



2024:DHC:3133



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

% **Date of order: 4th April, 2024**

+ **W.P.(C) 6669/2012**

HARINDER SINGH BUTOLA Petitioner

Through: **Dr. Ajay Chaudhary and Mr. Lal
Singh, Advocates (Through VC)**

versus

PREMIER SECURITY SERVICES PVT LTD AND ANR

..... Respondents

Through: **Mr. Ankit Dwivedi and Mr. Abhishek
Shukla, Advocates (Through VC)**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“i. set aside and quash the Award dated 11.04.2012 passed by Sh. Satinder Kumar Gautam, P. O., Labour Court, Karkardooma Courts, Dehli, in I. D. No. 39/11(Old ID No. 334/07

ii. direct the respondents to re-instate the petitioner in the service with full back wages and other benefits along with continuity of service.

iii. allow the costs of the proceedings.

iv. pass any other order(s) as deemed fit and proper to secure the ends of justice.”



2. The facts leading to the filing of the instant petition are as follows:
- In the year 1994, the petitioner, vide employment no. 17362, was employed with the respondent no. 1. The respondent no. 2 is stated to be the sister concern of the respondent no. 1.
 - It is stated that the petitioner's services were placed with the Centre for Cultural Resources and Training (hereinafter "CCRT") which is an autonomous body of the Central Government.
 - It is also stated that initially the petitioner was posted as a Peon under the administrative control of the CCRT and the salary of the petitioner was either paid by the respondent no. 1 or respondent no. 2. Thereafter, CCRT promoted the petitioner as 'Clerk-cum-Typist' in the year 1996.
 - Subsequently, CCRT sent a letter dated 16th October, 2001 to the respondent no. 1 informing that the services of the petitioner be discontinued with immediate effect.
 - Thereafter, the petitioner reported to the management of the respondent no. 1 and 2 to seek another job, however, it is alleged that they refused to provide him with any job and informed him that he had never been their employee.
 - The above said termination letter was challenged by the petitioner before this Court in writ petition bearing W.P (C) no. 229/2002 which was dismissed vide order dated 7th November, 2002 holding that there was no relationship of



employer-employee between CCRT and the petitioner. The above said order attained finality when the appeal filed by the petitioner before the Hon'ble Supreme Court in SLP bearing no. 9444/2004 was dismissed vide order dated 15th October, 2004.

- g. Thereafter, the petitioner sent a legal notice dated 14th December, 2004 to the respondents calling upon them to settle the dispute and to reinstate the petitioner with full back wages. Then the petitioner approached the Government of NCT of Delhi and raised an industrial dispute vide I.D. No. 39/11 (Old ID No. 334/07).
- h. In the above stated industrial dispute, the learned Labour Court dismissed the petitioner's claim vide award dated 11th April, 2012. Being aggrieved by the same, the petitioner has approached this Court seeking setting aside of the impugned award dated 11th April, 2012.

3. Learned counsel appearing on behalf of the petitioner submitted that the impugned award is bad in law and against the settled principles of industrial dispute adjudication which makes it liable to be set aside.

4. It is submitted that whilst passing the impugned award, the learned Labour Court failed to take into consideration the entire facts and circumstances available on its record.

5. It is submitted that the learned Court below failed to appreciate that since the illegal termination of the petitioner's services, he has remained



unemployed and has not been able to look after his family.

6. It is submitted that the learned Labour Court did not consider that the salary of the petitioner was being paid by the respondents as he was their employee.

7. It is submitted that the learned Court below did not appreciate the factum that the petitioner, vide his affidavit in evidence, had deposed that he was regularly paid salary by the respondents and the said fact has not been disputed by the respondent in their cross-examination, hence the same shall be deemed to have been admitted.

8. It is submitted that the learned Labour Court failed to appreciate that the petitioner's services were illegally terminated which is against the provisions of Industrial Disputes Act, 1947 (hereinafter "the Act").

9. Therefore, in view of the foregoing submissions, it is submitted that the present petition may be allowed and the reliefs as prayed for be granted.

10. *Per Contra*, the learned counsel appearing on behalf of the respondents vehemently opposed the instant petition submitting to the effect that the same being devoid of any merits is liable to be dismissed.

11. It is submitted that the petitioner was posted as Peon with CCRT and that he was under the administrative control of the respondents only upto 5th May, 1996 whereafter the petitioner was taken on roll by the said autonomous body of the Government and the petitioner had no concern whatsoever with the respondents.

12. It is further submitted that the cheques annexed by the petitioner were issued by the respondents as per client's instructions but they do not pertain



to his wages for the relevant period as alleged by him.

13. It is submitted that there is no error manifest and apparent on the face of the proceedings so as to reflect that the impugned award is based on ignorance and disregard to the provisions of law. As such, due to limited scope of the writ jurisdiction of this Court, the instant case has no merit whatsoever.

14. It is submitted that the petitioner did not make the respondents as party in the earlier writ petition filed before this Court and approached them after a period of over six years from the date of his termination.

15. It is further submitted that the petitioner himself did not consider or recognize the respondents as his employer at any time during the course of pursuing his petitions before this Court as well as before the Hon'ble Supreme Court, and consistently claimed himself to be the employee of CCRT. Moreover, the petitioner declined to join the services offered by the respondents in their written statement unless and until his pre-condition of payment of full back wage was met by the respondents.

16. Therefore, in view of the foregoing submissions, it is submitted that the present petition may be dismissed.

17. Heard the learned counsel appearing on behalf of the parties and perused the record.

18. It is the case of the petitioner that the learned Court below erred in passing the impugned award since it failed to appreciate that the services of the petitioner were terminated illegally and it further erred by not considering the factum that the petitioner was in the employment of the



respondents as his salary was paid by them.

19. In rival submissions, the respondents have opposed the petitioner's case submitting to the effect that the impugned award has been passed after considering the entire facts as well as the relevant provisions of law. It has been contended that the cheques annexed by the petitioner do not pertain to the payments towards his salary and are merely payments as per the client's instructions. It has further been contended that the petitioner was under the administrative control of the respondents only upto 5th May, 1996 pursuant to which he was under the employment of CCRT. After his deployment with CCRT, the respondents did not have any control over the petitioner and therefore, there existed no employer-employee relationship among the respondents and the petitioner.

20. Therefore, the issue before this Court is to decide whether the learned Labour Court adjudicated the petitioner's claim in accordance with the law. The relevant portion of the impugned award dated 11th April, 2012 is as under:

“...6. From the pleadings of the parties, the following issues were framed vide order dated 04.11.2008:-

- 1. Whether there existed any employee employer relationship between workman and either of the management?*
- 2. Whether the workman was illegally terminated by the management?*
- 3. Relief as per terms of reference.*

7. The workman examined himself through an affidavit and reiterated the contents made in the statement of claim as well as exhibited the letter dated 16.06.1995 issued by the CCRT Ex.



WW1/1 and tendered an affidavit Ex. WW1/A which bears his signatures at point A and B. He also relied upon the documents Ex. WW1/3 to Ex. WW1/20 & Mark A to Mark L.

8. The management also examined MW1 K.S. Pradesi through an affidavit being the Personnel Manager of management No. 1 and admitted that the management No. 2 was sister concern of management No. 1. The business of the management for deployment of security guard and watchman on the contract basis as per the requirement of the principal employer. As such, the management provided services to its client on contract basis. The workman was appointed by the management No. 2 on 05.05.1994 as Peon and he was deployed at CCRT at Vigyan Bhawan. Management No, 1 had never appointed the workman as Peon at any point of time.

11.....To extract the material facts to decide the issue No 1. the workman in his cross examination has testified that CCRT had appointed him as clerk-cum-typist w.e.f. 05.06.1996 and his services were regularized on 08.02.1997 as clerk-cunm--typist. The workman also admitted in the cross examination that his services were looked after by all means by CCRT and not by managements No. 1 & 2, The workman not only in his affidavit as well as in the cross examination has repeatedly admitted that CCRT has appointed him as Clerk-cum- Typist and his services were transferred by order of Deputy Director. The workman further admitted in the cross examination that he was posted to the Chairman Office on regular basis as a clerk-cum-typist w.e.f. 08.12.1997 vide Ex. WW1/2. Workman also admitted in the cross examination that he was also deputed as per Ex. WW1/3 & WW1/4. The workman also admitted in the cross examination that he raised a dispute dated 23.06.2003 against the CCRT after his termination in which workman admitted that 'I may be declared employee of CCRT". The services of the workman were terminated by CCRT on 16.10.2001 and not by management No. 1 & 2. The attendance was marked and looked



after by CCRT by all means. The workman also admitted that he raised the dispute after a gap of 6 or 8 years against managements No. 1 & 2. Initially he has approached the Hon'ble High Court through a Writ Petition seeking relief of his reinstatement with CCRT. The same was declined by the Court vide order dated 07.11.2002 holding that he is not employee of CCRT. He filed an LPA which was dismissed vide order dated 13.01.2003. Thereafter, he approached to the Regional Labour Commissioner of the Central Government for adjudication of the industrial dispute but the same was withdrawn for want of jurisdiction. His complaint dated 23.06.2003 is Ex. WW1/5. He also preferred SLP against the orders of High Court, but the Supreme Court also declined to interfere with the order of the Hon'ble High Court. Management No. 2 deployed the claimant as security guard cum peon with the CCRT. Thereafter, the claimant himself being employed as clerk-cum-typist on regular basis. As such, after being qualified examination and interview, he was selected and joined with the CCRT on 08.12.1997. All the salaries and perks were being paid by CCRT. The management No. 1 never appointed or selected him at any post. Therefore, there was no relationship existed between the management and the claimant. The management No. 2 has only deputed him with principal employer as CCRT had given the perks for deployment of the security guard cum peon. The claimant has remained under administrative and disciplinary control of the CCRT. The claimant time and again has admitted in his claim, affidavit as well as in the cross examination that he was appointed and selected by CCRT as clerk cum typist w.e.f. 05.06.1996 on merits and his services were regularized by CCRT on 08.12.1997. The present management has nowhere made any payment of the salary and other perks ever being in administrative control and supervision over the claimant, then in such circumstances there was no question of relationship of master and servant between the managements and claimant.



12. In view of the aforesaid discussion and material on record, the salary and perks are being drawn by the workman from the CCRT. The overall administrative control and supervision upon the workman is by the CCRT after deployment of the claimant as Peon on the muster roll of the management. The service of the workman was regularised by the CCRT. The management has no role to play during the service tenure. The role of the management no. 1 is only to deploy the workman with the management of the CCRT as a service provider. Therefore, the actual relationship of the employee employer is between the claimant and the management of CCRT which is not being made as a necessary party, despite being preliminary objection taken in the written statement by the management no. 1 and 2. As such in view of the aforesaid discussion and material on record, the issue No. 1 is decided in favour of the management and against the workman.

13.....Since there existed no relationship of master and servant or employer and employee between managements and workman, termination of services of the workman by the present management does not arise. There was no supervision or control over the workman by the present management ever being made. Actually, the claimant is the employee of the CCRT and he was being appointed by CCRT and his services were terminated by CCRT. This fact has also been admitted by the claimant in his claim, affidavit, as well as in the cross examination. The claimant categorically admitted that his services were terminated by CCRT on 16.10.2001. WW1 Harinder Singh Butola in his cross examination has admitted that I was appointed as Peon and deployed in CCRT. The CCRT has promoted me as clerk-cum-typist since 01.05.1998. It is correct that managements No. 1 & 2 have never terminated the services of workman on 16.10.2001 but the services were terminated by CCRT. It is further admitted that I have raised a dispute against CCRT after termination of my services in the



Hon'ble High Court, Supreme Court and Regional Labour Commissioner (Central) Therefore, in view of the above admission made by the workman, there is no question of termination of serviced by management No. 1 & 2. Accordingly, issue No. 2 is decided in favour of the managements and against the workman.....”

21. Upon perusal of the above extracted paragraphs of the impugned award, it is observed that whilst adjudicating upon the claim of the petitioner workman on the basis of the admissions made by the workman himself, the learned Labour Court decided that there existed no employer – employee relationship between the petitioner and the respondent's no. 1 & 2. In the absence of any master-servant relationship, the workman cannot be held to be an employee of the respondents and hence, the claim was dismissed.

22. The petitioner has contended before this Court that his salary was being paid by the respondent no. 1 & 2, copies of which have been annexed as Annexure P- 2.

23. It is an undisputed fact that during his cross examination conducted on 7th October, 2011, the petitioner had admitted that he was appointed by the respondent no. 2 and deployed at CCRT as a 'Peon' and since his deployment until 16th October, 2001, i.e., the date of termination, the petitioner worked with CCRT.

24. The petitioner also deposed in his cross examination that during his service with the CCRT as a 'Peon', he was promoted by the CCRT as Clerk-cum-Typist on 1st May, 1995 and CCRT used to sanction his leave and reimburse the payments for the bills submitted by him to CCRT itself. The



petitioner further deposed and admitted that his services were terminated by the CCRT and not by the present respondents. Finally, the petitioner also admitted that during the period of his services, CCRT maintained control over the petitioner and not the present respondents. The relevant extracts of the cross examination of the petitioner conducted on 7th October, 2011 are reproduced for reference herein below:

“...I know what is written in my affidavit. Previously I was residing at A-44, Gali no.9, West Vinod Nagar, and presently I am residing at E-235, Street no.4, West Vinod Nagar. Delhi-92. I am residing in the said house on rent @ 1000/- paid to the land lord. It is correct that I was appointed by the management no.2 and deployed CCRT at Vigyan Bhawan. It is chairman office of CCRT. Since the date of deployment at CCRT 16.10.01. It is correct that the transfer order was issued by the CCRX to me. There is no copy was ever sent to the management no. 1 & 2 by the CCRT. It is correct that the Ex.W1/1 is my first transfer order issued by the CCRTs Deputy Director and the Ex.WW1/2 is also my transfer order the copy of the same has not been sent to the management no.1 & 2. It is correct that I was appointed as peon and deployed at CCRT. It is correct that the CCRT has promoted me as clerk cum typist since 01.05.1995. The documents Ex.WW1/5 to Ex.WW1/11 are the payment received by me after giving the bill to the CCRT and thereafter CCRT re-imburse the same to me. The copy of the said payment receipt had not been sent to the management no.1 & 2. It is correct that the management no. 1 &2 has never terminate my services but my services has been terminated by CCRT on 16.10.01. I have raise a dispute against the CCRT after termination of my services. It is also correct that I have mentioned in letter Ex.WW1/15 I may be declared the employee of the CCRT before the Regional Labour Commissioner Government of India New Delhi. I have written letter to the



CCRT to confirm my services. I do not know on which date I sent the letter to the CCRT for confirmation. I have not brought the copy of the same today itself nor I have filed the same in the court file. The said letter was duly received by the CCRT by hand. My services were look after by CCRT by all means. It is wrong to suggest that there was no relationship with the management no.1. I have filed the case against the management no.1 & 2 after gap of six and half years at belated stage. It is correct that my leave were sanctioned by the CCRT. I do not know whether any intimation was sent to the management no.1 & 2. It is correct that I was directed by the CCRT to put over time and the over time payment has been paid by the CCRT and not by the management no.1 & 2. It is correct that during my service period the over all control of the CCRT on my services and not by the management no.1 & 2....”

25. Issue No. 1 before the learned Court below was to decide whether any employer-employee relationship existed between the management and the petitioner and if any relationship did exist then whether the petitioner’s services were illegally terminated.

26. On the basis of the observations made *qua* the above extracted cross – examination of the petitioner workman, the learned Labour Court decided that admittedly the workman was under the administrative control of CCRT and not the present respondents. Therefore, it decided the issue No. 1 in favour of the respondents and against the petitioner workman.

27. The settled position of law with respect to the burden of proof of establishing an employer-employee relationship has been discussed in the judgment of the Hon’ble Supreme Court in ***Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of T.N., (2004) 3 SCC 514***, wherein, it has been held



that the onus and degree of proof of employment primarily lies on a person who claims to be a workman. The relevant paragraphs of the said judgment are as under:

“..Burden of proof

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. Secy., Thodupuzha Taluk Shop and Commercial Establishment Workers' Union [1973 Lab IC 398 : (1973) 1 LLJ 366 (Ker)] the Kerala High Court held : (LAB IC p. 402, para 9)

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 v. First Labour Court of W.B. [1976 Lab IC 202 (Cal)] it has been held : (LAB IC para 10)

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 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...”



28. Relying upon the rationale of the aforesaid judgment and facts of the present petition as well as the admissions made by the petitioner workman in his cross examination before the learned Court below, this Court is of the view that the respondents no. 1 & 2 had no role in the employment of the petitioner workman after he was deployed at CCRT as a 'Peon' and promoted as a Clerk-cum-Typist on 1st May, 1995. As also held by the learned Labour Court, the respondent no. 1's role was merely to deploy the petitioner workman and thereafter, since his services were regularized by CCRT, it cannot be held that there existed employer-employee relationship between the respondents and the petitioner. The same can also be ascertained from the factum that the services of the petitioner were terminated by the CCRT and not by any of the respondents.

29. Moreover, since there did not exist any employer-employee relationship among the parties, the issue of the termination of the petitioner's services does not arise as there was no supervision or control of the respondents over the petitioner.

30. This Court is of the view that as per the settled position of law the onus to prove whether there exist any employer-employee relationship between the respondent and the petitioner lies on the party setting up the plea regarding existence of such a relationship. The plea of existence of employer-employee relationship between the parties is a pure question of fact and ordinarily cannot be interfered with by a High Court, while exercising its power of judicial review unless the finding of the Court below is manifestly erroneous or perverse.



31. At this stage, this Court deems it imperative to set out the law with regard to Article 226 of the Constitution of India under which the instant petition has been filed. It is a settled position of law that in order to invoke the writ jurisdiction of this Court, it has to be proved that the Court below has exceeded or usurped its jurisdiction, or acted illegally; or in contravention to any law, or there is an error on the face of the record.

32. In light of the said observations, this Court is of the considered view that the learned Labour Court rightly adjudicated the dispute referred to it and the impugned award has been passed after taking into consideration the entire facts and circumstances available in the learned Labour Court's record. The petitioner-workman has failed to make out any illegality or perversity in the impugned award and therefore, the decision of the learned Labour Court does not suffer from any infirmity.

33. There is nothing on record before this Court to imply that the learned Court below has acted in contravention of any law. The petitioner has been unable to put forth any proposition which would merit the interference of this Court and in view of the same the instant petition is liable to be dismissed.

34. In light of the foregoing discussions of facts as well as the settled law, it is held that there is no infirmity or irregularity in the impugned award dated 11th April, 2012, passed by the learned Presiding Officer, Labour Court, Karkardooma Courts, Delhi, in I.D. No. 39/11 (Old ID No. 334/07) and the same is hereby upheld.

35. Accordingly, the instant petition stands dismissed along with pending



2024:DHC:3133



applications, if any.

36. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 4, 2024
gs/ryp/av

Click here to check corrigendum, if any