

2023:PHHC:166475

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

CWP-19863-2012

Date of Decision: 12.09.2023

President/General Secretary, National Fertilizers Labour Union, Bathinda

..... Petitioner

Versus

General Manager, National Fertiliser Ltd., Bathinda and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Ram Lal Gupta, Advocate
for the petitioner.

Mr. Ajaivir Singh, Advocate
for respondent No.1.

HARSH BUNGER J. (ORAL)

1. Petitioner – National Fertilizers Labour Union, Bathinda (hereinafter referred to as 'the petitioner-Union') has filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing impugned award dated 30.04.2012 (Annexure P-13) passed by the learned Industrial Tribunal, Bathinda (in short 'the Tribunal'), whereby the reference of industrial dispute raised by the petitioner-Union, regarding termination of the services

of workmen, has been rejected.

A further prayer has been made by petitioner-Union for directing respondent No.1 – General Manager, National Fertiliser Ltd., Bathinda (hereinafter referred to as 'respondent No.1-Management) or in the alternative, respondent No.2 – Sh. Amrit Lal Khurana, N.F.D. Canteen Contractor, Bathinda to reinstate all the workmen in service along with all the consequential benefits and arrears of wages with interest @ 18% per annum, as claimed in the petition.

2. Briefly, the petitioner-Union raised an industrial dispute regarding termination of services of twenty six workmen, whose names, designations and service particulars are as under:-

<i>Sr. No.</i>	<i>Name</i>	<i>Father's Name</i>	<i>Designation</i>	<i>Date of Joining</i>	<i>Date of termination</i>
1.	Umesh	Bhag Narain	Semi-skilled	1.4.85	1.10.2000
2.	Md. Aalam	M.D. Squim	-do-	-do-	-do-
3.	Sh. Birinder	Madan Singh	Water	-do-	-do-
4.	Tuntun	Tippu Mehto	Skilled Lower	-do-	-do-
5.	Parmanand	-do-	-do-	-do-	-do-
6.	Ashok	Ratti Lal	Waiter	1.4.86	-do-
7.	Parmod	Sh. Gian Ram	-do-	-do-	-do-
8.	Shadi Lal	Sh. Rameshwar	-do-	-do-	-do-
9.	Shanker	Jhakas Dass	-do-	-do-	-do-
10.	Parkash	Parshadi Lal	-do-	-do-	-do-
11.	Jiwas	Siro Ram	-do-	-do-	-do-
12.	Joginder	Ram Adhin	-do-	-do-	-do-
13.	Singho	-do-	-do-	-do-	-do-
14.	Md. Arun	Md.Hamir Haser	-do-	1.7.86	-do-
15.	Shri Manoj	Biro Ram	-do-	-do-	-do-

16.	<i>Hari Lal</i>	<i>Sultan Singh</i>	<i>Safai Karamchari</i>	<i>-do-</i>	<i>-do-</i>
17.	<i>Nand Lal</i>	<i>Tikka Ram</i>	<i>Waiter</i>	<i>-do-</i>	<i>-do-</i>
18.	<i>Shri Suresh</i>	<i>Subho Ram</i>	<i>-do-</i>	<i>-do-</i>	<i>-do-</i>
19.	<i>Ashok</i>	<i>Raj Baldev</i>	<i>-do-</i>	<i>-do-</i>	<i>-do-</i>
20.	<i>Suresh</i>	<i>Ravinder Andia</i>	<i>-do-</i>	<i>1.4.88</i>	<i>-do-</i>
21.	<i>Suresh</i>	<i>Sard Chander Mandal</i>	<i>-do-</i>	<i>1.9.93</i>	<i>-do-</i>
22.	<i>Chajju Ram</i>	<i>Sultan Singh</i>	<i>Asstt. Supr.</i>	<i>-do-</i>	<i>-do-</i>
23.	<i>Brijesh</i>	<i>Mishri Lal</i>	<i>Helper</i>	<i>31.7.94</i>	<i>-do-</i>
24.	<i>Vijender</i>	<i>Dharam Pal</i>	<i>Safai Karamchari</i>	<i>31.7.97</i>	<i>-do-</i>
25.	<i>Punia</i>	<i>Sachi Thakur</i>	<i>Waiter</i>	<i>1.4.88</i>	<i>-do-</i>
26.	<i>Suresh</i>	<i>Sultan Singh</i>	<i>-do-</i>	<i>1.9.93</i>	<i>-do-</i>

Petitioner-Union claimed that the aforesaid workmen were employed by respondent No.1-Management, however, the salary was paid to them through the contractor (respondent No.2 herein). It was stated by the petitioner-Union that it had submitted representations before the Central Advisory Contractor Labour Board, New Delhi for abolition of Contract Labour System in the National Fertilizer Ltd., Bathinda, whereupon a Committee was constituted to go into the question of abolition of Contract Labour System and while the proceedings were pending before the said Committee, a notice dated 31.08.2000 was issued through the contractor (respondent No.2 herein) stating that the services of workmen will be terminated on 30.09.2000 and they cannot attend their duty on 01.10.2000. As per the petitioner-Union, the canteen workers made efforts to join the duty, however, the Management did not allow them to perform their duty; rather they started running the canteen by appointing fresh workmen. It was

stated that respondent No.1-Management was deducting the E.S.I. And P.F. from the wages of the workers and depositing the same in the National Fertiliser Ltd. Provident Fund and the canteen in which these workers were employed is the only canteen in the National Fertiliser Ltd., Bathinda premises. It is the categoric case of petitioner-Union that all the workers had served respondent No.1-Management for more than 240 days in the calendar year preceding the date of their termination and their were being supervised by the Management of National Fertiliser Ltd., Bathinda. It was claimed that since services of the aforesaid workmen were terminated, w.e.f. 01.10.2002, without issuance of any notice, charge-sheet, conducting of any enquiry or payment of compensation, therefore, the termination was contrary to the provisions of the Industrial Disputes Act, 1947 (for short 'the 1947 Act'). Accordingly, prayer was made for reinstatement of the workmen in service with continuity and full back wages.

3. The aforesaid claim of petitioner-Union, as regards its twenty six workmen, was contested by respondent No.1-Management *inter alia* on the ground that it is a Government of India undertaking having one of its manufacturing units at Bathinda and all the recruitment were made therein as per the approved Recruitment Rules. It was categorically stated that none of the workers were recruited by the respondent No.1-Management nor any appointment letter was issued to the said workers. It was further stated that the workers were always appointed, controlled and supervised by the contractor to whom the contract for running the canteen was awarded from time to time, which was in consonance with Rule 71 of the Punjab Factory Rules, 1952 framed under Section 46(1) of the Factories Act, 1947 and respondent No.1-Management had provided a canteen which required facilities for the use of employees working in the National Fertiliser Ltd.

Unit. It was categorically stated that for maintaining the canteen services, respondent No.1-Management had been following the tendering process and the tender for the period of one year, w.e.f. 01.10.1999 up to 30.09.2000, was issued in favour of the contractor (respondent No.2 herein). Accordingly, prayer was made for dismissal of the claim of petitioner-Union *qua* respondent No.1-Management.

4. On the other hand, no one had appeared for the contractor (respondent No.2 herein) and *ex parte* proceedings were initiated against him on 20.11.2009.

5. The petitioner-Union filed its rejoinder to the written statement filed by respondent No.1-Management; and from the pleadings of the parties, following issues were framed by the Tribunal below:-

“Additional Issue

1. *Whether the reference is not maintainable against the respondent No.1? (OPM)*

Issue under Reference

2. *Whether the termination of services of 26 workmen mentioned in demand notice is legal and justified? If not, to what benefits the workmen are entitled? (OPM)*

3. *Relief.”*

6. Thereafter, both the parties led evidence in support of their respective case. Workmen examined Sh. Naresh Kumar, President/General Secretary, National Fertilizers Labour Union, Bathinda as WW-1. On the other hand, respondent No.1-Management examined Sh. Vinod Kumar Mittal, Assistant Manager (P&A), NFL, Bathinda as RW-1.

7. Upon considering the material/evidence available on record, the Tribunal below rejected the claim of petitioner-Union vide impugned award dated 30.04.2012 (Annexure P-13).

8. Being aggrieved against the aforesaid impugned award, the

petitioner-Union has filed the instant writ petition before this Court.

9. Learned counsel for the petitioner submits that the Tribunal below has erred in law and fact in rejecting the claim of petitioner. It is further submitted that there is sufficient material on record that the workmen rendered continuous service under respondent No.1-Management in terms of Section 25-B of the 1947 Act, i.e. service of more than 240 days in a calendar year preceding the date of their termination, however still further, their services have been terminated in an illegal and arbitrary manner. It is submitted that it has been proved on record that P.F. and E.S.I were being deducted from the wages of the workmen by the National Fertiliser Ltd., Bathinda; it was also controlling the attendance of the workmen apart from supervising their work; and even identity cards were issued by respondent No.1-Management; and all these documents show that the workmen were the employees of respondent No.1-Management and the contractor (respondent No.2 herein) was only a name lender. It was stated that contract between respondent No.1-Management and contractor (respondent No.2 herein) was sham and camouflage, so as to deprive the workers of their due benefits. The petitioner-Union has also referred to a judgment rendered by the Hon'ble Supreme Court in the case of *“Air India Statutory Corporation and other Vs. United Labour Union and others, (1997) 9 SCC 377* to contend that on the exit of the contractor, the contract workmen would become direct employee of the employer, on whose establishment they were working.

With the aforesaid submissions, learned counsel for the petitioner has prayed for setting aside impugned award dated 30.04.2012 (Annexure P-13) and grant of necessary relief to the petitioner.

10. Per contra, learned counsel for respondent No.1-Management

has opposed the prayer made by learned counsel for the petitioner-Union. It is submitted that the Tribunal below has considered the relevant material/evidence available on record and has passed a well reasoned and justified award, which does not call for any interference by this Court. It is further submitted that petitioner-Union has failed to prove on record that the aforesaid twenty six workmen were the employees of respondent No.1-Management, and therefore, no relief could be granted against them. Learned counsel for respondent No.1-Management further pointed out that the reliance placed by learned counsel for the petitioner-Union upon the judgment rendered in *Air India Statutory Corporation's case* (supra) is totally misplaced in view of the fact that the said judgment stands prospectively over-ruled by the Hon'ble Supreme Court of India in the case of "*Steel Authority of India Ltd. v. National Union Water Front Workers*", **2001(4) SCT 1**. It is further submitted that petitioner-Union has failed to lead sufficient material on record to show that the contract between respondent No.1-Management and the contractor (respondent No.2 herein) is sham and camouflage. Accordingly, prayer for dismissal of the instant writ petition has been made.

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

12. At the outset, it would be apposite to indicate that the judgment relied upon by learned counsel for the petitioner-Union in *Air India Statutory Corporation's case* (supra) was prospectively over-ruled by the Hon'ble Supreme Court of India in *Steel Authority of India Ltd.'s case* (supra).

13. In "*Workmen of Nilgiri Coop. Mktg. Soc. Ltd. v. State of Tamil Nadu*", **2004(2) S.C.T. 789**, Hon'ble Apex Court observed as under:-

“DETERMINATION OF RELATIONSHIP :

32. Determination of the vexed questions as to whether a contract is a contract of service or contract for service and whether the concerned employees are employees of the contractors has never been an easy task. No decision of this Court has laid down any hard and fast rule nor it is possible to do so. The question in each case has to be answered having regard to the fact involved therein. No single test - be it control test, be it organisation or any other test - has been held to be the determinative factor for determining the jural relationship of employer and employee.

33. There are cases arising on the borderline between what is clearly an employer-employee relation and what is clearly the independent entrepreneurial dealing.

TESTS :

*34. This Court beginning from **Shivanandan Sharma v. Punjab National Bank Limited [1955]1 L.L.J. 688 : AIR 1955 Supreme Court 404** and **Dharangadhara Chemical Works Limited v. State of Saurashtra and others [1957]1 L.L.J. 477 : AIR 1957 Supreme Court 264** observed that supervision and control test is the prima facie test for determining the relationship of employment. The nature or extent of control required to establish such relationship would vary from business to business and, thus, cannot be given a precise definition. The nature of business for the said purpose is also a relevant factor. Instances are galore there where having regard to conflict in decisions in relation to the similar set of facts, the Parliament has to intervene as, for example, in the case of workers rolling bidis.*

35. In a given case it may not be possible to infer that a relationship of employer and employee has come into being only because some persons had been more or less continuously working in a particular premises inasmuch as even in relation thereto the actual nature of work done by them coupled with other circumstances would have a role to play.

*36. In **V.P. Gopala Rao v. Public Prosecutor, Andhra Pradesh***

[1970]2 L.L.J. 59 : AIR 1970 Supreme Court 66, this Court said that it is a question of fact in each case whether the relationship of master and servant exists between the management and the workmen and there is no abstract a priori test of the work control required for establishing the control of service. A brief resume of the development of law in this point was necessary only for the purpose of showing that it would not be prudent to search for a formula in the nature of a single test for determining the vexed question.

RELEVANT FACTORS :

37. The control test and the organisation test, therefore, are not the only factors which can be said to be decisive. With a view of eliciting the answer, the Court is required to consider several factors which would have a bearing on the result : (a) who is the appointing authority; (b) who is the pay master; (c) who can dismiss; (d) how long alternative service lasts; (e) the extent of control and supervision; (f) the nature of the job, e.g. whether it is professional or skilled work; (g) nature of establishment; (h) the right to reject.

38. With a view to find out a reasonable solution in a problematic case of this nature, what is needed is an integrated approach meaning thereby integration of the relevant tests wherefor it may be necessary to examine as to whether the workman concerned was fully integrated into the employer's concern meaning thereby independent of the concern although attached therewith to some extent.

XXX XXX XXX

CAMOUFLAGE :

68. Whether a contract is a sham or camouflage is not a question of law which can be arrived at having regard to the provisions of Contract Labour (Regulation and Abolition) Act, 1970. It is for the industrial adjudicator to decide the said question keeping in view the evidences brought on records.

XXX XXX XXX

92. On the aforementioned backdrop of legal principles, we may now consider the Constitution Bench judgment of this

*Court in Steel Authority of India Limited (supra). The principal question which arose for consideration therein was as to whether having regard to the provisions contained in Section 10 of the Contract Labour (Regulation and Abolition) Act, the workmen employed by the contractors in the event of abolition of contract labour were entitled to be automatically absorbed in the services of the principal employer. While answering the question in the negative the court reversed the earlier decision of this Court in **Air India Statutory Corporation and Others v. United Labour Union and Others, (1997)9 SCC 377**. This Court referring to a large numbers of decisions and tracing the history of the Contract Labour (Regulation and Abolition) Act, noticed that the Industrial Tribunal although prior to coming into force could issue directions for such regularisation but such directions could not be issued after coming into force of the Act. In view of the Constitution Bench decision in **M/s Gammon India Limited and Others etc. v. Union of India and Others, (1974)1 SCC 596**, the Court held that although the principle that a beneficial legislation needs to be construed liberally in favour of the class for whose favour it is intended, the same would not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. Upon analyzing the case law, the categories of cases were sub-divided into three stating:*

"An analysis of the cases, discussed above, shows that they fall in three classes : (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because appropriate Government issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case the

contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances where in the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) wherein discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer."

From a perusal of the judgment rendered in the case of ***Workmen of Nilgiri (supra)***, it would be evident that whether a contract is sham or camouflage, is not a question of law which can be arrived at having regard to the provisions of Contract Labour (Regulation and Abolition) Act, 1970. It is for the industrial adjudicator to decide the said question keeping in view the evidences brought on records.

14. Coming to the case in hand, the Tribunal below has returned the following findings:-

"Now, the question which survives for determination is whether there exists/existed relationship of workman and employer in between the parties to instant reference. If answer to this question is in affirmative only then, the workmen are entitled to benefits claimed under the instant reference. In order to establish relationship, workmen have examined Naresh Kumar, President/General Secretary, national Fertilizers Labour Union Bathinda as WW1, who furnished his sworn affidavit Ex-WW1. On the strength of this affidavit it has been vociferously argued by the learned authorized representative of the workmen that it is an undisputed fact that under the statutory provisions, it is incumbent upon the management to run a canteen for the benefit & welfare of

various employees working in NFL, who are approximately 3000 in number. Workmen, who have approached this Tribunal by way of reference were working in canteen and they were shunted out by serving notice through canteen's contractor that their services will be terminated on September 30, 2000 and further that they cannot attend their duty w.e.f. October 1, 2000. In fact, the contractor is nothing but an agent or a manager of the management, who works completely under the supervision, control and direction of the management. Further, the supervision and control of canteen is exercised by the NFL through its authorized officers as is evident from the various clauses of the contract entered into between the management and contractor. Moreover, the canteen is being provided under a status for welfare of workmen and has been run since the inception of the NFL. Workmen have been employed for long years and despite a change of contractors, workmen have been continuing to be employed in the canteen. Moreover, the premises, furniture, fixture, fuel, electricity, utensils etc. for running canteen have been provided by the NFL. In the reality, workmen are the direct employees of the NFL. During the course of arguments, the learned authorized representative of the workmen has also relief upon the various observations made by the Hon'ble Apex Court in case The General Manager v/s Canteen Workers of BHEL decided on January 4, 2010. The running of canteen in premises of NFL is of permanent nature. Since, the services of the workmen in question have been terminated without compliance of the provisions contained in section 25-F, 25-G & 25-H of the Act, despite the fact that they have continuously worked for more than 240 days in preceding calendar year, the termination of their services is liable to be set aside. Due to non compliance of mandatory provisions referred to above, order regarding the termination of their services is void ab-initio. Accordingly, they deserve to be reinstated with continuity of services as well as full back wages from the date of their illegal termination.

14. *This Tribunal has given thoughtful consideration to the aforesaid submissions made by learned representative of the claimants/workmen and has also minutely scanned oral as well as documentary evidence available on file.*

15. *Undeniably, workmen have claimed themselves to be employees of NFL as they have been working on canteen since long. But the crux of matter is whether workmen have been able to prove that they are employee of NFL. In case in hand, except the bald assertion of Naresh Kumar, President/General Secretary, National Fertilizers Labour Union Bathinda as WWI by way of affidavit, there is no other evidence either oral or documentary in this regard. Deposition of Naresh Kumar by way of his affidavit Ex-WW/1 can be termed to be a self-serving statement only. Moreover, his statement particularly cross examination is most relevant to decide the matter in controversy. While subjected to cross examination, it has been categorically admitted by him that he never worked in the canteen and he performed his duty in a mechanical section. It has further been admitted by him that the appointment of employee in the NFL are made under rules and as per the procedure prescribed for it, that too, after making publication in newspaper of vacancies obtaining applications, conducting tests & interviews. The employees, who are selected, can be posted in India at any place. It has further been admitted by him that work is being got done by NFL through contract system. Generally, contract is given by NFL for a period of one year to a contractor, but sometimes contract period is extended sometime contract is given to the same contractor. Not only this, it has also been admitted that the employees are employed by contractor to complete and perform the work taken by him on contract.*

16. *It has also been admitted by him that neither appointment letter was issued by NFL to any of the workmen nor any letter terminating their services has been issued and further that none of workmen/claimants did not work with him at any point of time in the canteen. Even, it has been admitted that*

payments are made to employees by contractor in respect of performance of their duty as per terms & conditions of contract in the premises of NFL. An admission has also emerged in cross examination of WW1 to the effect that canteen where the workmen had been working was on contract through, he hastened to add that it was being supervised by the officers of NFL. It has also been clearly admitted by WW1 that service of workmen, who working in canteen were dispensed with by contract.

17. the question as to whether a contractual arrangement that is entered into by the principal employer with contractor is sham and bogus cannot be determined on a priori basis or non the basis of a formula with a universal application. In a law as in a life events, actions and circumstances determined outcomes. In case, Workmen of Nilgiri Co-op, Marketing Society Ltd. v/s State of Tamil Nadu and Ors., AIR, 2004 SC 1639, Hon'ble Supreme Court held that several factors would have a bearing on the issue those bearing (a) who is the appointing authority; (b) who is the paymaster: © who can dismiss; (d) how long does the alternative service last: (e) the extent of contract and supervision: (f) the nature of the job e.g. whether it is professional or skilled work: (g) the nature of the establishment: (h) the right to reject. The Hon'ble Supreme Court further held that it was a settled principle of law that the person who sets up a plea of the existence of an employer-employee relationship must discharge the burden that is cast upon him of establishing the existence of such a relationship.

18. Reverting to the facts to the case in hand, the case does not pass the test, laid down by the Hon'ble Apex Court in above said referred authorities. In the present case, NFL is neither appointment authority nor it is their paymaster. Neither, NFL has got right or jurisdiction to terminate the services of any of workmen nor it has any control or supervision nor the nature of establishment that is canteen can be said to be under direct control or supervision of NFL. So, taking case of workmen from any angles, they cannot be termed to be employees of

NFL. Especially, the canteen as has been discussed above that NFL is neither appointing authority nor it has terminated the services of any of workmen and further that as per the admission suffered by Naresh Kumar WW1, the services of workmen were terminated by contractor and not by NFL. So, in view of discussion made above and evidence available on file, it can be safely concluded that workmen have miserably failed to prove that there exists of relationship of employer & employee and as such, the instant reference is not maintainable. Moreover, once it has been held that workmen are not employees of management/respondent no.1/NFL, the question of termination of services by it does not arise at all. So, both these issues are decided accordingly.

Relief

19. In view of the findings on aforesaid issues, reference is answered in favour of the respondents/management and against the workmen/claimants. Consequently, instant reference stands dismissed. Moreover, parties are left to bear their own costs.

20. File be consigned to the Record Room.”

A perusal of the above extracted findings would reveal that the Tribunal has considered all the contentions raised before this Court, in accordance with the settled law, as indicated in the foregoing paragraphs. It has been held by the Tribunal below that in order to substantiate its claim, the petitioner-Union had examined only one witness, namely Sh. Naresh Kumar, President/General Secretary, National Fertilizers Labour Union Bathinda as WW-1; and there is no other evidence, either oral or documentary, in support of the claim of petitioner-Union. While referring to the cross-examination of the aforesaid witness – Sh. Naresh Kumar, the Tribunal below has observed that he categorically admitted that he never worked in the canteen and so far as the appointment of employees in respondent No.1-Management was concerned, the same was made under

rules and as per the procedure prescribed for it, after making publication in newspaper of vacancies obtaining applications, conducting tests and interviews; and the employees, who were selected, could be posted in India at any place. It was further admitted by the said witness that work was being got done by the respondent No.1-Management through contract system; and generally, the contract was given for one year to a contractor, which was sometimes extended. He further admitted that the employees were employed by the contractor to complete and perform the work taken by him on contract. It was clearly admitted by the aforesaid witness that neither any appointment letter nor any letter terminating the services had been issued by respondent No.1-Management to any of the workmen. It was also admitted that payments were being made to the employees by the contractor in respect of the performance of their duties as per the terms and conditions of contract in the premises of respondent No.1-Management.

The Tribunal below has further tested the claim of petitioner-Union that the contract between respondent No.1-Management and the contractor (respondent No.2 herein) was sham and camouflage on several factors, as indicated by the Hon'ble Supreme Court of India in the case of *Workmen of Nilgiri (supra)*: and it has been held that the instant case does not pass the test laid down by the Hon'ble Supreme Court, as indicated above.

15. Considering the evidence available on record, the Tribunal has recorded the finding of fact that respondent No.1-Management is neither the appointing authority nor is the pay master; and also that respondent No.1-Management has got no right to terminate the services of workmen. It has further been held that respondent No.1-Management does not have any control or supervision over the workmen; nor the nature of establishment,

i.e. Canteen, can be said to be under the control and supervision of respondent No.1-Management. Consequently, it has been held that workmen cannot be termed as employees of respondent No.1-Management; and thus, there is no relationship of employee and employer between the workmen and respondent No.1-Management.

16. Learned counsel for the petitioner-Union has failed to discharge the aforesaid findings returned by the Tribunal below and in the absence of same, no relief can be granted to the workmen.

17. As regards the contention of petitioner-Union that even if the workmen are employed in a canteen through the contractor then also they would become an employee of the principal employer, i.e. respondent No.1-Management; it is observed that the said contention is untenable in the light of the judgment rendered by Hon'ble Supreme Court in the case of ***“Balwant Rai Saluja v. Air India Ltd.”, 2014(4) S.C.T. 245***, wherein the Hon'ble Supreme Court was considering the following issue:-

“10. The main issue for consideration before this Court in the present reference is "whether workers, engaged on a casual or temporary basis by a contractor (HCI) to operate and run a statutory canteen, under the provisions of the Act, 1948, on the premises of a factory - Air India, can be said to be the workmen of the said factory or corporation".

After considering the matter in detail, the Hon'ble Apex Court held as under:-

“84. In our considered view, and in light of the principles applied in the Haldia case (supra), such control would have nothing to do with either the appointment, dismissal or removal from service, or the taking of disciplinary action against the workmen working in the canteen. The mere fact that the Air India has a certain degree of control over the HCI, does not mean that the employees working in the canteen are the Air

India's employees. The Air India exercises control that is in the nature of supervision. Being the primary shareholder in the HCI and shouldering certain financial burdens such as providing with the subsidies as required by law, the Air India would be entitled to have an opinion or a say in ensuring effective utilisation of resources, monetary or otherwise. The said supervision or control would appear to be merely to ensure due maintenance of standards and quality in the said canteen.

85. Therefore, in our considered view and in light of the above, the appellants-workmen could not be said to be under the effective and absolute control of Air India. The Air India merely has control of supervision over the working of the given statutory canteen. Issues regarding appointment of the said workmen, their dismissal, payment of their salaries, etc. are within the control of the HCI. It cannot be then said that the appellants are the workmen of Air India and therefore are entitled to regularisation of their services.

86. It would be pertinent to mention, at this stage, that there is no parity in the nature of work, mode of appointment, experience, qualifications, etc., between the regular employees of the Air India and the workers of the given canteen. Therefore, the appellants-workmen cannot be placed at the same footing as the Air India's regular employees, and thereby claim the same benefits as bestowed upon the latter. It would also be gainsaid to note the fact that the appellants-herein made no claim or prayer against either of the other respondents, that is, the HCI or the Chefair.

87. In terms of the above, the reference is answered as follows :

The workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the Act, 1948, and not for other purposes, and further for the said workers, to be called the employees of the factory for all purposes, they would need to satisfy the test of

employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers.

88. In view of the above, while answering the referral order, we dismiss these appeals. No order as to costs...”

18. 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”.

19. 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 30.04.2012 (Annexure P-13). Resultantly, the instant writ petition fails and the same is accordingly dismissed.

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

12.09.2023
Apurva

(HARSH BUNGER)
JUDGE

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No