

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

CWP-27035-2021 (O&M)
Date of Decision: 19.07.2023

DEV RAJ

...Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT-III, FARIDABAD AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Bhisham Kumar Majoka, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

Petitioner (Dev Raj) has filed the instant writ petition under Article 226 of the Constitution of India, seeking quashing of impugned Award dated 23.12.2016 (Annexure P-3) passed by respondent No.1-The Presiding Officer, Industrial Tribunal-cum-Labour Court-III, Faridabad; whereby, the reference has been answered against him.

A further prayer has been made for issuance of a writ in the nature of *mandamus* directing the respondents to reinstate the petitioner with all consequential benefits including full back wages along with interest @ 18% per annum.

2. Briefly, the petitioner herein raised an industrial dispute by filing his claim petition before the learned Tribunal below, wherein it was stated that he joined the services with respondent No.2

(M/s Sata Vikas (India) Pvt. Limited) on 19.12.2009 as CNC Operator after a trial in that regard, conducted by the Manager namely, Sh. Jitender Gautam and Supervisor-Sh. Shiv Pal. It was the case of the petitioner that the Management had taken an application from him at the time of joining, besides obtaining his signatures on ESI and PF Forms; however, no appointment letter, wage slip, leave book, ESI card and PF slip were issued to him. Petitioner alleged that the Management was exploiting the workers by fabricating records and thereby indulging in unfair labour practices. Petitioner claimed that his services along with 129 workers (including him) were illegally terminated by the respondent-Management on 15.04.2011, when these workers questioned the Management as to why they did not allow another co-worker namely, Narottam Sharma to join his duty on the said date. It was claimed that the services of the petitioner was illegally terminated.

3. On the other hand, the respondent-Management opposed the claim of the petitioner, *inter alia*, on the plea that there was no relationship of employee and employer between the petitioner and the respondent-Management. It was claimed by the respondent-Management that the petitioner was neither employed by it nor the Management used to supervise and control the work of the contractual workers. It is the stand of the respondent-Management that its company being a labour-oriented company, engaged labourers through five licensed contractors for operating unskilled work and in that regard, the Management had also obtained a certificate of registration from the Department of Labour. The deduction of Welfare Fund, PF and ESI from the salary of the petitioner-claimant was denied

by the respondent-Management as also the allegations of harassment and victimization. As per the respondent-Management, since there is no relationship of employee and employer between the parties; accordingly, there was no question of termination of the services of the petitioner-workman. Hence, the prayer for dismissal of the claim petition filed by the petitioner was made.

4. Respondent no.3, herein (M/s Sun Bright Services) also contested the claim of the petitioner-worker by filing its separate written statement, wherein it was stated that the petitioner was engaged and appointed as a Helper on 01.12.2009 and his last drawn salary was Rs.5,550/- p.m. According to respondent No.3, the services of the petitioner were never terminated and in fact, the petitioner-workman observed the strike on 14.04.2011 in front of the gate of respondent No.2-Company, where he had been assigned duty by respondent No.3. The appointment and engagement of petitioner by respondent No.3, herein was claimed. It was also the case of respondent No.3 herein that the respondent No.2-Company had obtained the certificate of registration under the Contract Labour (Regulation and Abolition) Act, 1970 and the respondent No.3 herein, had taken a license for working with respondent No.2-Company. Accordingly, prayer was made for dismissal of the claim petition filed by the petitioner.

5. On the basis of the stand taken by the respective parties, the issues were framed and the parties led their respective evidence.

6. In order to establish his case, petitioner-Dev Raj stepped into the witness box as WW1 and tendered his affidavit (Exhibit WA); wherein he reiterated the averments made in the claim petition. The petitioner further examined one Dalbir Singh as WW2, who had placed on record the

the following documents :-

<i>Exhibit</i>	<i>Document</i>
WW2/1	Copy of his appointment letter dated 26.12.2009.
WW2/2	Copy of letter dated 31.12.2010, confirming his services.
WW2/3	Relieving Certificate dated 28.01.2011.

Apart from the above-said documents, the petitioner-claimant had also produced the following documents :-

<i>Exhibit</i>	<i>Document</i>
<i>W1</i>	<i>Copy of the wage slip of the workman for the month of December 2009 issued by M/s Sun Bright Services.</i>
<i>W2</i>	<i>Copy of the notice dated 25.05.2011 issued by Labour-cum-Conciliation Officer, Palwal to respondent-Management.</i>
<i>W3</i>	<i>Copy of register of payment of wages in Form-4 for the month of March 2011.</i>
<i>W4</i>	<i>Copy of failure report submitted by Labour-cum-Conciliation Officer, Palwal under Section 12(4) of the Act to Labour Commissioner, Haryana, Chandigarh.</i>

7. On the other hand, the respondent No.2-Management examined Sh. BrijeshNandan Tiwari, Manager HR as MW1, who had tendered the following documents :-

<i>Exhibit</i>	<i>Document</i>
<i>MW1/1</i>	<i>Registration Certificate from Government of Haryana under CLRA Act.</i>
<i>MW1/2</i>	<i>Copy of the agreement entered with the contractor.</i>
<i>MW1/3</i>	<i>ESI returns of respondent-Company (M/s SattaVikas (India) Pvt. Limited)</i>
<i>MW1/4</i>	<i>PF returns</i>

Another witness namely, Laxman Singh, MW2, working as a Clerk in the Office of Assistant Labour Commissioner, Palwal, was also

examined, who had produced on record the following documents :-

<i>Exhibit</i>	<i>Document</i>
<i>MW2/1</i>	<i>Copy of order dated 28.08.2012 passed by Shri M.P. Bhargav, the then Authority under Payment of Wages Act, Palwal in case No.2/2011.</i>
<i>MW2/2</i>	<i>Receipt showing that the petitioner-workman had received the payment of wages.</i>
<i>MW2/3</i>	<i>Photocopy of the pass book of the workman.</i>
<i>MW2/4</i>	<i>Cop of the Cheque; whereby respondent-Management had deposited the payment of wages with the Authority.</i>

8. After considering the pleaded case of the respective parties and also the material/evidence available on the record, the Tribunal answered the reference against the petitioner-workman vide impugned Award dated 23.12.2016 (Annexure P-3) holding that he is not entitled to get any relief.

9. In the afore-mentioned circumstances, the instant writ petition has been filed.

10. Learned counsel for the petitioner submits that the impugned Award dated 23.12.2016 (Annexure P-3) passed by learned Presiding Officer, LabourCourt-III, Faridabad is arbitrary and against the established principles of law. It is submitted that the petitioner is an employee of respondent No.2-Company for all intents and purposes as the petitioner worked under the control, management and supervision of respondent No.2 and there is sufficient evidence in that regard on the record of the case; however, the same has been overlooked by the learned Tribunal below. It is contended that the petitioner has been shown in the records as contract labourer; whereas in fact, they are the workers of respondent No.2-Company. It is also contended that the impugned award is contrary to the

judgments of the Hon'ble Supreme Court rendered in *Jasmer Singh vs State of Haryana (Civil Appeal No.346 of 2015* decided on *13.01.2015*) and *Harjinder Singh vs Punjab State Warehousing Corporation (Civil Appeal No.587 of 2010*, decided on *05.01.2010*). Accordingly, it is submitted that the impugned Award be quashed and the petitioner be directed to be re-instated in service with all consequential benefits.

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

12. In the instant case, the petitioner has categorically averred that he was appointed by respondent No.2 herein as a CNC Operator on 19.12.2009. Concededly, no appointment letter, wage slip, leave book, ESI card/PF slip was ever issued to the petitioner. The petitioner claims that he was shown as a contract labourer; whereas, in fact, he was the worker of respondent No.2-Company herein.

13. On the other hand, the respondent No.2-Management has categorically denied that it had ever appointed the petitioner and the relationship of employee and employer between the parties was denied. Apart thereof, respondent No.3 herein i.e. M/s Sun Bright Services, had taken a stand that in fact, the petitioner was appointed as a Helper on 01.12.2009 by their company; however, the petitioner was not recognizing it as his employer.

14. From the stand of the respective parties, the core question to be considered in this case is as to whether there exists relationship of employee and employer between the petitioner and respondent No.2-Company i.e. M/s Sata Vikas (India) Private Limited. It is a well settled law that the onus to prove the relationship of employee-employer is upon the worker

himself.

15. The learned Industrial Tribunal, Faridabad vide impugned Award dated 23.12.2016 (Annexure P-3), has returned the following findings :-

“16. Now coming to the facts of the present case, it may be noticed that no appointment letter has been produced by the workman in order to show that he was in the direct employment of respondent No.1 company. Rather the wage slip Ex. W1 and the copy of register of payment of wages Ex. W3, on which much reliance has been placed by learned AR appearing on behalf of the workman, would, in itself, show that the claimant-workman was the employee of the contractor M/s Sun Bright Services. In addition to it, the respondents have led overwhelming evidence to prove that salary was being paid to the claimant by contractor and the contribution which is made from the salary of the workman to the ESI and PF department was regularly being deposited by the contractor only. Copies of the PF returns Ex. MW4/1 for the period from March 2009 to February 2011 shows that contribution in respect of workman Dev Raj towards PF was being deducted by respondent No.2 contractor M/s Sun Bright Services and deposited to the Provident Fund Authorities during the aforesaid period. Similarly, the ESI returns for the period from October 2009 to March 2011 Ex.MW4/2 would reveal that the contractor had been depositing the contribution of ESI to the ESIC. Moreover, MW4 Dinesh Kumar, HR Executive of the contractor, has also stated clearly that they used to pay salary to the claimant and they used to control and supervise the work of the claimant. It is pertinent to note here that there is no cross-examination on this point from the side of the claimant; meaning thereby that the claimant himself

admits that salary was being paid to him by the contractor and his work was also being controlled and supervised by the contractor. Moreover, it has also come into the testimony of Brijesh Nandan Tiwari, MW1, who is working as Manager HR of the respondent No.1 company, that the claimant was never employed by them and the name of the workman does not exist in the records of the attendance as well as payment of wages register of the respondent No.1 company for the period from 2009 to 2012. Even in the ESI and PF returns for the said period, placed on record as Ex.MW1/3 and Ex.MW1/4 by MW1, the name of the workman does not find mention. Had the claimant had been in the employment of respondent No.1 company, his name would have certainly appeared in the attendance record, wages record as well as in the ESI and PF returns being submitted by respondent No.1 company to the concerned authorities.

17. Further, in the earlier proceedings arising under Payment of Wages Act, although respondent No.1 management was directed to pay the due amount of wages to the applicants including the workman Dev Raj, yet respondent No.1 management was allowed to recover the amount so paid from respondent No.2 contractor, as would be evident from the copy of the order dated 28.2.2012 Ex.M2/1 passed by the Authority.

In compliance of the aforesaid order of the Authority, respondent No.1 company also deposited due amount of wages amounting to Rs.1,68,503/- vide cheque Ex.MW2/4 and the workman also received the wages vide receipt dated 15.5.2014 which is Ex. MW2/2. This aspect of the matter also cannot be overlooked.

18. As regards the contention raised on behalf of the workman that non-obtaining of the registration by principal employer and licence by the contractor under

CLRA Act, the workman would be treated as an employee of the principal employer i.e. M/s SataVikasPvt. Limited, the same cannot be accepted in view of the proposition of law laid down by the Hon'ble Supreme Court in the case of Dena Nath and others versus National Fertilizer Limited and others 1992 LLR page 46 (SC)...

19. However, in the present case, MW1 has clearly stated in his affidavit that respondent No.1 company has obtained registration certificate from the Government of Haryana under CLRA Act and it has been engaging contract employees through different contractors vide agreement Ex. MW1/2. Otherwise also, it may be seen that respondent No.2 contractor in its written statement stated as specifically pleaded in para No.7 on merits that it has taken a licence for working with respondent No.1 company. But there is no specific denial to these averments on behalf of the workman. Rather in para No.7 of his demand notice, the workman himself has stated clearly that the work in the establishment of respondent No.1 company is of perennial nature and he has been working continuously there and therefore, the question of applicability of CLRA Act does not arise. As such the workman now cannot be heard complaining that the contractor was not having any licence as per section 12 of CLRA Act.

Even for the sake of arguments, it is assumed that the Principal Employer respondent No.1 company had not obtained registration u/s 7 or the Contractor respondent No.2 did not get licence u/s 12 of the CLRA Act, as being projected on behalf of the workman, then also, as held by the Hon'ble Supreme Court in Dena Nath's case (supra), but non-obtaining of the registration by the Principal Employer and licence by the Contractor under CLRA Act does not ipso facto entitle

the workman to claim the status of the direct employee of the Principal Employer.

20. *It is also the submission of the learned AR appearing on behalf of the workman that respondent No.1 company was not having any valid agreement with respondent No.2 for supply of contract labour. These submissions being beyond pleadings cannot be looked into. Otherwise also, it is for the workman to aver and prove that respondent No.1 was not having any valid agreement with respondent No.2 or that the agreement Ex. MW1/2 is void or uncertain, which the workman has failed to do so.*

Another contention raised on behalf of the workman is that the contractor respondent No.2 could not have deployed the workman as a CNC Operator in the establishment of respondent No.1 company and the fact that the workman has worked there in such capacity would, in itself, establish that the workman was the direct employee of respondent No.1 company. These contentions are again devoid of any merit and hence cannot be accepted. It may be noticed here that as per the Schedule of Haryana Contract Labour (Regulation & Abolition) Rules, 1975 there is no bar to employ any workman through contractor to work as a CNC Operator in the establishment of respondent No.1 company.

21. *Thus, viewed from any angle, the workman has not been able to prove on record that he was a direct employee of respondent No.1 company. Rather the respondent No.1 has been successful in proving that the workman was not their employee and he was the employee of respondent No.2 contractor inasmuch as not only the salary was being paid to him by the contractor but it was only the contractor who used to control and supervise his work. Accordingly, both these issues are decided against the workman."*

16. A perusal of the aforesaid findings returned by the learned Tribunal below would manifest as follows :-

- (i) that there is no appointment letter has been produced by the workman;*
- (ii) that the wage slip (Ex. W1) and register of payment of wages (Ex. W3) show that the workman was the employee of the contractor (M/s Sun Bright Services);*
- (iii) that the copies of the PF returns (Ex. MW4/1) for the period from March 2009 to February 2011 show that contribution in respect of workman Dev Raj towards PF was being deducted by respondent No.2-contractor (M/s Sun Bright Services) and deposited with the Provident Fund Authorities;*
- (iv) that the ESI returns for the period from October 2009 to March 2011 (Ex. MW4/2) reveals that the contractor had been depositing the contribution of ESI to the ESIC;*
- (v) that in the earlier proceedings arising under Payment of Wages Act, although the Management was directed to pay the due amount of wages to the workers including workman-Dev Raj (petitioner), yet the Management was allowed to recover the said amount from the contractor.*

Upon considering the totality of circumstances, the learned Tribunal below has recorded a finding of fact that the petitioner-workman had failed to prove on record that he is a direct employee of respondent No.2-Company herein and it was proved that he was an employee of the contractor.

17. It is well settled that 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.

18. The reliance placed by learned counsel for the petitioner on the judgments rendered by the Hon'ble Apex Court in *Jasmer Singh's* case (supra) as well as *Harjinder Singh's* case (supra), are misplaced as the said judgments are distinguishable on facts. In *Jasmer Singh's* case (supra), a finding of fact had been recorded by the learned Tribunal that the petitioner therein had completed more than 240 days of continuous service and accordingly, the relief was granted to the employee. However, the writ Court, had set aside the Award passed by the learned Tribunal and the said order was affirmed by the LPA Bench.

In those circumstances, the Hon'ble Supreme Court, after considering the law on the subject and going by the finding of fact recorded by the learned Tribunal below, had restored the order passed by the Tribunal.

Further in *Harjinder Singh's* case (supra), the issue before the learned Tribunal was regarding violation of the provisions of Section 25-G of the Industrial Disputes Act, 1947 and in reference to the same, the learned Tribunal had granted relief to the workman therein.

In the said case also, the order of the learned Tribunal below was set aside by the Writ Court, by awarding compensation. However, the Hon'ble Supreme Court, after considering the findings recorded by the learned Tribunal below, had restored the order of Tribunal.

19. Furthermore, the peripheries of exercising *certiorari* jurisdiction stand authoritatively delineated by the Hon'ble Supreme Court in *Syed Yakoob v. K. S. Radhakrishnan, AIR 1964 Supreme Court 477*;

wherein it was observed as under :-

"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 is in excess of it, or as a result of failure to exercise jurisdiction. 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 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 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.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and

one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened."

20. Since the petitioner has failed to prove on record that there is a relationship of employee-employer between him and respondent No.2-Company; accordingly, I do not find any illegality or perversity in the findings returned by the learned Tribunal.
21. The instant writ petition is therefore dismissed.
22. All pending application/s, if any, shall stand closed.

July 19th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No