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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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***Reserved on: 15.02.2023
Pronounced on: 17.03.2023***

+ **W.P.(C) 4388/2010**

SHYAMJI SRIVASTAVA & ANOTHER Petitioner

Through: Mr. Sandeep Kumar
Srivastava and Mr. Dinesh
Kumar, Advocates.

versus

**THE EXECUTIVE ENGINEER-M-311
OF P.W.D. & OTHERS**

..... Respondents

Through: Mr. Rishikesh Kumar and Mr.
Aditya Raj, Advocates for
respondent No. 1/ GNCTD.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The Petitioners/Workmen in the present writ Petition is assailing the impugned Award dated 29.03.2008 passed by the Presiding Officer, Labour Court-XIII, Karkadooma Courts, Delhi, in ID No. 420/2006 (*"impugned award"*).
2. Learned Labour Court, vide the impugned Award, was pleased to hold that the Petitioners/Workmen were not employees of Respondent No.1 /Management and that there was no employer-

employee relationship between the Petitioners/Workmen and Respondent No.1/ Management.

FACTS RELEVANT FOR THE CONSIDERATION OF THE PRESENT WRIT PETITION:

3. It is the case of the Petitioners/Workmen that they were working with Respondent No.1/ Management at their office at PWD Division-6, Sub Division-4, Road No.28, Raja Garden, Delhi for the past 11-12 years as Chowkidars. They were employed by Respondent No.1/ Management through Respondent No.3 (Contractor). Their services were terminated earlier. However, pursuant to the orders of the conciliation officer dated 01.10.2002, Mr. M.L Azad, Assistant Engineer, PWD Division-6, Sub Division -4, Road No.28, Raja Garden, Delhi reinstated them back in service on 04.10.2002. They remained in service till 04.02.2003 and were not allowed to work w.e.f. 05.02.2003.
4. In these circumstances, the Petitioners/Workmen raised an Industrial Dispute before the Conciliation officer. On failure of the conciliation proceedings, the appropriate Government referred the following reference to the Labour Court for adjudication:

“Whether the services of Sh. Shyamji Srivastava S/o Sh.B.P Srivastava & Sh.Omji Srivastava S/o Sh. B.P Srivastava have been terminated illegally and /or unjustifiably by the management and if so, what relief are they entitled and what directions are necessary in this respect?”

5. The Petitioners/Workmen filed their statement of claim before the learned Labour Court reiterating their case as presented

before the Conciliation Officer. Respondent No.1/ Management has filed its reply before the learned Labour Court. In the said reply, Respondent No.1/ Management denied the existence of employer-employee relationship between the Petitioners/ Workmen and Respondent No.1/ Management. It is the case of Respondent No.1/ Management that Respondent No.3 was its registered and approved licensed Contractor. Accordingly, Respondent No.1/ Management awarded the contract for security services to Respondent No.3/Contractor through tendering process. The Petitioners/Workmen were employees of Respondent No.3/Contractor and Respondent No.1/ Management has no privity of contract with the Petitioners/Workmen.

6. Respondent No. 3 (M/s. Indian Industrial Security Co. (P) Ltd) failed to appear before the learned Labour Court despite service. Hence, Respondent No.3 was proceeded as *ex-parte* before the learned Labour Court.

7. Based on the pleadings of the parties, the learned Labour Court framed the following issues:

1. *“Whether the services of the workmen have been terminated illegally and unjustifiably by the management?”*
2. *Whether there is no relationship of employer-employee between the parties?*
3. *Relief.”*

8. In order to prove their case, the Petitioner/Workman No.1 stepped into the witness box as WW-1 and the Petitioner/Workman No.2 stepped into the witness box as WW-2.

On behalf of Respondent No.1/Management, Mr. A.K Saini, Executive Engineer was examined as MW-1.

9. Learned Labour Court based on the evidence adduced by the parties concluded that the Petitioners/Workmen were not employees of Respondent No.1/ Management. In view of the said finding, learned Labour Court answered the reference in negative and dismissed the claim petition filed by the Petitioners/Workmen.
10. Being aggrieved by the impugned Award, the Petitioners/Workmen preferred the present Writ Petition.
11. Despite service, there was no appearance on behalf of Respondent No.3 (Contractor) in the present proceedings.

SUBMISSIONS ON BEHALF OF THE PETITIONERS/WORKMEN.

12. Learned counsel for the Petitioners/Workmen submits that Respondent No.1 /Management was the principal employer of the Petitioners/Workmen. Respondent No.1/ Management was engaging the workmen through contractors in violation of the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 (“**CLRA Act**”). Learned counsel for the Petitioners/Workmen further submits that the Petitioners/Workmen were working as Chowkidars at Respondent No.1/ Management’s office for 11-12 years. However, their services were terminated by Respondent No.1/ Management w.e.f. 05.02.2003 without following the mandatory provisions of

Sections 25F, 25 G and 25 H of the Industrial Disputes Act, 1947 (“*I.D. Act*”).

13. Learned counsel for the Petitioners/Workmen further submits that the Petitioners/Workmen were working under the direct control & supervision of the officers of Respondent No.1/ Management. In an earlier occasion, learned Labour Court passed an award dated 21.04.2006 in ID No. 31/2003 against Respondent No.3/Contractor therein and the said award itself shows that the Petitioners/Workmen have worked with Respondent No.1/ Management for more than 240 days. Learned counsel for the Petitioners/Workmen submits that the recovery certificate was issued against the contractor in the said matter but the contractor remained absconding. Therefore, pursuant to the order dated 03.09.2013 passed by the Hon’ble Division Bench of this Court in LPA 351/2013, Respondent No.1/Management, being the principal employer, made the payment to the Petitioners/Workmen as per Section 21 (4) of the CLRA Act. Hence, Respondent No.1/ Management admitted their liability towards the Petitioners/Workmen.

14. In view of these submissions, learned counsel for the Petitioners/Workmen prayed for setting aside of the impugned Award.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

15. Learned counsel for Respondent No.1/Management argued in support of the impugned Award. Learned counsel submits that

there was no employer-employee relationship between the Petitioners/Workmen and Respondent No.1/ Management. The Respondent No.1/Management hired the services of Respondent No.3 for the security services and the Petitioners/Workmen were employees of Respondent No.3. The service conditions, wages etc., of the Petitioners/Workmen were to be decided by Respondent No.3 and Respondent No.1/ Management has no role in deciding the service conditions of the Petitioners/Workmen. Petitioners/Workmen were under the direct control and supervision of Respondent No.3. In view of the same, learned Labour Court rightly held that the Petitioners/Workmen were not the employees of Respondent No.1/ Management.

16. With these submissions, learned counsel for Respondent No.1/Management prayed for the dismissal of the present Writ Petition.

LEGAL ANALYSIS

17. This Court heard the arguments advanced by the learned counsel for the parties and perused the documents on record and Judgments relied upon by the parties.

18. The moot question in this case is whether Respondent No.1/ Management terminated the services of the Petitioners/Workmen in contravention of various provisions of the ID Act. To answer this question, it is pertinent to examine whether there was any employer-employee relationship between the Petitioners/ Workmen and Respondent No.1/ Management.

19. Learned Labour Court examined this issue in detail in the impugned Award. Learned Labour Court noted the following points:

- (i) The Petitioners/Workmen in their statement of Claim or in their evidence have not given their actual date of appointment. It was vaguely mentioned that they were working with Respondent No.1/ Management for 11-12 years.
- (ii) Respondent No.1/ Management specifically denied the fact that the Petitioners/Workmen were working with them for the past 11-12 years.
- (iii) Hence the burden of proof was on the Petitioners/Workmen to prove that they worked with Respondent No.1/ Management for more than 240 days.
- (iv) There was no documentary or oral evidence adduced by the Petitioners/Workmen to prove the fact that they have completed 240 days with Respondent No.1/ Management.

Hence, in the absence of any evidence in favour of the Petitioners/Workmen, the learned Labour Court answered the reference in negative and dismissed the Claim Petition filed by the Petitioners/Workmen. The relevant portion of the impugned Award, reads as follows:

“ 30. Both the workers in their cross-examination stated that no appointment letter was issued by PWD. They further stated that they were paid their wages and allowances by the

contractor with whom they were working from 1.8.92 to 4.2.03. The management has placed on record award of Sh. Gurdeep Kumar, Presiding Officer, Industrial Tribunal No. II, dated 18.9.07 vide which the court held that workers (who are workers in this case also) had failed to prove that they were employees of PWD. Relevant part of the award reads as follows;

“On careful scrutiny of the evidence that has been produced on record by the parties, I am of the considered view that workmen have failed to discharge the initial burden of proof which is on them. WW-1 Shyamji Srivastava in his affidavit in evidence has not uttered even a single word in this regard. Even in the statement of claim there is no averments to that effect. Similar affidavits have been filed by WW2 Omji Srivastava, WW3 Manoj Kumar Srivastava and WW4 Dinesh Kumar Srivastava.

In the cross examination of MWL R.K. Gupta Executive Engineer it has been suggested by the workmen that the payment is being made by contractor under the supervision of JE to the workers. This amounts to admission on the part of the workmen that they are employees of the contractor to whom PWD has awarded the contract. The workmen have not brought on record any iota of evidence to prove existence of relationship of employer and employee between them and the management no.1 PWD.

31. Workers have placed on record photocopy of their letter dated 3.10.02 sent to Executive Engineer PWD. Workers proved it as Ex.WW1/7. This letter reads that they worked with PWD Rajouri Garden through Jai Jawan Security. It is alleged that their services were terminated on 27.2.2000. It is further stated that pursuant to orders of Hon'ble High Court and Assistant Labour Commissioner they be reinstated w.e.f. 3.10.02. This letter of the workers show that they were not in employment of any respondent w.e.f. 27.10.2000. In para 3 of their statement of claim they have stated that they were reinstated on 4.10.02 by M.L. Azad AE PWD. No order of M.L. Azad AE PWD has been proved to show that they were reinstated on 4.10.02.

32.If they were reinstated on 4.10.02 and again terminated on 4.2.03 as alleged in para 3 of their statement of claim, they have not completed 240 days continuous service in a

year immediately preceding the date of alleged termination of their employment as per mandate of section 25F read with section 25 B of the Act.

33. In Bhogpur Co-operative Sugar Mills Ltd. v. Harmesh Kumar 2007 LLR 183 SC Hon'ble Apex Court held:

"For applicability of section 25 F of the LD. Act, the workman is bound to prove that he had been in continuous service of 240 days during twelve months preceding the order of termination."

34. Workers cannot invoke section 25 F of the Act as per their own case as they have not completed 240 days of continuous service. They were allegedly reinstated on 4.10.02 and terminated on 5.2.03.

35. Further workers have stated in para 6 of their statement of claim:

"That on 4.2.03 when the worker Shyamji Srivastava and Omji Srivastava went to join their duties with Sh. G.R. Singh M/s Industrial Security Services Pvt. Ltd. The management refused the workmen to work for one reason or the other and terminated their services."

36. So it is M/s Industrial Security Services Pvt. Ltd. who allegedly terminated their services. There is no letter of PWD either appointing or terminating their services.

37. Ld. Authorised Representative for the workers filed written arguments in which he relied upon various judgments. I have perused the same. Said judgments, having different facts, do not help the workers in any way.

38. As such both the issues are decided in favour of the management and against the workers."

20. This Court also carefully examined the evidence adduced by the Petitioners/Workmen before the learned Labour Court and the arguments advanced by the learned counsel for the Petitioners/Workmen. The Petitioners/Workmen stepped into the

witness box as WW-1 & WW-2. Both the Petitioners/Workmen categorically admitted that (i) the Petitioner/Workman No.1 was engaged as security guard w.e.f. 11.08.1992 through the contractor M/s Universal Security and Petitioner/Workman No.2 was engaged on 01.08.1998 through the contractor M/s Rover Hunter Security; (ii) from time to time they worked with various contractors till the date of their alleged termination; and (iii) the salary & other allowances were paid to them by the respective contractors. There is no evidence led by the Petitioners/Workmen to show that they were under the control & supervision of Respondent No.1/ Management. Hence, Respondent No.1/ Management cannot be held liable for the termination of the Petitioners/Workmen as their service conditions were solely determined by Respondent No.3/Contractor. In the absence of any such evidence, learned Labour Court rightly held that there was no employer-employee relationship between the Petitioners/Workmen and Respondent No. 1/Management.

21.Learned counsel for the Petitioners/Workmen relied on the Award dated 21.04.2006 passed by the learned Labour Court in ID No. 31/2003 to show that the Petitioners/Workmen had served at Respondent No.1/ Management for more than 240 days. However, a perusal of the said Award clearly shows that based on the evidence adduced by the Workmen therein, the learned Labour Court concluded that the Workmen concerned are not the employees of Respondent No.1/ Management, but that of

Respondent No.3/Contractor. In the said proceedings, the Petitioners/Workmen argued that Respondent No.3/contractor was not traceable and hence as per Section 21 of the CLRA Act, it is the responsibility of Respondent No.1/ Management being the principal employer to implement the said Award. The said proceedings finally culminated as Order dated 03.09.2013 in LPA No. 351/2013. In the said LPA, the Hon'ble Division Bench of this Court observed that under Section 21(4) of the CLRA Act, in case the contractor fails to pay the wages of the workmen, the said amount can be recovered from the principal employer. In view of the said provision, the Hon'ble Division Bench directed the Deputy Labour Commissioner to consider the contention of the parties and issued recovery certificate in accordance with law. In pursuance of the said direction, Respondent No.1/ Management paid the wages to the Petitioners/Workmen for the period from 27.10.2000 to 02.10.2002 in their capacity as Principal Employer with liberty to recover the said amount from the employer of the Petitioners/Workmen, i.e, Respondent no.3/ Contractor therein. Hence, it is evident from the various orders passed in these proceedings that Respondent No. 3/Contractor was treated as the employer of the Petitioners/Workmen. Respondent No.1/ Management was treated as the principal employer.

22.Sections 20 & 21 of the CLRA Act deal with the liabilities & responsibilities of the principal employer. As per Section 20 of

the CLRA Act, it is the responsibility of the principal employer to ensure that the workmen are provided with the amenities as per sections 16, 17, 18 and 19 of the said Act. In case the contractor fails to provide the said amenities, the duty is cast upon the principal employer to provide the said amenities to the workmen at the cost of the contractor. Further, as per Section 21 of the CLRA Act, it is the primary duty of the contractor to provide the wages to the workmen. However, in case of a failure of the contractor to pay the wages to the workmen, duty is cast upon the principal employer to make the said payment which is subject to recovery from the contractor. However, in the present case, both Sections 20 & 21 are not attracted. As a principal employer, Respondent No.1/ Management has no control over the Contractor to decide the service conditions of its employees. The determination of the service conditions of its employees was exclusively within the domain of the contractor. No evidence whatsoever has been placed on record to prove that Respondent No.1/ Management had any control in determining the service conditions of the employees of the contractor. Further, the Constitution Bench of the Hon'ble Supreme Court in *Steel Authority of India Vs National Union Waterfront Workers* reported as **2001 (7) SCC 1** categorically held that no relationship of master and servant is created between the principal employer and the contract labour by virtue of engagement of the contract labour by the contractor in any work of or in connection with the work of the principal employer. This

being the legal position, Respondent No.1/ Management cannot be held responsible for terminating the services of the Petitioners/Workmen.

23.Learned counsel for the Petitioners/Workmen also sought to rely on the recommendation of the Central Advisory Contract Labour Board dated 18.12.2001 to argue that Respondent No.1/ Management is engaging contract labour in a manner which is contrary to the provisions of the CLRA Act. However, a perusal of the said recommendations of the Central Advisory Board Contract Labour Board reveals that there was no recommendation from the Board for the abolition of contract labour regarding the post of 'Chowkidar'. The Petitioners/ Workmen were working as Chowkidars, and it cannot be said that the employment of the Petitioners/Workmen through the Contractor was in contravention of the CLRA Act.

24.It is a well settled principle of law that the jurisdiction of this Court is very limited while examining the Award passed by the Industrial Tribunal. The Hon'ble Supreme Court of India in the matter of ***Overseas Bank Vs I.O.B Staff Canteen Workers Unions &Anr*** reported as ***2000(4) SCC 245***, held as follows:

“The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally re- appreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a Tribunal, presided over by a Judicial Officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of

having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly be taken.....”

25. In the present case, learned Labour Court's decision was based on the evidence adduced by the parties on record. This Court is of the considered view that there is no perversity or illegality in the impugned Award which requires the interference of this Court under Articles 226 & 227 of the Constitution of India.

26. In view of the detailed discussions herein above, the present Writ Petition is dismissed. No order as to costs.

GAURANG KANTH, J.

MARCH 17, 2023