

(2014) 11 P&H CK 0126
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 18583 of 2014

Payre Lal

APPELLANT

Vs

Presiding Officer, Labour Court-III and Others

RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Labour (Regulation and Abolition) Act, 1970 — Section 12, 7
Industrial Disputes Act, 1947 — Section 25-F

Citation : (2015) 1 SCT 715

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Anil Shukla, Advocates for the Appellant

Judgement

Tejinder Singh Dhindsa, J.—Challenge in the instant petition is to the award dated 3.9.2009 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-III, Faridabad whereby a reference has been answered against the petitioner-workman and he has been held not entitled to any relief. Learned counsel appearing for the petitioner would vehemently argue that the finding recorded by the Labour Court as regards there being no relationship of employer and employee between the workman and respondent No. 2 and further holding the workman to be an employee of the Contractor i.e. M/s. Progressive Security Services, is perverse. In this regard, learned counsel would contend that the Contractor had produced fake and forged record before the Labour Court and which could not have been relied upon. It has also been contended that there has been a violation of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (for short "1970 Act"), inasmuch, as for the period the workman had worked as a Driver i.e. from 1.9.1997 till 28.2.2000, neither respondent No. 2-Management had any certificate/registration under Section 7 of the 1970 Act and nor did the Contractor-firm i.e. M/s. Progressive Security Services, Ballabgarh have any licence under Section 12 of the Act. Learned counsel argues that as a necessary corollary, the workman would be deemed to

be a direct employee of respondent No. 2-Management.

2. Having heard learned counsel for the petitioner at length and having perused the case paper book, this Court is of the considered view that no basis or interference in the impugned award is made out.

3. The claim set up by the workman was that he had been appointed by the respondent-Management as a Driver on 1.9.1997 and his services were illegally terminated on 28.2.2000 and in violation of the provisions of the Industrial Disputes Act. Respondent-Management had opposed the claim by taking a preliminary objection that there was no relationship of employer/employee between the parties and the workman had, in fact, been employed by the Contractor, namely, M/s. Progressive Security Services, Ballabgarh.

4. Upon reference having been made, the following issues were framed by the Labour Court on 27.5.2003:

1. Whether there is employer employee relationship between the parties? OPWM
2. Whether the claimant completed 240 days service under the respondent during 12 calendar months preceding the date of termination of his service? OPWM
3. Whether the termination of the service of the claimant was illegal due to non-compliance with section 25-F of the Industrial Disputes Act, 1947? OPWM
4. As per reference? OPWM
5. Whether the reference is bad? OPM
6. Relief.

5. While taking up Issues No. 1 to 4 together, a finding of fact has been recorded as regards the workman being an employee of the Contractor and not that of respondent No. 2 - Management. In this regard, evidence adduced on record as Exhibit M7 i.e. copy of nomination and declaration form shown to have been signed by the workman under EPF Scheme and reflecting him to be employee of M/s. Progressive Security Services, has been noticed. That apart, Exhibit M8 was a copy of a return of declaration form under the ESI Act submitted by the Contractor where the name of the workman found a mention. Exhibit M1/12 was a copy of the certificate issued by the Contractor - firm and shown to be signed by the workman. Furthermore, Management witness Shri Mahipal Singh, MW 2 had adduced document, Mark MX/2, which was a complaint having been submitted by the workman along with certain other persons to the General Manager of respondent No. 2-Management alleging that the Contractor, namely, Shri S.P. Singh was deducting the Provident Fund but was not issuing any receipt and slips in lieu thereof. The Labour Court has further observed that no suggestion had been made by the workman at any stage as regards the documents at Exhibits M7, M8, M1/12 and Mark MX 2 being false or forged. It has also gone unrebutted that the workman did not examine any co-worker from

respondent No. 2 - Management to prove his relationship as regards being an employee. He also did not move any application before the Labour Court for production of record from the Office of respondent No. 2 - Management to prove the factum of his being their employee.

6. Such finding of fact as regards there being no relationship of employer and employee between workman present petitioner and respondent No. 2-Management is based on due appreciation of evidence. It is by now well settled that while exercising supervisory jurisdiction, the writ Court under Article 226 of the Constitution of India would not enter the thicket of adequacy or sufficiency of evidence. These are matters within the exclusive domain of the inferior Tribunals. A reference in this regard may be made to the land-mark judgment of the Hon"ble Supreme Court in Syed Yakoob Vs. K.S. Radhakrishnan and Others, .

7. Even the submission raised by the learned counsel as regards violation of the provisions of the 1970 Act would be of no consequence. The same at best would entail penal consequences envisaged under the 1970 Act itself. The absence of registration of respondent No. 2-Management or the Contractor not holding a licence cannot obliterate the issue as regards engagement of the workman by the Contractor and neither can the said fact alter the status of the workman to one of a regular employee under the principal employer. For the reasons recorded above, this Court does not find any infirmity in the impugned award dated 3.9.2009, Annexure P3, and consequently, writ petition is dismissed.