

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

**CWP-27745-2022 (O&M)
Date of Decision: 04.09.2023**

SAROJ

...Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT-I, FARIDABAD AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Paramjit Singh Jammu, Advocate
for the petitioner.

HARSH BUNGER, J.

1. Petitioner (Saroj) has filed the present petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of *certiorari* for quashing of impugned award dated 12.09.2022 (Annexure P-1) passed by respondent No.1-Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad (here-in-after referred to as 'the Tribunal') in Ref. No.67 of 2017, whereby the reference of industrial dispute has been decided against her.

2. Briefly, the petitioner raised an industrial dispute by submitting her claim application under Section 2A(2) of the Industrial Disputes Act, 1947 (here-in-after referred to as 'the Act, 1947') on the plea that she has been working with the Municipal Corporation, Faridabad (here-in-after referred to as 'the Management') as Sweeper since 27.12.2017 on monthly salary of Rs.13,000/-. It was stated that 3300 workers were working in this establishment and she was orally transferred by the Management at Old

Faridabad Zone Ward No.24, Agwanpur, Palla on 24.02.2018, where she

was working as Sweeper and then, she was again transferred by the Management at a new place i.e. NIT, Division NH-4, Faridabad, vide letter dated 30.01.2019 and she was continuously doing her job w.e.f. 05.03.2019 by noting her attendance and her work and conduct remained satisfactory during her service period. It is the case of the petitioner that the Management had taken her signatures on several blank papers, vouchers and forms on the pretext of pension scheme; however, her services were terminated on 05.03.2019 in an illegal manner and she was also not paid earned wages for the months of January, February and five days of March, 2019. Petitioner claimed that the worker junior to her, is working in her place and that she had completed more than 240 days in a calendar year; therefore, the termination of her services were in violation of principles of natural justice as well as the mandatory provisions of Sections 25-F and 25-G of the Act, 1947.

3. The afore-said claim of the petitioner was contested by the respondent-Management; wherein a categorical stand was taken that there was no relationship between the Management and the petitioner as the petitioner is not an employee of the Municipal Corporation, Faridabad. It was stated that in fact, the petitioner was an employee of M/s Imperial Electrical and Allied Services (for short 'IEAS'), who was engaged as a service provider as per outsourcing policy. Accordingly, it was prayed that the petitioner was not entitled to any relief.

4. It appears that the petitioner had also submitted her rejoinder to the written statement filed on behalf of respondent-Management.

5. From the pleadings of the parties, the issues were framed and evidence was led by the respective parties.

6. Upon considering the material/evidence on record, the learned Tribunal below rejected the claim of the petitioner by answering the reference against her vide impugned Award dated 12.09.2022 (Annexure P-1).

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

8. Learned counsel for the petitioner has submitted that the initial appointment of the petitioner was through an outsourcing agency namely, IEAS. However, subsequently after the developed HUDA Sectors and its markets were handed over to Municipal Corporation, Faridabad; then the employees working in HUDA Sectors were also decided to merge into the Municipal Corporation, Faridabad. In this regard, reference has been made to certain letters dated 13.02.2017 and 20.02.2017 (Annexures P-2 and P-2A, respectively) as well as General Instructions issued by the State (Annexure P-2/B). It is submitted that the petitioner was transferred to Old Faridabad Zone, Ward No.24 on dated 24.02.2018 and thereafter, again transferred to NIT Division NH4, Faridabad vide letter dated 30.01.2019 and in this regard, reference to Annexures P-5 and P-6 has been made. Petitioner submits that in fact one Som Lata Badana, who is a Municipal Councillor, Faridabad had made a complaint (Annexure P-7) against the petitioner due to some personal reasons and it is on account of the said fact that the petitioner was terminated from the job without complying with the provisions of the Act, 1947. It is submitted that the learned Tribunal below has erred in holding that the petitioner has failed to prove that she was an employee of respondent No.2-Municipal Corporation, Faridabad. It is submitted that the transfer orders pertaining to the petitioner have been

passed by respondent No.2-Corporation and accordingly, it could not be said that the petitioner is not an employee of respondent No.2-Municipal Corporation. Learned counsel for the petitioner submits that the findings returned by the learned Tribunal that there is no relationship of employer and employee between the parties, is wrong and perverse. It is the case of the petitioner that her initial appointment was from outsourcing agency; however, subsequently, she was inducted as *Safai Karamchari* of respondent No.2-Municipal Corporation, Faridabad. Accordingly, it is contended that the petitioner is entitled to the protection under the provisions of the Industrial Disputes Act.

With the afore-said submissions, prayer has been made for quashing of impugned Award dated 12.09.2022 (Annexure P-1) passed by the learned Tribunal.

9. A further prayer has been made for directing the respondents to reinstate the petitioner with all consequential benefits.

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

11. Here it would be apposite to refer to few judicial pronouncements as would be gainful for the present case.

12. In *Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu and others, (2004) 3 SCC 514*, Hon'ble Supreme Court held as under:-

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

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

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

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

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

50. The question whether the relationship between the parties is one of the employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse..."

13. In *Kirloskar Brothers Limited v. Ramcharan 2023(1) SCC 463*, Hon'ble Supreme Court while considering an issue regarding employee employer relationship in reference to the provisions contained in the Contract Labour (Regulation & Abolition) of the Act, 1970 (in short 'CLRA Act') held as under:-

4.1 On going through the entire material on record, no documentary evidence was produced, by which it can be said that the contesting respondents were the employees of the appellant. There is no provision under Section 10 of the CLRA Act that the workers/employees employed by the contractor automatically become the employees of the appellant and/or the employees of the contractor shall be entitled for automatic absorption and/or they become the

employees of the principal employer. It is to be noted that even the direct control and supervision of the contesting respondents was always with the contractor. There is no evidence on record that any of the respondents were given any benefits, uniform or punching cards by the appellant.

4.2 Under the contract and even under the provisions of the CLRA, a duty was cast upon the appellant to pay all statutory dues, including salary of the workmen, payment of PF contribution, and in case of non-payment of the same by the contractor, after making such payment, the same can be deducted from the contractor's bill. Therefore, merely because sometimes the payment of salary was made and/or PF contribution was paid by the appellant, which was due to non-payment of the same by the contractor, the contesting respondents shall not automatically become the employees of the principal employer - appellant herein.

*4.3 Even otherwise, as observed hereinabove, in the absence of a notification under Section 10 of the CLRA Act unless there are allegations or findings with regard to a contract being sham, private respondents herein, who are as such the workmen/employee of the contractor, cannot be held to be employees of the appellant and not of the contractor. At this stage, the decision of this Court in the case of **Steel Authority of India Ltd. and Ors. v. National Union Waterfront Workers and Ors.** (supra) is required to be referred to. Following two questions fell for consideration before this Court:-*

A. whether the concept of automatic absorption of contract labour in the establishment of the principal employer on issuance of the abolition notification, is implied in Section 10 of the CLRA Act; and

B. whether on a contractor engaging contract labour in connection with the work entrusted to him by a principal employer, the relationship of master and servant between him (the principal employer) and the contract labour, emerges.

4.4 After considering various decisions of this Court on the point, in paragraph 125, it was concluded as under:-

"125. The upshot of the above discussion is outlined thus:

(1)(a) Before 28-1-1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government;

(b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause (a) of Section 2 of the Industrial Disputes Act; if (i) the Central Government company/undertaking concerned or any undertaking concerned is included therein eo nomine, or (ii) any industry is

carried on (a) by or under the authority of the Central Government, or (b) by a railway company; or (c) by a specified controlled industry, then the Central Government will be the appropriate Government; otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2)(a) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government:

(1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and

(2) having regard to

(i) conditions of work and benefits provided for the contract labour in the establishment in question, and

(ii) other relevant factors including those mentioned in sub-section (2) of Section 10;

(b) Inasmuch as the impugned notification issued by the Central Government on 9-12-1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.

*(4) We overrule the judgment of this Court in **Air India case [(1997) 9 SCC 377]** prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in **Air India case [(1997) 9 SCC 377]** shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.*

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the

contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

4.5 Thus, as observed and held by this Court, neither Section 10 of the CLRA Act nor any other provision in the Act, expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or any other work in any establishment and consequently, the principal employer cannot be required to order absorption of the contract labour working in the

establishment concerned. It has further been observed and held by this Court in the aforesaid decision that on issuance of prohibition notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labour or otherwise, in case of an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefits thereunder.

4.6 In the present case, neither any notification under Section 10(1) of the CLRA Act has been issued prohibiting the contract labour, nor there are allegations and/or even findings that the contract is sham and bogus and/or camouflage.

*4.7 In the case of **International Airport Authority of India v. International Air Cargo Workers' Union and Anr.** (supra), after considering the decision of this Court in the case of **Steel Authority of India Ltd. and Ors. v. National Union Waterfront Workers and Ors.**(supra), it has been observed and held by this Court that where there is no abolition of contract labour under Section 10 of the CLRA Act, but the contract labour contends that the contract between the principal employer and the contractor is sham and nominal, the remedy is purely under the ID Act. It is further observed that the industrial adjudicator can grant the relief sought if it finds that the contract between the principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employee and that there is in fact a direct employment, by applying tests like: who*

pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short, who has direct control over the employee. It is further observed that where there is no notification under Section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was a sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularise the services of the contract labour does not arise. It has further been observed in paragraphs 38 and 39 as under :-

"38. The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will

work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

4.8 Applying the law laid down by this Court in the aforesaid two decisions to the facts of the case on hand and in the absence of any notification under Section 10 of the CLRA Act and in the absence of any allegations and/or findings that the contract was sham and camouflage, both the Industrial Tribunal as well as the High Court have committed a serious error in reinstating the contesting respondents and directing the appellant - principal employer to absorb them as their employees. The parties shall be governed by the CLRA Act and relief, if any, could have been granted under the provisions of the CLRA Act and not under the MPIR Act.

14. In the instant case, the learned Tribunal below has considered the claim petition of the petitioner in detail and has returned the following findings :-

"10. No doubt as argued by the Learned AR for the claimant since in this case, as per the respondent, MCF, the claimant is alleged to be a contract labourer as per the provision of The Contract Labour (Regulation & Abolition) of the Act, 1970, the onus to prove, it was upon the respondent, especially when it is alleged that this defence is manipulated and sham and thus it be ignored and the claim is allowed.

11. Admittedly in this regard, in M/s Steel Authority of India Ltd. vs. National Union Water Front Workers & Ors. etc. etc. 2001(7) SCC 1, the Hon'ble Supreme Court has also considered a question as to

whether on a contractor engaging contract labourer in connection with the work entrusted to him by principal employer, the relationship of master and servant between the principal employer and contract labour emerges? And it was held by the Hon'ble Apex Court held that no such relationship of employer and employee can exist between a contract labourer and principal employer unless it is shown that the contract between the principal employer and labourer contractor is proved to a sham and nominal rather a camouflage after piercing the veil and declaring the contract as sham. The same was the view of the Hon'ble Supreme Court in Hussainbhai, Calicut And Alath Factory Thozhilai Union, Calicut and others, 1978, II, LLJ. 397. And this very proposition was reiterated by the Hon'ble Punjab and Haryana High Court in Punjab State Electricity Board Vs. Presiding Officer, Labour Court, Amritsar, 2005(107) FLR 991.

12. Accordingly during the course of arguments, learned AR for the claimant argued that the entire stand taken by respondent, MCF in its reply and evidence proved to be false and manipulated as there is sufficient cogent evidence on record which proves that the claimant was a regular employee of the respondent MCF and it use to transfer her from one place to other. In support of his contention, he has relied upon copy of the relieving order Exhibit WW-A issued by the Sanitary Inspector of the respondent, MFC vide which the claimant was allegedly relieved from her duties alleging that it is by terminating her.

13. Then he also relied upon the copy of office order dated 30.01.2019 of the MCF, marked as Ex.WW-B vide which she was transferred from one ward to other area of the MCF and lastly he also relied upon office order dated 20.02.2018 copy of its exhibit W-X and submitted that vide this order, the claimant was initially posted in Ward No.2

old Faridabad Zone and she was under supervision of Lal Chand Rawat, Sanitary Inspector and lastly, it is admitted case of MW-1 that claimant has worked 27.12.2017 to 05.03.2019 under the MCF and she was being posted to different places and thus, this evidence clearly proves that she was the regular employee of the respondent MCF and even MW-2 another sanitary Inspector of the respondent MCF has also admitted these facts and thus the claim of the claimant be allowed as she has been terminated illegally without conducting any enquiry or show cause notice despite the fact that it was alleged that there was a complaint of misconduct against her, copies of which are Ex.W-3 and Ex.W-4, which leads to her termination and thus a inquiry was required to be conducted and thus the impugned order, Ex.R-5 is illegal.

14. Applying the above referred legal proposition to the facts in hand and after considering the contentions of both the parties vis-à-vis evidence on record, it comes of that in its written statement itself, the respondent, MCF has taken a categorical stand that the claimant was never employed or otherwise engaged by it, on the contrary, she was employed as a contractual labourer through M/s Imperial Electrical as per a service provider tender issue in its favour and thus there is no relationship of employer and employee between the parties.

15. It was also alleged that no doubt the claimant used to work as a sweeper as a contractual employee and her services were being taken at different places as per the requirement. But during it, a complaint was made against her by a councillor and a report was also made by the In-charge of cleanliness branch against her for indulging into uncalled for behaviour including abusing the official of the MCF on duty and threatening them, copies of which are Ex.R-3 and Ex.R-4 and on the basis of that report, the respondent, MCF asked the contractor to take her back as

per the letter Ex.R-5, which is being wrongly alleged as a termination order and thus the reference is not maintainable against it.

16. However as per the learned AR for the claimant, the evidence on record is sufficient to pierce the veil behind the plea put forwarded by the respondent, MCF being a sham and camouflage and thus a false plea. As such, let us take the evidence in this regard and to see whether the plea raised by the claimant is well founded and the plea of claimant being a contract labourer is merely a sham and manipulated one.

17. During the course of arguments, it is admitted case of the learned AR for the claimant that the respondent, MCF being a statutory body is bound by the Government rules and regulations, is require to issue appointment order in case it employs any employee may be adhoc, contractual or temporary or otherwise but no such order was placed on record as admitted by the claimant herself during her cross examination further admitting that she has also no other proof in this regard but in order to wriggle out of legal implications she tried to allege that no such order was given to the claimant and she was allowed to work without any such order, which cannot be a plausible explanation. But she also admitted that she cannot say how and who engaged her and who terminated her. Then the other proof could have been the payment of salary or wages to the claimant by the respondent, MCF showing her on its Muster rolls but no such evidence has been brought on record. Rather claimant also admitted that she cannot say what salary was paid to her without saying that it was being paid by the MCF.

18. On the contrary, when claimant summoned the official of the respondent, MCF along with copies of Muster rolls and wages and attendance record of the sweeper working under the MCF for the relevant period,

WW-2, placed on record the copy of list employees on the muster rolls of the MCF, Ex.W-3 and complete copy of the stock register consisting of 136 pages, vide which different article related to cleanliness duty was being issued to the employees, Ex.W-4 and it is admitted fact that the name of the claimant is not in these lists as these articles are issued only to the permanent employees of the MCF and she was never on the muster rolls of the MCF. It was also explained by WW-2 that the attendance of the claimant being a contractual employee was being marked by the contractor only and payment of salary or wages was also made by that agency, whose name was also disclosed by him as M/s Imperial Electrical & Allied Services.

19. Then it is not case where a private company is the employer, who can manipulate the records to save itself from granting legal rights to its employees as per ID Act, by showing them as contractual employees or fixed term contract employees. On the other hand, the respondent being a statutory municipal body cannot do so just to cause loss to the claimant alone. Rather as per the respondent, MCF, IEAS provided almost 469 unskilled, semi skilled and skilled contractual employees to the MCF and the claimant has failed to cite the example of any other employee who comes forward to deny it. Thus, on this ground alone, the plea of the claimant that the evidence of the respondent, MCF is manipulated and doubtful and proved to sham and created one, is proved to be plea factual and legally misconceived and the stand of the claimant is liable to be discarded for want of any cogent evidence on record to prove herself to be a employee of the respondent, MCF as per section 2(s) of the ID Act.

20. In addition to above, the respondent, MCF has placed on record, the complete record to prove that the claimant was one of the contractual manpower as provided to it by IEAS as per the contract and supporting documents

as proved on record by MW-1 and MW-2, two official of the respondent, MCF and as per the testimony of these witnesses, it is proved on record that as per the tender floated by the Respondent, MCF for providing manpower to the respondent MCF for various posts under outsourcing policy of the Government, IEAS also submitted its tender and vide letter dated 09.03.2016, copy of which is part of Ex.R-1, the tender of the said IEAS was accepted for various posts of skilled, unskilled and semi skilled manpower along with number of posts under each of the category and it includes 104 posts of SafaiKaramchari (sweepers).

21. Then it is also proved that accordingly, a agreement dated 18.03.2016 as required under the provisions of Act of 1970 was duly executed between the parties, which is also part of Ex.R-1 and then it is also proved that as per this agreement, the contractor, IEAS provide the requisite manpower including the sweepers and the claimant was one of those contractual employees as is clear from the letter, copy of which is Ex.R-2 written by IEAS as vide this letter some of the sweepers joined their duties and the name of the claimant is at serial number 16 of this letter and it is admitted case of the claimant that she joined the MCF on the above date as admitted by her in her examination in chief itself by way of affidavit, Ex.WW-1/A. During the course of argument, learned AR for the respondent has also placed on file various other letters, which are also part of Ex.R-1 vide which the above contract of IEAS was extended from time to time till 31.07.2019 and thereafter, the above services was taken from a different contractor. Thus, from this evidence which cannot be manipulated or fabricated, it is proved that the claimant was one of the contractual employees as provided to MCF by the contractor, IEAS, who is proved to be the actual employer of the claimant

and thus on this evidence alone, which is clinching, the case of the claimant is proved to be baseless and not maintainable for want of relationship of employer and employee between the parties.

22. *So far as the plea of learned AR for the claimant that since the claimant was being transferred from one place to other place by the respondent MCF, it shows that she was working under the supervision of respondent, MCF as its actual employer and the contract was a sham document, is concerned, this plea is totally misplaced factually and legally misconceived because as per the terms and conditions of the agreement, the contractor will be a service provider under the provision of the Contract Labour Act and it is a contract for providing manpower for various services and it was for the MCF to post them for the required services at the places required and there was no bar on the MCF not to depute such manpower to any place or to shift it from one place to other and it cannot be an instance of transfer from one post to other or one place to other. Then, certificate Mark-B though not admissible in evidence, even if considered, is just a proof that she was working under MCF which fact is otherwise not disputed and thus, cannot be a proof of employment.*

23. *And then the further terms and conditions also provides that it is agreed between the parties that the persons employed by the service provider for providing various services as per tender shall be the employees of the service provider only and not of the MCF. It shall be the duty of service provider to pay the wages or salaries to all such employees including statutory benefits under the law including minimum wages etc. and lastly all the disciplinary proceedings were also under the service provider and the MCF will not be taken as the employer of such employees for such proceedings and even the attendance of such employees and submission of monthly*

wage bill was the responsibility of the IEAS and thus it is apparent from all those terms and conditions that the respondent, MCF was having no relationship of employer and employees with those contractual employees. Thus, the fact remains that there is nothing to disbelieve the documentary evidence as duly proved on record and thus no further evidence required to conclude that claimant was never but she was one of the contractual employees as provided by the IEAS, who is proved to be the actual employer of the claimant.

24. *So far as the plea that as per the relieving order, Ex.WW-A, the services of the claimant was terminated by the respondent MCF and she was relieved, is concerned, this plea is also factual wrong because Ex.WW-A is just a relieving order vide which the claimant was relieved from her duty as per the shifting order 30.01.2019, vide which the area of working of the claimant was shifted from ward No.24 to NH-4, NIT Zone, as per order copy of which is Ex.WW-B and this is already held to be not a transfer order of the claimant as an employee of the MCF but adjustment of the contractual employee which is not barred under agreement as service provider has to render its services as per the co-ordination and guidance of the MCF, being principal employer. As such this plea also proved in vein to create any dent in the defence of the respondent, MCF.*

25. *So far as the legal implications of the letter dated 25.02.2019, copy of which is Ex.R-5 as written by the MCF to the contractor IEAS is concerned, as per the learned AR for the claimant, it is the termination order passed by the MCF but this plea is totally misplaced and factually wrong as vide this letter, the commissioner of the respondent, MCF asked the service provider M/s IEAS to withdraw the claimant from its service with immediate effect and thereafter the entire issue was between claimant and*

service provider as she was the employee of the service provider and if any adverse order has been passed by the contractor, she has every right to sue him by raising a industrial dispute but this claim is not maintainable. And in this regard, it is also proved that since there was a complaint against the claimant by a councillor and then by a senior employee who is supposed to inspect and supervise the services of the claimant from time to time, copies of which are Ex.R-3 and Ex.R-4 and there were allegations of misconduct on the part of the claimant, the MCF wrote to her employer, IEAS to withdraw her as it was not competent to take any other action against her as she was not employee of MCF. As such, this letter cannot be treated as a termination order.

26. *On the other hand, as held above, once it is proved that the claimant is not a employee of the respondent, MCF, she has no right to seek any claim under the ID Act as no industrial dispute is maintainable against the respondent for want of relationship of employer and employee and the plea of the claimant that defence is just a camouflage is also proved to be plea without any cogent evidence.*

27. *So far as the other case law relied upon by the AR for the claimant is concerned, in **Manufacturing of KSB Pumps Ltd. Vs. Presiding Officer, Labour Court, 2012, LLR. 824**, it was proved on record that the plea of the private management that the claimant is a contractual employee is not proved as the alleged agreement itself was not produced and then the stand of the management was otherwise found to be false factually, whereas in this case the position is otherwise as per the discussion made above, as such, this case law is of no help to the claimant being based on different and distinguishable facts.*

28. *As a outcome of above discussed legal and factual position, it is concluded that the claimant has failed to*

prove herself an employee of the respondent, MCF as per the requirements of Section 2(s) of ID Act and thus she has no right to maintain this reference and thus the same is held to be not maintainable and the claimant has no right to seek any further relief against the respondent. Though being an employee of the contractor, IEAS, she has every right to avail legal remedies as available to her against that contractor. Resultantly, this issue is answered against the claimant.

Issue No.2 and 3

29. *In view of findings on issue No.1, once the claimant is not proved to be an employee of the respondent, MCF, she is not entitled for any relief whatsoever, rather, the reference in hand is held to be not maintainable against the respondent, MCF. Thus issue No.2 is accordingly, answered against the claimant, whereas issue No.3 is answered in favour of the respondent.*

Relief

30. *As a sequel to above discussion and findings on above issues, especially issue No.1, the reference in hand is held to be not maintainable and thus stand dismissed, leaving both the parties to bear their own costs. However, the claimant shall be at liberty to seek appropriate legal remedies as available to her under the law against the contractor as per the law and nothing stated in this judgment shall be misconstrued as an expression of opinion on the merits of that controversy. Let a copy of this judgment be sent to competent authority for publication of award as per section 17 of the ID Act. File be consigned to record room after due compliance.”*

15. The afore-said findings returned by the learned Tribunal below would manifest that each and every submission made in the instant petition has already been considered by the learned Tribunal below. Learned

Tribunal below, after considering the evidence/material on record, has recorded a finding that the petitioner was one of the contractual employees as provided to the Municipal Corporation, Faridabad by the contractor i.e. IEAS, who has been proved to be the actual employer of the petitioner. Accordingly, it has been held that there is no relationship of employer and employee between the parties.

16. As regards the submission of learned counsel for the petitioner that the relationship of employer and employee is proved from the transfer orders in respect of the petitioner, it has been observed that the petitioner was relieved from her duty as per the shifting order dated 30.01.2019, vide which, the area of working of the petitioner was shifted from Ward No.24 to NH-4, NIT Zone, as per order (Exhibit WW-B), which has been held to be not a transfer order of the petitioner as an employee of Municipal Corporation but adjustment of the contractual employee, which has been held to be not barred under the agreement as the service provider has to render its services as per the coordination and guidance of the Municipal Corporation, Faridabad, being the principal employer.

17. It is apposite to state here that even in the writ petition, the petitioner has categorically admitted that her initial appointment was through outsourcing agency namely; IEAS. It appears that the petitioner has tried to take the benefit of the Act, 1947 by contending that she was an employee of the respondent-Municipal Corporation; whereas, she was in fact engaged by the outsourcing agency.

18. A perusal of the findings returned by the learned Tribunal would manifest that the same have been rendered on the basis of the material/evidence on record and the learned counsel for the petitioner has

failed to dislodge the afore-said findings. Once the petitioner has failed to prove the relationship of employee and employer between her and the respondent-Management, no relief can be granted to her.

19. The peripheries of certiorari jurisdiction of High Court stands authoritatively delineated in ***Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 Supreme Court 477***, wherein Hon'ble Supreme Court held 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 mis-interpretation 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. Keeping in view the above principles and also the legal position indicated above, once there is clear admission of the petitioner that she was initially appointed by the outsourcing agency; coupled with the fact that she has not shown any appointment order issued by the respondent-Municipal Corporation directly, this Court is of the opinion that there is no scope for interference in the well-reasoned order and in the factual findings, which have been recorded by the learned Tribunal below. Therefore, the present

writ petition is bereft of any merit and the same is accordingly dismissed.

- 21. No other point has been urged.
- 22. All pending application/s, if any, shall stand closed.

September 04, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No