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

\+ W.P.(C) 10304/2018

HARISH KUMAR .....Petitioner

Through: Mr. Lalit Kumar, Mr. Pushpendra Kr. and Mr. Nitin Kumar, Advs. with petitioner in person.

versus

UNION OF INDIA .....Respondent

Through: Mr. K.C. Dubey, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% **13.02.2025**

C. HARI SHANKAR, J.

1. This petition challenges judgment dated 15 January 2018 passed by the Central Administrative Tribunal[1] in OA 3301/2016.

2. The petitioner was the applicant before the Tribunal in the said OA.

3. The petitioner contended, before the Tribunal, that he had been engaged by the respondent as Compiler/Data Entry Operator in August 2009. However, after having worked with the respondent for

[1] "the Tribunal", hereinafter

three years, he claimed to have been informed, in December 2012, that he was on contract basis and that his services were being terminated.

4. Aggrieved thereby, the petitioner approached the Tribunal by way of the aforesaid OA 3301/2016, with a prayer that the respondent be directed to permit him to continue as Data Entry Operator.

5. In support of their contention, that he was directly employed by the respondent, the petitioner produced

(i) cheques evidencing direct payment of salary by the respondent to the petitioner,

(ii) certificate dated 16 October 2012 issued by the respondent, certifying that the petitioner had been continuous services with the respondent for three years, and

(iii) copies of the attendance register maintained by the respondent, which recorded the attendance of the petitioner.

6. We may reproduce, for ready reference, the certificate dated 14 January 2016 issued by the respondent certifying that the petitioner was in continuous service with them, thus:

> **"TO WHOM IT MAY CONCERN**
>
> It is certified that Shri Harish Kumar S/o Shri Phool Singh residing at Mahubadabra Jaspur Distt. U.S. Nagar, Uttrakhand, is working in Customs, Central Excise & Service Tax Past Noida as computer Operator (Contract basis) for five year. The signature & photograph of Shri Harish Kumar is attested as under."

7. Thus, before the Tribunal, all the evidence produced by the petitioner was sought to be explained away as being in terms of the contract between PMSSPL and the respondent.

8. The purported agreement between the respondent and PMSSPL was, however, not forthcoming before the Tribunal.

9. The Tribunal has accepted the submissions of the respondent and proceeded to dismiss the petitioner's OA, on the following basis:

> "8. The applicants have not produced before this Tribunal any tangible material showing that they were duly appointed to the post of Compiler/Data Entry Operator by the respondent-Department in August 2009 and were working as Compilers/Data Entry Operators in the respondent-Department. No material has also been placed before this Tribunal to show that the applicants were engaged by the respondent Department to work on contract basis with consolidated salary and their services were terminated by the respondent-Department. From the documents filed by the applicants, along with their O.A., it is clear that the respondent-Department had outsourced the work of data entry work, and the applicants were engaged by M/s Park Management Support Services Pvt. Ltd. to do the data entry work in the office of respondent no.3. Specific amount of expenditure was sanctioned by the respondent-Department for such data entry work and paid from the head "Office Expenses". Thus, the applicants were disengaged by the said service provider in accordance with the terms and conditions of their engagement. Therefore, I do not find any substance in the claim made by the applicants in the present O.A."

10. Aggrieved by the aforesaid decision, the petitioner approached this Court by means of the present writ petition.

11. While issuing notice in this matter, this Court on 28 September 2018, passed the following order:

> "1. Issue notice.
>
> 2. Although the pleadings before the Tribunal are already on

record, *it is considered necessary to direct the respondent to file an affidavit to explain the reason for issuing cheques through the Pay and Accounts Office, Customs Central Excise and Service Tax Department, Noida, in favour of the petitioner towards his wages and for issuing a certificate dated 16.10.2012, declaring inter alia that the petitioner is working in the Customs, Central Excise and Service Tax Department, Noida, as a Computer Operator, (contract basis) for five years. Further, the respondent shall place on record, the contract executed with the private agency that had employed the petitioner who was working as a Data Compiler in their Noida branch.*

3. List on 15.02.2019."

(Emphasis supplied)

12. In terms of the aforesaid order, an additional affidavit was filed by the respondent, which read thus:

"**AFFIDAVIT**

I, Nisha Lal W/o Late Shri Ratan Lal, R/o Flat No. 1231, Sharon Tower, Gaur Saundaryam, Greater Noida (West) aged about 58 years, do hereby solemnly affirm and declare as under:-

1. That I am working as Assistant Commissioner with the Respondent in the aforementioned case and well conversant with the facts and circumstances of the case and competed to swear this affidavit.

2. That the Petitioner has never been an employee of the Respondent nor has been paid any remuneration by the Respondent. *The Respondent has not issued any cheque to the Petitioner nor has he ever been paid in cash.*

3. That *the said certificate dated 14.01.2016 declaring inter-alia that the Petitioner was working with the respondent cannot be treated as an authority which appoints him as an employee of the Department.*

4. That the Petitioner's services were utilized through the service provider namely M/s Park Management Support Services Pvt. Ltd., S-9, Sector-12, Noida-201301 to meet out some works which were of urgent and temporary nature when such work was over his services were no more required.

5. That as per the direction the Respondent has looked over all records but *as the matter being very old, a copy of contract executed with M/s Park Management Support Services Pvt. Ltd. is not traceable. Instead, a bill for the month of March, 2012 dated 31.03.2012 has been found by which M/s PMSS Pvt. Ltd was paid an amount of Rs. 15,645/- for providing two Data Entry Operator to the Respondent which proves that Shri Harish Kumar is not an employee of this department and he was outsourced through M/s Park Management Support Services Pvt. Ltd.* A copy of the said bill dated 31.03.2012 is placed on record and marked as **Annexure-R-A**.

6. That the contents of the affidavit have been read over and explained to me and the same are true and correct to the best of my knowledge and belief.

7. That the Annexure attached with the affidavit are true copy of the original and the same are true and correct.

DEPONENT"

(Emphasis supplied)

13. The respondents had three opportunities to explain the material on which the petitioner relied, as enumerated *supra*; in its counter-affidavit before the Tribunal, thereafter during oral arguments before the Tribunal and, thereafter, before this Court. It would be interesting to note the stand taken by the respondents on each occasion:

Regarding	**Stand of the respondent**		
	In counter-affidavit before the Tribunal	**During oral arguments before the Tribunal**	**In additional affidavit filed before this Court**
Cheques issued by respondent in petitioner's name	"No such cheque has been issued by the respondent no. 3 in favour of applicant nor any payment in cash has been made."	"As per the terms and conditions of the agreement entered into by and between the respondent-Department and the service	"The Respondent has not issued any cheque to the Petitioner nor has he ever been paid in cash."

		provider, the payment of wages made by the respondent-Department directly to the applicants does not imply that the applicants were the employees of the respondent-Department."	
Attendance register	"No such attendance register is maintained in the office of the respondent no. 3."	"… since the service provider engaged the applicants to do the data entry work in the office of respondent no. 3, the maintenance of Attendance Register was required by the service provider for the purpose of making wages to the applicants, and such maintenance of Attendance Register does not clothe the applicants with a right to claim that they were employees of the respondent-Department."	(No submission)
Certificates	"Wrong and denied. As such certificates cannot be treated as an authority which appoints him as an employee of the respondents."	(No submission)	"The said certificate dated 14.01.2016 declaring *inter alia* that the Petitioner was working with the respondent cannot be treated as an authority which

			appoints him as an employee of the Department.”

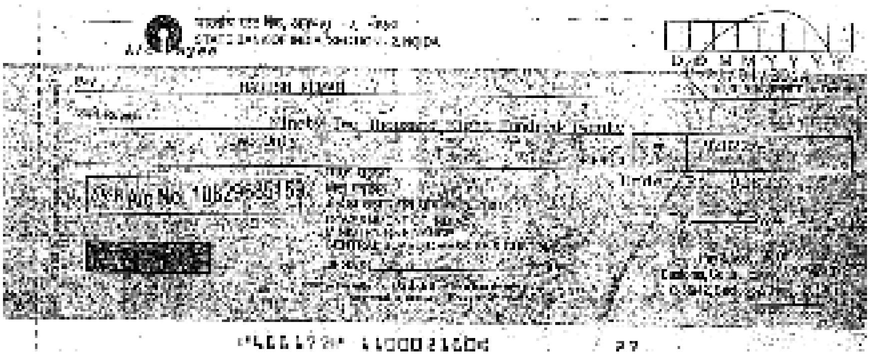
14. Thus, the position that emerges is as under, with respect to the material on which the petitioner relied, to substantiate his stand that he was the respondent’s employee:

(i) Re. payment of salary by cheques issued by the respondents

(a) In their counter-affidavit before the Tribunal, as also in the additional affidavit before this Court, the respondents sought to completely disown the cheques issued to the petitioner as never having been issued by them.

(b) In a starkly contradictory, and incompatible, manner, the respondents argued, before the Tribunal, that the payments *had* been made, but as per the contract between the respondents and PMSSPL.

(c) We deem it appropriate to provide, here, a screen shot of one such cheque issued to the petitioner, the genuineness of which was *never* questioned by the respondents:



(ii) Re. attendance register

(a) Despite having been given an opportunity by this Court, *vide* its order dated 28 September 2018, to explain the maintenance of an attendance register for the petitioner if he was not the respondent's employee, the additional affidavit filed by the respondent is totally silent on this aspect.

(b) Before the Tribunal, the stand adopted during oral arguments was completely at variance to the stand taken in the counter-affidavit. In the counter-affidavit, the respondent completely denied maintaining any attendance register for the petitioner. Before the Court, however, the respondent contended that the maintenance of the attendance register was in terms of the agreement between the respondent and PMSSPL.

(c) That agreement, as already noted, has never been produced or filed.

(iii) Re. certificate

(a) Again, apropos the certificate issued by the respondent, while the respondent chose to remain silent during oral arguments before the Tribunal, in the counter-affidavit filed in response to the respondent's OA, it was sought to be contended that the certificate could not be cited as proof that the petitioner was the respondent's employee. This stand has been reiterated in the additional affidavit filed in compliance with the order dated 28 September 2018 passed by this Court.

(b) Mr Dubey, learned Counsel for the respondent submits, before us, however, that the certificate was issued so as to aid the petitioner in obtaining alternate employment.

(c) No such contention was even advanced before the Tribunal.

15. The position that emerges is that, while the petitioner had placed material, on record, indicating that he was the respondent's employee, the respondent, while asserting, *per contra*, that the petitioner was the employee of PMSSPL, could not place tangible material on record to substantiate the plea.

16. The Tribunal, in our view, has erred in holding otherwise.

17. In that view of the matter, we cannot sustain the impugned judgment of the Tribunal, which is accordingly quashed and set aside.

18. The OA filed by the petitioner shall stand allowed in terms of the prayers made therein.

19. The writ petition is allowed accordingly.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

FEBRUARY 13, 2025/*aky*

Click here to check corrigendum, if any