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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

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W.P.(C) 4386/2010

DINESH KUMAR

..... Petitioner

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

versus

P.W.D./C.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 Petitioner/Workman in the present writ Petition is assailing the impugned Award dated 19.08.2008 passed by the Presiding Officer, Industrial Tribunal-II, Karkadooma Courts, Shahdara, Delhi in complaint case no. 02/2006. (“**impugned award**”).
2. Learned Labour Court, vide the impugned Award, was pleased to dismiss the Application filed by the Petitioner/Workman under Section 33(A) of the Industrial Disputes Act, 1947 (“ID Act”). Learned Labour Court was pleased to hold that the Petitioner/Workman was not an employee of Respondent No.1/ Management. Learned Labour Court further held that the

Petitioner/Workman's termination was not effected by Respondent No.1/ Management as he was not an employee of Respondent No.1/ Management.

FACTS RELEVANT FOR THE CONSIDERATION OF THE PRESENT WRIT PETITION:

3. The Petitioner/Workman was engaged as a Chowkidar by Respondent Nos.2 & 3 (Contractors) and was deputed at the premises of Respondent No.1/Management (PWD). It is the case of the Petitioner/Workman that he was engaged w.e.f. 02.01.1993 and was terminated w.e.f. 11.07.2005.
4. It is the case of the Petitioner/Workman that earlier the Secretary (Labour) NCT of Delhi referred an Industrial dispute between the parties to the Industrial Tribunal for adjudication (vide order No. F. 24(4598) / 2003 /Lab dated 12.05.2004) with the following term of reference:

"Whether the workmen Sh. Omji Srivastava S/o Sh. B.P. Srivastava, 2.Sh. Dinesh Kumar S/o Sh. Har Sahai Srivastava,; 3. Shyamji Srivastava S/o Sh. B.P. Srivastava, 4. Sh. Manoj Srivastava S/o Sh. H.S. Srivastava are entitled to increase in wages from October, 2002, Cycle allowance and Uniform and if so, to what extent and what directions are necessary in this respect?"

5. It is the case of the Petitioner/Workman that during the pendency of the said industrial dispute, Respondent No.1/Management terminated his service. In view of the same, the Petitioner/Workman filed an Application under Section 33(A) of the ID Act before the learned Labour Court.

6. The Petitioner/Workman in the said Application averred that he has been performing his duties under the direct control and supervision of Assistant Engineer, Sub-Division No. 1 and Junior Engineer attached with the P.W.D. Division No. 6 of Respondent No.1/Management. He further averred that the duty of Respondent No.2 contractor was to only supply the labour force and they were acting as an agent of Respondent No.1/management. It is the case of the Petitioner/Workman that he has already completed more than 240 days of service with Respondent No.1/ management. However, Respondent No.1/management terminated his service without following the mandatory conditions of Section 25F & Section 33 of the ID Act. In view of the violation of the mandatory provisions of the ID Act, the Petitioner/Workman prays for reinstatement with full back wages, continuity of service and all other consequential benefits.
7. Respondent No. 2 (M/s. Indian Industrial Security Co. (P) Ltd) failed to appear before the learned Labour Court despite service. Hence, Respondent No.2 was proceeded ex-parte by the learned Labour Court.
8. Respondent No.1/ Management has filed their reply before the learned Labour Court. In the said reply, Respondent No.1/management denied the existence of employer-employee relationship between the Petitioner/Workman and Respondent No.1/ Management. It is the case of Respondent No.1/Management that Respondent No.2 was their registered and

approved licensed Contractor and was therefore awarded the contract for the security services to Respondent No.2 Contractor. The Petitioner/Workman was an employee of Respondent No.2 Contractor and Respondent No.1/Management had no privity of contract with the Petitioner/Workman. Respondent No.1/Management denied that it violated any provisions of the ID Act or the Contract Labour (Regulation & Abolition) Act, 1970 (“CLRA Act”).

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

1. *Whether' the applicant is an employee of the management No. 1 -P.W.D? (OPA)*
2. *Whether the management No. 1 terminated the services of the applicant? (OPM).*
3. *Relief.*

10.To prove his case, the Petitioner/Workman stepped into the witness box as WW-1. On behalf of Respondent No.1 Management, Mr. A.K Saini, Executive Engineer was examined as MW-1.

11. Learned Labour Court based on the evidence adduced by the parties concluded that the Petitioner/Workman was not an employee of Respondent No.1/Management. In view of the said finding, the learned Labour Court was pleased to dismiss the Application filed by the Petitioner/Workman under Section 33 of the ID Act.

12.Being aggrieved by the impugned Award, the Petitioner/Workman preferred the present Writ Petition.

13.Despite service, there was no appearance on behalf of Respondent Nos.2 & 3 (Contractors) in the present proceedings.

SUBMISSIONS ON BEHALF OF THE PETITIONER/WORKMAN

14.Learned counsel for the Petitioner/Workman submits that Respondent No.1/Management was the principal employer of the Petitioner/Workman. Respondent No.1/Management was engaging the workman through contractors in violation of the provisions of the CLRA Act. Learned counsel for the Petitioner/Workman further submits that the Petitioner/Workman was working as a Chowkidar at Respondent No.1/ Management's office w.e.f. 02.01.1993. His services were terminated by Respondent No.1/ Management w.e.f. 11.07.2005. Since there was already an industrial dispute pending between the Petitioner/Workman and Respondent No.1/Management, the Petitioner/Workman filed an Application under Section 33(A) of the ID Act. Respondent No.1/Management terminated the services of the Petitioner/Workman without following the mandatory provisions of Section 33 of the ID Act.

15.Learned counsel for the Petitioner/Workman further submits that the Petitioner/Workman was working under the direct control of the officers of Respondent No.1/Management. In an earlier occasion, the 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 Petitioner/Workman worked with Respondent No.1/Management

for more than 240 days. Learned counsel for the Petitioner/Workman 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 Petitioner/Workman as per Section 21 (4) of the CLRA Act. Hence, Respondent No.1/Management admitted its liability towards the Petitioner/Workman.

16. In view of these submissions, the Petitioner/Workman prayed for the setting aside of the impugned Award.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

17. 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 Petitioner/Workman and Respondent No.1/Management. Respondent No.1/Management hired the services of Respondent No.2 for the security services and the Petitioner/Workman was an employee of Respondent No.2. The service conditions, wages etc of the Petitioner/Workman was decided by Respondent No.2 and Respondent No.1/Management has no role in deciding the service conditions of the Petitioner/Workman. Petitioner/Workman was under the direct control and supervision of Respondent No.2. In view of the same, the learned Labour

Court rightly held that the Petitioner/Workman was not an employee of Respondent No.1/Management.

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

LEGAL ANALYSIS

19. This Court heard the arguments advanced by the learned counsels for the appearing parties and perused the documents on record and Judgments relied upon by the parties.

20. The moot question here is whether the Application filed by the Petitioner/Workman before the learned Labour Court under Section 33(A) of the ID Act was maintainable or not. To answer this question, it is pertinent to examine whether the Petitioner/Workman was an employee of Respondent No.1/Management.

21. Learned Labour Court examined this issue in detail in the impugned Award. The relevant portion of the impugned Award, reads as follows:

“9. Initial onus is on the complainant to prove that there exists relationship of employer and employee between him and the management - P.W.D. In his cross examination while deposing as WW1, complainant - Dinesh Kumar admitted that he used to work under a contractor at P.W.D. He also admitted that the wages and salary used to be paid by the contractor. He also admitted to have received arrears of wages from the contractor, namely, M/s. Indian Industrial Security Co. (P) Ltd after he had made a representation. He also admitted that there, is no written communication by the management - P.W.D: terminating his services. He also admitted that M/s. Good Year Security has been awarded

contract in June, 2005 and salary for the month of June, 2005 was paid by M/s. Good Year Security.

The aforesaid admissions on the part of WW1 – Dinesh Kumar go to prove that there is no relationship of employer and employee between the complainant and the management-P.W.D.

MW1 - Mr. A.K. Saini, Executive Engineer has categorically stated that the complainant was neither appointed nor engaged by P.W.D. and as such there is no question of termination or discontinuation of his services by P.W.D. He further deposed that there exists no relationship of employer and employee between, complainant and P.W.D and that the P.W.D has paid any wages / salary, to the complainant. The said testimony of MW-1, Mr. A.K. Saini is unrebutted and unchallenged for want of any effective cross examination with regard to this issue. The complainant workman has not elicited anything in his cross examination to prove existence of relationship of employer and employee between him and the management-PWD.

10. As stated earlier, initial burden lies on the workman to prove existence of relationship of employer and employee between him and the management -PWD. As discussed above, the complainant has failed to discharge the initial burden which is on him. Therefore, this issue is liable to be decided against the complainant and in favour of the management. No.1-P.W.D.”

22. This Court also carefully examined the evidence adduced by the Petitioner/Workman before the learned Labour Court and the arguments advanced by the learned counsel for the Petitioner/Workman. The Petitioner/Workman himself stepped into the witness box as WW-1. As noted by the learned Labour Court, the Petitioner/Workman categorically admitted that (i) he was working with the contractor of Respondent No.1/ Management; (ii) his appointment was made by the contractor;

(iii) his salary was paid by the contractor; and (iv) his arrears of wages were also paid by Respondent No.2/Contractor. There is no evidence led by the Petitioner/Workman to show that he was under the control of Respondent No.1/Management. Hence, Respondent No.1 Management cannot be held liable for the termination of the Petitioner/Workman as his service condition was solely determined by Respondent Nos.2 and 3/Contractors. In the absence of any such evidence, learned Labour Court rightly held that there is no employer-employee relationship between the Petitioner/Workman and Respondent No. 1 Management.

23.Learned counsel for the Petitioner/Workman relied on the Award dated 21.04.2006 passed by the learned Labour Court in ID No. 31/2003 to show that the Petitioner/Workman had served 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 Petitioner/Workman argued that Respondent No.3/contractor was not traceable and hence under 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 351/2013. In the said LPA, the Hon'ble Division Bench of

this Court observed that as per 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 issue recovery certificate accordingly. In pursuance of the said direction, Respondent No.1/ Management paid the wages to the Petitioner/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 Petitioner/Workman, i.e., Respondent no.3/contractor therein. Hence, it is evident from the various orders passed in these matters that Respondent Nos. 2&3 contractors were treated as the employer of the Petitioner/Workman. Respondent No.1/ Management was treated as the principal employer.

24. Section 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 on the part 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 of the said Act, 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 the employees was exclusively within the domain of the contractor. No evidence whatsoever has been placed on record to prove that Respondent No.1/ Management has 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 a principal employer. This being the position, Respondent No.1/ Management cannot be held responsible for altering the service conditions of the Petitioner/Workman during the pendency of the pending industrial dispute.

25. Learned counsel for the Petitioner/Workman 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 employees contrary to the CLRA Act. However, a perusal of the said recommendations

reveals that there was no recommendation from the Board for the abolition of contract labour regarding the post of 'Chowkidar'. The Petitioner/Workman was working as Chowkidar and it cannot be said that the employment of the Petitioner/Workman through the Contractor was in contravention of the CLRA Act.

26. It is a well settled principle of law that the jurisdiction of this Court is limited while examining the Award passed by the learned Labour Court. The Hon'ble Supreme Court of India in ***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.....”

27. In the present case, the 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 interference of this Court under Articles 226 & 227 of the Constitution of India.

28. 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

