

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

CWP-6328-2023 (O&M)
Date of Decision: 16.08.2023

DHULLA RAM

...Petitioner

Versus

THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
CHANDIGARH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ishaan Dogra, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

Petitioner (Dhulla Ram) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of *certiorari* for quashing of Award dated 02.12.2021 (Annexure P-5) passed by the Industrial Tribunal-cum-Labour Court, Union Territory, Chandigarh (published on 17.01.2022) (here-in-after referred to as 'the Tribunal'); whereby, the industrial dispute raised by the petitioner regarding termination of his services has been answered against him.

2. Briefly, the petitioner raised an industrial dispute by filing his claim petition before the Tribunal below, wherein he stated that he was appointed as a Security Guard at Defense Services Officer's Institute, Sector 36, Chandigarh (respondent No.2, herein) through 'Tusri Security Agency (Regd.)' (respondent No.3, herein) on 10.06.2015. Petitioner claimed that he was working under the control and supervision of respondent

No.2 till 10.07.2016 and his attendance was also marked in the register maintained by respondent No.2. Petitioner further claimed that he was not permitted to work beyond 10.07.2016 and his services were orally terminated. Petitioner claimed that he had completed 240 days of service in each year and his last drawn wages were Rs.7400/-. Petitioner stated that since he was out of service for four months, accordingly, he applied for release of his provident fund but the same was not released as respondent No.3 herein did not provide him the Provident Fund Number and any other document, on the basis of which, he could get the said amount released. Petitioner claimed that the oral termination of his services is unfair Labour Practice and his services have been terminated in violation of the provisions of Section 25-F of the 1947 Act (for short 'the 1947 Act'). It is further submitted by the petitioner that his juniors were still working and new persons were engaged; therefore, there was also a violation of Sections 25-G and 25-H of the 1947 Act. Accordingly, the petitioner prayed for his reinstatement with continuity of service and full back wages along with other consequential benefits.

3. It appears that respondents No.2 and 3, herein were proceeded against *ex-parte*.

4. In the *ex-parte* evidence, the petitioner examined himself as AW-1.

5. The Tribunal below, upon considering the material/evidence available on the record, rejected the claim of the petitioner.

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

7. It is well settled law that the onus to prove existence of relationship of employee and employer between the parties is upon the workman. In ***“Workman of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu and Ors.”***, (2004) 3 SCC 514, the 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 on 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 workman 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...”

It is also well settled law that the onus to prove that the workman has rendered continuous service in terms of Section 25-B of the

1947 Act, i.e. the workman has worked under the Management for 240 days in 12 months preceding the date of termination, is also on the workman. It is further well settled that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. In this regard, reference can be made to the case of ***“Municipal Corpn. V. SiriNiwas”, 2004(4) S.C.T. 211*** and ***“Surendranagar District Panchayat v. Dahyabhai Amarsinh”, 2005(8) SCC 750.***

8. In the instant case, the Tribunal below has returned the following findings :-

“5. I have heard learned representative for the workman and have gone through the file carefully. The workman while stepping into the witness box AW1 deposed that he was appointed as Security Guard at Defence Services Officer’s Institute, Sector 36, Chandigarh under management No.1 through management No.2 on 10.06.2015. Copy of Adhaar Card, identity card, caste certificate are Exhibit ‘WW1/A’ to ‘WW1/C’ respectively. He worked till 10.07.2016 and was not permitted to work beyond that date. His services were terminated verbally without any written order. He had completed 240 days service in each year and his last drawn wages were Rs.7,400/-. He further deposed that he served demand notice upon both the managements, upon which conciliation proceedings were held but both the managements only appeared once before the Conciliation Officer so dispute could not be resolved. No notice, notice pay or benefit of Section 25-F of the ID Act was given to him. Junior to him still working and similar persons are

working at the moment in violation of Section 25-G & 25-H of the ID Act.

6. *Learned representative for the workman has argued that the workman was appointed as Security Guard at Defence Service Officer's Institute on 10.06.2015 and worked upto 10.07.2016 but he was not permitted to work beyond that. He further argued that he was regular on his duty and his work remained satisfactory. The attendance was marked in register with fictional brake. His job was terminated by way of verbal order and no opportunity of hearing was given to him. Learned representative for the workman has referred to Section 25-F and 25-G of the ID Act in which procedure for retrenchment has been mentioned. He further referred to Section 25-H of the ID Act regarding retrenched workman and further argued that the workman be reinstated with continuity of service and full back wages.*

7. *After giving my careful consideration to the submission of learned representative for the workman as well as evidence on record, I find that the workman is alleging himself to be working as Security Guard with management and as per his averments he has been terminated without any notice and oral order only. In order to prove its case the workman proved on record Exhibit 'WW1/A' copy of adhaar card, Exhibit 'WW1/B' identity card issued by the security agency, Exhibit 'WW1/C' copy of certificate of schedule caste, Exhibit 'WW1/D' letter sent by the Assistant Provident Fund Commissioner to the workman with regard to non-attestation of provident fund forms, Exhibit 'WW1/E' copy of demand notice dated 17.06.2017, Exhibit 'WW1/F' copy of memo bearing endorsement dated 07.09.2017 issued by the Assistant Labour Commissioner-cum-Conciliation Officer, Union Territory Chandigarh to the workman. From the perusal of the oral as well as*

documentary evidence on record it is crystal clear that the workman is unable to prove on file that he was appointed as Security Guard at Defence Services Officer's Institute, Sector 36, Chandigarh on 10th June, 2015 and worked till 10.07.2016. No attendance sheet has been proved on record by the workman. Meaning thereby this is a case without any documentary proof. Moreover, oral statement of the workman cannot prove the case in his favour. No doubt the management has been proceeded against ex-parte but it is for the workman to prove his case by standing at his own legs. There is no single evidence on file with regard to working of the workman as Security with the management. He had simply placed on record Adhaar card, identity card, copy of demand notice etc. and copy of letter issued by the Assistant Provident Fund Commissioner does not help the workman to prove the relief claimed for reinstatement along with continuity of service and back wages so Section 25-F, 25-G and 25-H referred by learned representative for the workman did not help to prove the case in favour of the workman.

8. *In the light of discussion made above, this present industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room."*

A perusal of the above extracted findings would reveal that the petitioner had failed to prove on record that he was appointed as a Security Guard at Defense Services Officer's Institute, Sector 36, Chandigarh on 10.06.2015 and that he worked till 10.07.2016. No proof of receipt of salary or wages or any record or order in that regard was produced, no co-worker was examined. Petitioner had not led any evidence in the form of attendance sheet or any other document to *prima facie* show that he had worked with the Management. It is improbable that the workman who claimed to have

worked under a Management, would not possess any documentary evidence to prove nature of his engagement and the period of work he had undertaken with his employer. In the absence of any such record / evidence, no relief could have been granted to him.

9. It is apposite to state here that the petitioner has sought to rely upon Annexures P-6 to P-13 by way of new evidence to contend that there was a relationship of employee and employer between the petitioner and respondent No.3, herein.

10. Concededly, the said documents Annexures P-6 to P-13 were not brought on record before the Tribunal below. Accordingly, no fault can be found with the findings returned by the Tribunal below to the effect that the petitioner had failed to prove his pleaded case. It is apposite to state here that the afore-said documents i.e. Annexures P-6 to P-13, upon which the reliance is being sought to be placed by the learned counsel for the petitioner; were required to be not only produced before the Tribunal below but also proved in accordance with law, before the said documents could be accepted in evidence. Apparently, the said course has not been adopted by the petitioner herein and now by simply placing the said documents as annexures to the writ petition, no benefit can be extended to the petitioner.

11. Furthermore, the Hon'ble Apex Court in ***“Nicks (India) Tools Versus Ram Surat”, 2004(4) S.C.T. 130*** had upheld non-consideration of additional evidence sought to be brought before High Court for first time by observing that the same was not brought on record in a manner known to law.

12. In the instant case, the petitioner was not diligent enough to have produced the evidence before the Tribunal below and the same cannot

be allowed now at this belated stage, therefore, the petition deserves to be dismissed on the tough stone of the doctrine of due diligence.

13. In this view of the matter, no interference is required to be made in impugned award dated 02.12.2021 (Annexure P-5) passed by the Tribunal below; resultantly, the instant writ petition fails and the same is accordingly dismissed.

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

August 16, 2023

gurpreet

(HARSH BUNGER)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No