them.

14. As regards the contention of learned counsel for petitioner that even if the petitioner was employed through the contractors even then he would become an employee of the principal employer i.e. respondent No. 1, however, the said contention of learned counsel for petitioner has been considered and rejected by the Tribunal below by placing reliance upon the case of Balwant Rai Saluja and Anr. V/s Air India Ltd. and Ors., rendered by Hon'ble the Supreme Court wherein it was held that when an employer is obliged to provide a canteen to his employees under the Factory Act and the canteen is run by contractor being an independent entity then the worker of the contractor cannot claim to be worker of the principal employer. It has been held that the petitioner had failed to prove that he had worked under the supervision and control of respondent No. 1 or he was ever paid by respondent No. 1. The petitioner has also not been able to show that he has rendered continuous service in terms of Section 25-B of 1947 Act so as to claim relief against respondents No. 2 and 3. Moreover, petitioner had categorically stated that he is not seeking relief from respondents No. 2 and 3, but seeking only reinstatement in service with respondent No. 1. Therefore, in my considered view, the Tribunal below was justified in rejecting the

claim of the petitioner.

15. As regards order dated 31.08.2015 passed in the review application filed by the petitioner under Rule 28 of Haryana Labour Rule and Industrial Disputes (Central) Rules, 1957, is concerned, it is apparent that the said rule relates to procedural or clerical mistake arising from any accidental slip or omission. Since the petitioner was seeking review on the merits of the case, accordingly, the Tribunal below was justified in rejecting the review application.

16. 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.

17. 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 11.12.2014 (Annexure P-4) and impugned order dated 31.08.2015 (Annexure P-7), passed the Tribunal below. Resultantly, the instant writ petition fails and same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

19.09.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No