

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

CWP-6925-2017 (O&M)
Date of decision : 04.10.2023

KANWAR BHAN

...Petitioner

Versus

THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, PANIPAT AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Kamal Sharma, Advocate
for the petitioner.

Mr. Padam Kant Dwivedi, Advocate
for respondent No.2.

HARSH BUNGER, J.

1. Petitioner-Kanwar Bhan has filed this petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of *certiorari* for quashing of impugned Award dated 27.12.2016 (Annexure P-6), vide which, the reference under the Industrial Disputes Act, has been decided against him.

A further prayer has been made by the petitioner for issuance of direction to respondent No.2 to reinstate him with full back wages along with all consequential benefits.

2. Briefly, the petitioner herein raised an industrial dispute, which was referred for adjudication to the Industrial Tribunal-cum-Labour Court, Panipat. In the claim petition, the petitioner-workman claimed that he had been working with the respondent-Management as Chowkidar since 02.02.2005 and he was drawing monthly salary of Rs.3,600/-. It is the case

of the petitioner-workman that he was not paid minimum wages as prescribed by the Haryana Government; hence, he raised a claim of minimum wages; whereupon, the respondent-Management orally terminated his services on 30.09.2010 without giving him any notice or pay in lieu of notice and retrenchment compensation. As per the petitioner, neither any inquiry was conducted against him nor any charge sheet was served upon him before terminating his services. Petitioner's case was that the Management used to send him for supplying fertilizers and other products to different societies and the petitioner-workman used to put his signatures on gate pass and other documents. Petitioner claimed to have worked continuously from 02.02.2005 to 30.09.2010 and there was no complaint against him. Petitioner alleged unfair labour practice and stated that his services have been terminated in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act, 1947'). Accordingly, the petitioner prayed for his reinstatement with continuity of service and full back wages along with all consequential benefits.

3. On the other hand, the respondent-Management contested the claim of the petitioner-workman; wherein, a categorical plea was taken that the workman was never appointed by the respondent-Management. It is the pleaded case of the respondent-Management that it used to issue the tender for tendering services for watch and ward of stocks and other works. As per respondent-Management, it was the duty of the agency to keep the labour and it has no concern with the appointment of the said persons appointed by the agency. It was the case of the respondent-Management that in the year-2005, the tender for attending the work of covering and de-covering of stacks, brushing and cleanliness of stocks and for other storage functions

was given to M/s Narwal Super Security, Plot No.207, Sector 25, Part-II, Panipat, which was evident from the agreement dated 11.11.2004 executed between said M/s Narwal Super Security and respondent-Management.

4. As per the respondent-Management, the tender of M/s Narwal Super Security continued since 11.11.2004 to 30.09.2006 and thereafter, the said tender was given to Prehari Security and Detective Services Private Limited, Kapurthala (Punjab) w.e.f. 01.10.2006 to 31.03.2010, which was further extended upto 08.04.2010 and thereafter, the said tender was given to Narwal Super Security, Panipat on 09.04.2010. The respondent-Management claimed that the number of labour employed by the Security Agencies were checked by the respondent-Management by making their presence in the register as the agency had been given the payment by the respondent-Management as per number of labour employed by it. The respondent-Management had specifically denied that the workman (petitioner) was working as Chowkidar in HAFED, Panipat. It was also denied by the Management that the services of the petitioner-workman were illegally terminated on 30.09.2010 when he allegedly raised the claim of minimum wages. It was claimed that the respondent-Management has not violated any provisions of the Act, 1947 and prayed for dismissal of the claim petition.

5. No replication was filed by the petitioner-workman and from the pleadings of the parties, the issues were framed and the parties led their respective evidence.

6. The learned Tribunal below, after considering the case of the respective parties and also the evidence/material placed on record, rejected

the claim of the petitioner-workman vide impugned Award dated 27.12.2016 (Annexure P-6).

7. In the afore-mentioned circumstances, the present writ petition has been filed before this Court.

8. Learned counsel for the petitioner, while reiterating the stand taken in the claim petition, submits that the Tribunal below has erred in law and facts in dismissing the claim petition without considering the evidence placed on the record. It is submitted that the petitioner-workman had fully supported his case while appearing as a witness (WW1) and had further produced on record photocopies of the gate passes and attendance register in which the name of the petitioner-workman is mentioned, which clearly proved that the petitioner-workman is the employee of respondent-Management. In support of his plea, learned counsel for the petitioner places reliance upon Annexures P-3 and P-4, which are the copies of daily attendance register for the year 2009-2010 and few copies of gate passes. Learned counsel for the petitioner, while referring to the statement of RW2-Sh. Sat Parkash, Senior Accountant, HAFED, Panipat (Annexure P-5), submits that the said witness appearing for the Management, had admitted in his cross-examination that the petitioner-workman had worked in HAFED from 02.02.2005 to 30.09.2010. Learned counsel for the petitioner submits that the petitioner had duly proved the relationship of employee-employer between him and the respondent-Management. It is further submitted that the termination of services of the petitioner is in violation of the provisions of Sections 25-F, 25-G and 25-H of the Act, 1947 and he is entitled for re-instatement with full back wages along with all consequential benefits.

9. Per contra, learned counsel for respondent No.2-Department opposed the prayer of the petitioner by supporting the findings returned by learned Tribunal below. It is submitted that the respondent-workman failed to prove its pleaded case and therefore, there is no scope for any interference in the factual findings returned by Tribunal below. Accordingly, prayer for dismissal of writ petition was made.

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

11. A perusal of the file reveals that the stand of the petitioner-workman is that he was employed by the respondent-Management, whereas, the stand of the respondent-Management is that they had never employed the petitioner-workman and rather they had tendered the services to the Security Agencies entering into the contract with them. Thus, the core issue was regarding the relationship of employee and employer between the petitioner-workman and the respondent-Management.

12. It is well settled law that the onus to prove the relationship of the employee-employer between the workman and the management is upon the workman. Before the Tribunal, the petitioner-workman apart from examining himself, further examined one Sh. Parveen Kumar, Manager HAFED (WW2), who is stated to have produced the attendance record during the period from January-2007 to 20.09.2010, which is Exhibit WW2/1 to Exhibit WW2/4. The learned Tribunal below, upon considering the said evidence, has returned the finding that from the said record, it is proved that the workman is not the employee of the respondent-Management but he was appointed by the Security Agency and the salary was also given to the petitioner-workman by the Agency. The Tribunal below has further

referred to Exhibit R1 to Exhibit R16, produced by the Management witnesses and held that the said documents proved that the respondent-department had executed an agreement with Narwal Super Security Agency and Prehari Security and Detective Services, to provide manpower with the respondent-department and that there was no relationship between the workman and the respondent-department. The Tribunal below has held that it was the bounden duty of the workman to bring some appointment letter or some wage slip to prove this crucial aspect of the matter and even no effort was made to bring on record anything regarding deposit of Provident Fund. The Tribunal further held that the workman only produced himself in the witness box and no other co-worker was examined to prove that he was the employee of the respondent-Management. The workman did not produce any appointment letter/pay slip or any other document, which could prove the relationship of workman and employer. A further reference is made to the admission by the petitioner-workman in his cross-examination, where he admitted that he had no proof regarding payment of salary by the respondent-department and also admitted that no appointment letter was issued by the respondent-department. Accordingly, it was held that there was no sufficient material to prove that the petitioner-workman was the employee of the respondent and also that, he had completed continuous service of more than 240 days in the last preceding twelve calendar months from the date of his alleged termination.

13. Before this Court, the learned counsel for the petitioner has sought to place reliance upon Annexure P-3 (gate pass) and Annexure P-4 (attendance register).

14. I have considered the said documents as well. A perusal of the gate pass (Annexure P-3) would suggest that the same are for the dates i.e. 17.12.2009, 18.12.2009 and 19.12.2009 and the same cannot be sufficient to prove that there exists an employee-employer relationship. As regards Annexure P-4 (Daily Attendance register), although the attendance of petitioner-Kanwar Bhan is stated to have been shown in the said document; however, it is not forthcoming as regards the employer therein. Even otherwise, if the workman has been employed through agency, then some check by way of attendance has to be kept by the principal employer. In my considered view, in the peculiar facts and circumstances of this case merely producing few Gate Pass and the Daily Attendance Register, would not advance the case of the petitioner.

15. The impugned award clearly analyses the Gate Passes and the evidence which have been placed on record. The impugned award has also rightly held that no adverse inference can be drawn in these facts and circumstances.

16. After hearing the learned counsel for the parties and perusing the file, I am of the considered view that the petitioner has failed to discharge the onus of proving employee-employer relationship between him and respondent-Department.

17. The law on the scope of interference in a writ petition against the order of a tribunal is well settled. In ***Syed Yakoob vs K.S. Radhakrishnan, AIR 1964 Supreme Court 477***, the Supreme Court has categorically held:

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the

true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings 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. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or

inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised."

18. No other point has been urged.

19. Under these circumstances, no error is found in the impugned award dated 27.12.2016 (Annexure P-6) passed by the Tribunal below. Accordingly, there is no merit in this petition and the same is hereby dismissed.

20. All pending applications (if any) shall stand closed.

October 4th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No