

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**LPA No.18 of 2021****Reserved on: 19.03.2024****Date of Decision: 22.03.2024**

Rakesh Sharma

...Appellant

Versus

Indian Oil Corporation and another

...Respondents

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge

The Hon'ble Mr. Justice Sushil Kukreja, Judge

Whether approved for reporting?¹

For the appellant : Mr. P.S. Goverdhan, Senior Advocate
with Mr. Rakesh Thakur, Advocate.

For respondent No.1: Mr. Rahul Mahajan, Advocate.

Sushil Kukreja, Judge

The instant Letters Patent Appeal has been preferred by the appellant (writ petitioner) against the impugned order dated 21.08.2019 passed by the learned writ Court, whereby the writ petition filed by him was dismissed.

2. Brief facts of the case, as set-up by the appellant, are that he was engaged by respondent No.1-Indian Oil Corporation (hereinafter referred to as the 'Corporation') as Electrical Helper on

¹ Whether reporters of Local Papers may be allowed to see the judgment?

23.03.1996 at LPG Bottling Plant, Baddi, District Solan, H.P. and he worked continuously there for about 4½ years. On 04.08.2000, his services were terminated by the Corporation without any reason and without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short, the 'Act'). Resultantly, the appellant raised the industrial dispute and accordingly the matter was referred to the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh for adjudication. The reference was formulated as under:-

“Whether the action of the management of Indian Oil Corporation in ordering disengagement/termination of services of Sh. Rakesh Sharma, engaged through contractor and who has completed 240 days of service is just and legal? If not what relief the workman is entitled to and from which date”

3. The reference was answered against the appellant, vide award dated 31.01.2013 passed by the learned Industrial Tribunal-cum-Labour Court below. Feeling aggrieved and dissatisfied against the award dated 31.01.2013, the appellant preferred a writ petition being CWP No.8497 of 2013 and after hearing learned counsel for the parties, the learned writ Court had dismissed the writ petition, vide the impugned order dated 21.08.2019, on the ground that the appellant had failed to establish the relationship of master and

servant between him and the Corporation. Consequently, the appellant preferred the instant appeal against the aforesaid impugned order dated 21.08.2019.

4. Learned Senior counsel for the appellant contended that the impugned order dated 21.08.2019 passed by the learned writ Court suffers from material irregularities and illegalities as the learned writ Court had failed to take into consideration the log-book as well as the Employees' State Insurance Corporation (ESI) Card, issued by the Corporation. He further contended that the learned writ Court had passed the impugned order by completely ignoring the un-rebutted evidence as well as oral testimony of the appellant available on record.

5. On the other hand, learned counsel for the Corporation contended that there is no iota of evidence to show that the appellant was appointed as Electrical Helper by the Corporation, as such, the impugned order does not call for any interference.

6. We have heard learned Senior counsel for the appellant as well as the learned counsel for the Corporation and also carefully gone through the record of the case.

7. It is no longer *res-integra* that the burden of proving the employer-employee relationship primarily rests upon the person

who asserts its existence. In a situation where a person asserts to be an employee of the management which the management denies, the duty primarily rests upon the person so asserting to give positive evidence in his favour and discharge his initial burden. Once such a person has given positive evidence in his favour, only then, the burden would shift on the management to give evidence to counter such claims. The Hon'ble Supreme Court in ***Workmen of Nilgiri Co-op. Mkt. Society Ltd. Vs. State of Tamil Nadu and others***, ***AIR 2004 SC 1639*** held as under:-

"47. It is a well-settled principle of law that the person who is set up a plea of existence of relationship of employer and employee, the burden would be upon him.

48. In N.C. John Vs Secretary, Thodupuha Taluk Shop and Commercial Establishment Workers' Union and others [1973 Lab. I.C. 398], the Kerala High Court held :

"The burden of proof being on the workman 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."

50. The question whether the relationship between the parties is one of the employer and employee is a pure question of the fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the findings is manifestly or obviously erroneous or perverse."

8. Therefore, the onus was upon the appellant to prove the existence of relationship of employer and employee between him and the Corporation. However, except for the bald statement of the appellant that he was an employee of the Corporation, no concrete

material has been placed on record by him to substantiate his case. The appellant claims to have joined the Corporation on 23.03.1996 at the post of the Electrical Helper, but has no proof of appointment such as appointment letter, salary slip etc. The Corporation had denied existence of any relationship of employer and employee or master and servant between the Corporation and the appellant as the case of the Corporation is that he was not engaged by it but was employed by M/s U.K. Electricals Corporation Limited, with whom, the Corporation was having an agreement with regard to supply of manpower.

9. Learned counsel for the appellant laid much stress upon the log-book, allegedly prepared by the Corporation, through its authorized officer as well as the ESI identity card, in order to establish that the appellant was working directly under the control of the Corporation. However, the appellant has not produced the original log-book and has only placed on record the photocopy of the same, which cannot be read in evidence as it has not been proved on record in accordance with law. The perusal of ESI card shows that it has been issued in the name of appellant Rakesh Kumar, but it does not reflect the name of the employer. Only the code number of the employer has been given in this card and there

is no evidence on record to suggest that the code number mentioned in this card is that of Corporation. Therefore, on the strength of this document, it cannot be said that the appellant was an employee of the Corporation as in the case of contract labour also, it is the responsibility of principal employer to ensure that the labour is duly registered with the Corporation and the contribution required in terms of the Act is deposited by the employer, of course, subject to realization thereof from the contractor. The appellant has failed to show that as member of ESI Corporation, the contribution has been realized from the Corporation. Hence, in the absence of any other cogent and satisfactory evidence on record, simply on the basis of ESI card, it cannot be said that the appellant was employed by the Corporation. The appellant does not possess any cogent evidence by which it may be appreciated that he was ever employed by the Corporation. He also could not prove that the Corporation had ever paid him salary. He could have moved an application before the learned Tribunal below thereby calling upon the records of the Corporation to prove the relationship of employer and employee between him and the Corporation, however, for the reasons best known to the appellant, no application was moved before the learned Tribunal below to call for the record of the Corporation.

10. On careful consideration of the rival contentions of the parties, we are of the view that the appellant has failed to prove the relationship of employer and employee between him and the Corporation. Respondent No.1, being a Government of India Undertaking, cannot employ any person without issuance of appointment letter and cannot make payments without maintaining proper records of the wages. We agree with the learned Single Judge that the appellant had failed to establish the relationship of master and servant between him and the Corporation, hence, we see no reason to interfere with the impugned order dated 21.08.2019 passed by the learned writ Court.

11. Consequently, there is no merit in the instant appeal and the same is accordingly dismissed, so also the pending miscellaneous application(s), if any.

(Tarlok Singh Chauhan)
Judge

(Sushil Kukreja)
Judge

March 22, 2024
(VH)