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117-1

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

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Date of Decision: 08.08.2023

Dara Ram

...Petitioner

Versus

Presiding Officer, Industrial Tribunal, Bathinda and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Puneet Kumar Bansal, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

1. Petitioner-workman (Dara Ram) has filed this petition under Articles 226/227 of the Constitution of India, seeking a writ of *certiorari* for setting aside the impugned award dated 29.11.2022 (Annexure P-6) passed by learned Industrial Tribunal, Bathinda, whereby the reference of the industrial dispute raised by the petitioner has been decided against him. A further prayer has been made for directing the respondents to reinstate the petitioner with all consequential benefits.

2. Briefly, Petitioner (Dara Ram) raised an industrial dispute, which was referred for adjudication to the learned Industrial Tribunal, Bathinda (*herein after "the Tribunal"*) under section 10(1)(c) of the Industrial Disputes Act, 1947 (*in short "the 1947 Act"*).

3. As per the claim statement filed by petitioner, he claimed to have been appointed with respondent No.2-Punjab State Civil Supplies

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Corporation Ltd. (PUNSUP) as *Security Guard* on 01.08.2009. Petitioner claimed to have worked continuously upto 31.12.2014, when suddenly his services were terminated in an illegal and arbitrary manner by adopting unfair labour practice. Petitioner claimed to have worked for 240 days in each year as well in the last calendar year. It was also claimed by the petitioner-workman that junior to him namely Pankaj Kumar, Rajinder Kumar, Johny and Ram Lal; have been retained in service and even new appointments had been made by Corporation after his termination; therefore, the petitioner claimed that his services were terminated in violation of Sections 25-F, 25-G & 25-H of 1947 Act. Accordingly, the petitioner prayed that he may be reinstated on job with full back wages and continuity of service.

4. The aforestated claim of the petitioner-workman was opposed by the respondent No.2-Corporation by submitting its reply, wherein, it was *inter alia* stated that there was no relationship of employee-employer between the parties. It was categorically stated that the work was given on contract to Guardian Security and Placement Services, Chandigarh for providing security guards to Corporation and payment was made to contractor. It was stated that the petitioner-workman was an employee of the contractor. The plea of the petitioner that he worked for 240 days was also denied. Accordingly, dismissal of claim statement was prayed for.

5. From the pleadings of the parties, the learned Tribunal framed the following issues:

“1. Whether there exists relationship of employee and employer between the parties? (OPW)”

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2. *Whether the workman has completed 240 days in the preceding calendar year? (OPW)*

3. *If issue no. 1 & 2 are proved then whether termination of workman is legal and justified? (OPR/M)*

4. *Whether the reference is bad for non joinder of necessary parties? (OPR/M)*

5. *Whether no cause of action has accrued to workman to bring forth present reference/demand notice? (OPR/M)*

6. *Relief.”*

6. In order to prove his case/claim, the petitioner/workman-Dara Ram, examined himself as WW-1 and tendered his affidavit Ex. WW-1/A. The petitioner-workman relied upon Ex. W-1 copy of pass book. Thereafter, the petitioner-Workman closed his evidence.

7. On the other hand, the respondents have examined Inderpreet Singh, Senior Assistant as Ex. MW-1, who tendered his affidavit Ex. MW-1/A. the respondent-Corporation relied upon Ex. M-1, Ex M-2, Ex. M-3 , Ex. M-4 record of copies of agreement with Guardian Security & Placement Services Chandigarh; Ex. M-5 the copy of terms and conditions with the Contactor as well as Ex. M-6 copy of agreement dated 23.06.2014. Thereafter, the respondents evidence was closed.

8. Upon appreciating the material/evidence available on record, the Tribunal below rejected the claim of the petitioner-workman and answered the reference against the petitioner-workman vide the impugned Award dated 29.11.2022 (Annexure P-6).

9. In the aforementioned circumstances, the petitioner has filed the instant writ petition before this court.

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10. Learned counsel for the petitioner while reiterating the stand of the petitioner before the Tribunal below, submitted that the petitioner was appointed as Security Guard on 01.08.2009 and he continuously worked till 31.12.2014, when suddenly his services were terminated in an illegal and arbitrary manner without following the mandatory provisions of the Act, 1947. He submits that the petitioner worked in the respondent-Corporation for more than 240 days in preceding 12 months from the date of his termination in December, 2014. Accordingly, counsel for the petitioner prays that the impugned award dated 29.11.2022 (Annexure P-6) passed by the Tribunal below, may be set aside and necessary directions may be issued for reinstatement of petitioner with continuity of service and full back wages.

11. I have heard learned counsel for the petitioner and perused the paper-book with his able assistance.

12. It is well settled that the onus to prove relationship of employee and employer between workman and Management is on the workman. It is also well settled that the onus to prove factum of continuous service of workman under the Management in terms of Section 25-B of the 1947 Act is on the workman. It is further 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 Amarsinh*, 2005(8) SCC 750.

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13. In the instant case, vide impugned award dated 29.11.2022 (Annexure P-6), the Tribunal below; has returned the following findings:-

“Issue No.1

11. Onus to prove this issue was upon the workman. The workman claimed to be employee of the respondents since 01.09.2009 and he further claimed to be employed as security guard. The respondents on the other hand denied the relationship of employer and employee between the parties and further alleged that M/S Guardian Security and Placement Service Agency provided security guard to them and the payment was made to the agency/contractor, which disbursed the same to the workmen employed by it.

12. In order to prove the relationship of employee and employer between the parties, the workman deposed the same facts in his affidavit Exh. WW-1/A and also produced on record the copy of his bank account statement. On the other hand to rebut this evidence, the respondents produced on record the copies of agreements EXh. M-1 to Exh. M-4.

The affirmative evidence led by the workman failed to prove the relationship of employee and employer between the parties. First of all, there is no appointment letter issued by the respondents in favour of the workman. The workman has also admitted this fact in his cross-examination that the respondents issued no appointment letter to him. Further the workman has also failed to prove that the respondents used to pay him the wages as claimed by him. The sole documents produced by the workman to prove this assertion is the copy of his bank statement i.e. EXh. W-1, which runs into ten pages. Even from the perusal of this document goes to prove that the name of the

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security agency i.e. M/S Guardian and Security & Placement Services Agencies alleged to be service provider by the respondents, is duly mentioned against the payment of wages to the workman. In the entries regarding payment of wages/ salary, the name of the security agency i.e. GSPS is recorded. Meaning thereby the payment has been made by the security agencies i.e. M/S Guardian and Security & Placement Services Agencies in short GSPS and the said security agency made reference to the name of the respondents to connect the workman with the respondents. The workman has also not produced any other documents to prove that the wages were paid by the respondents and not by the said security agency. The respondents have also produced on record the copy of agreements EXh. M-1 to Exh. M-4, which also proved their assertion that it hired the services of security agencies. These all agreements between the respondents and security agencies proved that the service provider agreed to provide security guards to the respondents for a fixed term and further extendable for one year. There are certain other agreements between the respondents as well as the other security agency i.e. M/S Dater Security and Services Group. Thus the respondents have produced sufficient evidence with regard to their assertions of denying the relationship of employee and employer between the parties.

13. During the course of arguments, the learned AR of the workman made reference to one decision of Hon'ble Punjab and Haryana High Court in Civil Writ Petitions 4384, 4857 & 4894 of 1986 filed by the Food Corporation of India. The learned AR pointed out the observations made by the Hon'ble High Court with regard to the certificate of registration as well as with

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regard to the licensed contractor. However this tribunal is of the conclusion that the workman has failed to prove that there existed relationship of employee and employer between the parties and workman has not arrayed the said security agency i.e. M/S Guardian and Security & Placement Services, Chandigarh as one of the respondents, therefore the question of certificate of registration and licensed contractor cannot be dealt with, as the same was also not agitated by the workman at the time of filing of the claim and at the time, when he led the evidence.

Thus in view of the above discussion as well as the conclusions, it is held that the workman failed to prove that there existed any relationship of employee and employer between the parties and therefore question of his termination from service by the respondents/management, does not arise at all and this issue accordingly decided against the workman.

Issue No.2

14. Onus to prove this issue was upon the workman. Since the workman has failed to prove issue No. 1 with regard to relationship of employee and employer between the parties, therefore this issue has become redundant.

Issue No.3

15. Since workman has failed to prove the relationship of employee and employer between the parties, therefore the question of his termination of services by the respondents does not remain as an issue.

Issue No. 4

16. Onus to prove this issue was upon the respondents/management. As already concluded while deciding issue No. 1 that the M/S Guardian and

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Security & Placement Services, Chandigarh i.e. service provider was necessary party, but it has not been arrayed as respondent therefore the reference is bad for non-joinder of the necessary parties, hence this issue is decided in favour of respondents/management.

Issue No. 5

17. In view of my findings given on aforesaid issues this issue is decided in favour of the respondents/management.”

14. A perusal of the above extracted findings of Tribunal would make it evident that the petitioner-workman failed to discharge the onus placed upon him of proving employee-employer relationship nor it was proved that the petitioner-workman had completed 240 days work under the Corporation in terms of section 25B of 1947 Act, so as to attract the provisions of section 25F of the 1947 Act. No appointment letter or proof of receipt of salary or wages or any record of engagement by the respondent- Corporation in the year 2009 or any order in that regard was produced. Thus, once the petitioner-workman had failed to prove employee-employer relationship and / or that he had completed 240 days work under the Management, no relief could have been granted to him. From the evidence of the workman i.e., Exh. W-1, copy of the bank statement, itself proved that the name of the security agency, M/s Guardian and Security & Placement Services Agencies is mentioned against the payment of wages to the workman. Thus, clarifying that it was the Security Agency who paid the wages to the petitioner-workman. Furthermore, the respondent-Corporation relied upon documents which

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proved their assertion that services were being provided by a security agency- /s Guardian and Security & Placement Services Agencies.

15. 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

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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.*

16. Considering the totality of circumstances in the light of legal position indicated above, I am of the considered view that the findings recorded by Tribunal below are based upon correct appreciation of evidence available on record and as per law, there is no scope for

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interference in the findings returned by the Tribunal below in exercise of writ jurisdiction by this Court. Resultantly, the instant writ petition fails and the same is accordingly dismissed.

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

08.08.2023
Himani

(HARSH BUNGER)
JUDGE

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