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

Date of Decision: 21st May, 2026

+ W.P.(C) 1329/2020

MOHD. AFTAB ALAM

.....Petitioner

Through: Ms. Adrija Bhadra and Mr. Hasnain
Ali Zuberi, Advocates.

versus

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
& ANR

.....Respondents

Through: Ms. Surbhi Mehta and Mr. Hari
Krishnan Sangwa, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution seeking a writ of *mandamus* directing the Respondents to reinstate him in service, with full back wages and continuity of service. His grievance arises from a letter dated 4th October, 2019, issued by Respondent No. 2, M4 Solutions Pvt. Ltd., by which he was discharged from duties with effect from the close of office hours on that date.

Factual Background

2. The Petitioner states that he applied for employment pursuant to advertisements published on websites and job portals. According to him, he was called for an interview at the headquarters of Respondent No. 1,



namely, the Institute of Chartered Accountants of India [“ICAI”], at ICAI Bhawan, New Delhi. He asserts that officers of ICAI interviewed and selected him for deployment as a Civil Engineer. However, instead of issuing an appointment directly, ICAI engaged him through intermediary contractors.

3. The Petitioner’s engagement began on 12th July, 2012 through Randstad India Ltd./MAFOI, which issued a fixed-term contract of employment and, by a deputation letter of the same date, placed him with ICAI. Thereafter, the contracting agency changed more than once: from Randstad India Ltd./MAFOI to Crux Management Services Pvt. Ltd., then to G.A. Digital Web Word Pvt. Ltd., and eventually to Respondent No. 2. The Petitioner’s case is that these changes altered only the name of the intermediary, not the reality of his engagement; he remained posted and continued to work at ICAI throughout his period of engagement. The documents on record reflect the succession of these arrangements: Crux Management Services Pvt. Ltd. issued an appointment letter dated 1st April, 2013; G.A. Digital Web Word Pvt. Ltd. issued an appointment letter dated 1st December, 2014; and Respondent No. 2 issued an appointment letter dated 2nd July, 2019, followed by a letter of outsourcing of the same date and an extension letter dated 1st September, 2019.

4. The employment relationship was brought to an end on 4th October, 2019, when Respondent No. 2 discharged the Petitioner from duties with immediate effect from the close of office hours on the same day. The order invoked Clause 9 of the outsourcing letter dated 2nd July, 2019, which restrained the Petitioner from joining any union, resorting to strike, demonstration or agitation, or acting against the interests of the client. It



alleged that the Petitioner had violated that condition by participating in strike and demonstrations at ICAI's premises, instigating others to join him, disrupting normal work and tarnishing ICAI's image.

5. Before instituting the present proceedings, the Petitioner approached the Deputy Labour Commissioner/Conciliation Officer under the Industrial Disputes Act, 1947 [*“ID Act”*]. In those proceedings, the Petitioner alleged unlawful termination and a sham contracting arrangement. ICAI, in response, disputed the very foundation of the claim. It asserted that it was not an *“industry”*, that the Petitioner was not a *“workman”*, that he had never been its employee, and that no employer-employee relationship existed between them. The said proceedings ended in a failure report dated 5th February, 2021.

Petitioner's Contentions

6. In support of the petition, Ms. Adrija Bhadra, counsel for the Petitioner, makes the following submissions:

6.1. ICAI is a statutory body constituted under the Chartered Accountants Act, 1949 [*“CA Act”*] and discharges public functions relating to the regulation of the profession of chartered accountants. Being an authority having statutory character and performing public functions, it is amenable to this Court's writ jurisdiction. Where such an authority acts through a contractor to defeat the lawful rights of persons working in its establishment, this Court would not be powerless to exercise jurisdiction under Article 226 of the Constitution.

6.2. The contractual arrangement through successive contractors was a sham and a mere paper arrangement. ICAI selected the Petitioner, controlled and supervised his work, regulated his attendance and granted leaves.



Although the contractors changed from time to time, the Petitioner's work in ICAI continued uninterrupted for over seven years. These circumstances demonstrate that ICAI was the real employer and the contractors were interposed only to avoid legal obligations. The Petitioner performed duties of a permanent and perennial nature in ICAI's establishment, and the contractual arrangement was devised solely to deny him the status, benefits and security available to regular employees.

6.3. Clause 9 of the letter of outsourcing dated 2nd July, 2019, insofar as it prohibits joining a union, is *ex facie* illegal. The rights to freedom of speech and expression and to form associations are guaranteed under Articles 19(1)(a) and 19(1)(c) of the Constitution, respectively. The said clause is also contrary to the provisions of the Trade Unions Act, 1926. The Petitioner had merely become a member of a registered trade union and had neither participated in any strike, demonstration or agitation. His discharge was, in reality, occasioned by his trade union membership and his participation in raising labour grievances before the competent authorities on behalf of himself and other similarly placed employees. The discharge was, thus, retaliatory in nature and not founded on any misconduct.

6.4. The discharge letter dated 4th October, 2019 contains allegations that the Petitioner indulged in strike, demonstration and instigation of other employees. Once such allegations were levelled, the Respondents could not have discharged him without holding a domestic enquiry and affording him an opportunity to meet the charges. The termination is, therefore, vitiated by violation of the principles of natural justice.

6.5. The common order dated 17th November, 2021, passed by this Court



in the matters of *Santosh Kumar Sharma & Anr. v. ICAI & Ors.*¹ and *Narender Singh & Ors. v. ICAI & Ors.*², is distinguishable. There, the Petitioners were peons and data entry operators and were admittedly workmen. The present Petitioner, being an engineer, does not fall within the definition of “*workman*” under Section 2(s) of the ID Act. Consequently, the industrial forum cannot grant him relief.

6.6. The Petitioner earlier approached the Conciliation Officer assuming, on an erroneous premise, that he was a “*workman*” under the ID Act. Once his status as an engineer is properly appreciated, it becomes clear that he cannot pursue a remedy under that enactment. In fact, ICAI itself disputed the maintainability of the proceedings before the Conciliation Officer by asserting that it was not an “*industry*”, that the Petitioner was not a “*workman*”, and that no employer-employee relationship existed between the Petitioner and ICAI. Having taken those objections, the Respondents cannot now insist that the Petitioner must be relegated to the remedies under the ID Act. On this basis, the present writ petition is maintainable.

Respondent No. 1's Contentions

7. Opposing the petition, Ms. Surbhi Mehta, counsel appearing for ICAI, submits as follows:

7.1. The petition is not maintainable. The Petitioner has admittedly invoked the machinery under the ID Act by raising an industrial dispute before the Conciliation Officer. The conciliation proceedings culminated in a failure report dated 5th February, 2021, which stands submitted to the Government of India. It is, therefore, for the appropriate Government to take

¹ W.P.(C) No. 12914/2021.

² W.P.(C) No. 12965/2021.



a decision in accordance with law based on the said report.

7.2. ICAI is a statutory body constituted under the CA Act and is not an “*industry*” within the meaning of the ID Act. Merely because it raised objections before the labour authorities regarding jurisdiction, maintainability, the Petitioner’s status and the absence of any employer-employee relationship, the petitioner cannot treat those objections as a basis for maintaining the present writ petition under Article 226.

7.3. The Petitioner cannot meet the objection of alternative remedy merely by asserting that he is not a “workman” under the ID Act. That assertion is itself a matter for determination. Whether the Petitioner answers the statutory description of a workman, whether any employer-employee relationship existed between him and ICAI, and whether the contractual arrangement was genuine or a camouflage are all contested issues requiring evidence. They cannot be determined on affidavits in proceedings under Article 226. The petitioner’s change of stand, therefore, does not make the writ petition maintainable.

7.4. There is no employer-employee relationship between the Petitioner and ICAI. The Petitioner was neither appointed by ICAI nor were his services terminated by it. In fact, Petitioner was engaged by independent contractors with whom ICAI had entered into contractual arrangements through a tendering process. The records concerning his engagement, including attendance records, pay slips and identity cards, were maintained or issued by the concerned contractors. Therefore, the Petitioner cannot seek reinstatement against ICAI.

7.5. Reliance is placed upon the common order dated 17th November, 2021, in the matters of ***Santosh Kumar Sharma*** and ***Narender Singh***. In



those matters, this Court declined to entertain similar claims for reinstatement against ICAI and observed that questions concerning the existence of an employer-employee relationship, the status of ICAI as an “*industry*”, and the allegation that the contractual arrangement was a sham or camouflage, required adjudication before the appropriate industrial forum. The present petition is governed by the same principle.

Respondent No. 2’s Contentions

8. Additionally, Respondent No. 2 has put forth the following contentions:

8.1. The Petitioner was appointed by Respondent No. 2 on a fixed-term basis for a period of two months commencing July 2019. His engagement was, thereafter, extended for a further period of three months by letter dated 1st September, 2019. The Petitioner accepted the terms and conditions governing his engagement, including the appointment letter and the letter of outsourcing dated 2nd July, 2019.

8.2. Clause 9 of the letter of outsourcing formed an integral part of the contractual arrangement between the parties and was expressly accepted by the Petitioner at the time of joining. Having accepted and acted upon the said terms, the Petitioner cannot selectively challenge Clause 9 after the issuance of the discharge letter.

8.3. The Petitioner’s case proceeds on an erroneous premise that he was discharged merely because he joined a trade union. The discharge letter itself records that the action was taken on account of allegations that the Petitioner had indulged in strikes and demonstrations at the premises of ICAI and had instigated other employees to participate in such activities. The allegations forming the basis of the discharge are materially different



from the case now sought to be projected in the writ petition.

8.4. ICAI, by email dated 14th September, 2019, called upon Respondent No. 2 to take appropriate action in relation to the Petitioner's conduct. The said communication referred to complaints regarding the Petitioner's participation in protests and demonstrations, instigation of other employees and conduct allegedly causing disruption at ICAI's premises. The discharge letter dated 4th October, 2019 was issued thereafter in accordance with the contractual terms governing the Petitioner's engagement.

8.5. The questions whether the discharge amounted to an unfair labour practice, whether the allegations against the Petitioner were correct, whether the contractual arrangement was genuine, and whether the Petitioner is entitled to reinstatement, all involve disputed questions requiring adjudication on evidence. Such issues cannot appropriately be determined in writ proceedings.

Issues for Determination

9. On the basis of the rival submissions and the material placed on record, the following issues arise for determination:

- (i) Whether this petition is maintainable in the facts and circumstances of the case, having regard to the nature of the relief sought and the objections raised by the Respondents concerning the appropriate forum for adjudication of the dispute?
- (ii) Whether questions relating to the alleged sham contractual arrangement, the existence of an employer-employee relationship between the Petitioner and ICAI, the Petitioner's status as a workman or non-workman, and the true basis of the discharge are amenable to adjudication in proceedings under Article 226 of the Constitution?



Discussion & Analysis

10. The objection to maintainability has to be examined with some care, because the petition is directed against two respondents of different legal character. ICAI is a statutory body constituted under the CA Act. Respondent No. 2, on the other hand, is a private contractor through whom, according to the Respondents, the Petitioner was engaged. The mere presence of a statutory body in the array of parties does not, by itself, make every employment-related grievance amenable to Article 226. Equally, the fact that one respondent is private does not end the inquiry if the action complained of is shown to carry a public law element. The Court must therefore examine the substance of the relief, the source of the right asserted, and the nature of the duty sought to be enforced.

A. Maintainability of the Writ Petition against ICAI

11. Article 226 is broad in its scope, yet its application is governed by established principles and limitations. Its sweep extends beyond authorities which answer the description of “*State*” under Article 12. Even so, the remedy remains a public law remedy. The inquiry, therefore, cannot stop with the character of the respondent. The Court must also examine what duty is sought to be enforced, what right is asserted, and whether the impugned action bears a public law character. A body may perform public functions in one sphere and yet act in the realm of private law in another. It is this distinction which marks the boundary between judicial review and adjudication of an ordinary private dispute.

12. The Supreme Court has repeatedly emphasised that the remedy under Article 226 is pre-eminently a public law remedy. In ***Federal Bank Ltd. v.***



*Sagar Thomas & Ors.*³, the Supreme Court drew a distinction between regulatory control and enforceable public duty. The Court observed that a writ may issue against a private body only where it discharges a public duty or is under a positive obligation of a public nature. Mere regulatory provisions governing the functioning of a private body do not, by themselves, confer any public character upon it or render every action of such body amenable to judicial review under Article 226. In *Binny Ltd. & Anr. v. V. Sadasivan & Ors.*⁴, the Court explained that the scope of *mandamus* is determined by the nature of the duty sought to be enforced rather than the identity of the authority against whom it is sought, and that there must be a public law element in the action complained of. In *K.K. Saksena v. International Commission on Irrigation and Drainage & Ors.*⁵, it was reiterated that even where a body performing a public duty is amenable to writ jurisdiction, only those actions which bear a public element are subject to judicial review. The principle was further elucidated in *St. Mary's Education Society v. Rajendra Prasad Bhargava*⁶, wherein the Supreme Court emphasized that even where a body performs a public function or discharges a public duty, the action complained of must itself have a direct nexus with the discharge of such public duty. Individual wrongs or breaches of mutual contractual obligations, without any public law element, cannot be corrected through proceedings under Article 226. The Court further observed that although a body performing public functions may, in certain respects, be amenable to writ jurisdiction, its

³ (2003) 10 SCC 733.

⁴ (2005) 6 SCC 657.

⁵ (2015) 4 SCC 670.

⁶ (2023) 4 SCC 498.



employees cannot invoke Article 226 in matters relating to service where their conditions of service are not governed or controlled by statutory provisions. Actions taken solely within the confines of an ordinary contract of service, having no statutory force or backing, remain in the realm of private law.

13. Tested against these principles, the Petitioner's claim against ICAI does not carry the necessary public law element. ICAI is undoubtedly a statutory body constituted under the CA Act, and performs public functions in regulating the profession of chartered accountants. But the present *lis* does not concern the discharge of those statutory functions. It is not a dispute about admission to the profession, examination, enrolment, membership, disciplinary control over chartered accountants, or any obligation imposed on ICAI by the CA Act. The controversy concerns the Petitioner's discharge from an outsourced engagement. The relief sought is reinstatement with full back wages and continuity of service. No provision of the CA Act, or any statutory rule having force of law, has been shown to confer such a right on the Petitioner or to regulate the impugned discharge. The statutory character of ICAI, therefore, cannot by itself make the writ petition maintainable.

14. The Petitioner seeks to overcome this difficulty by alleging that ICAI was, in substance, the real employer and that the contractors were interposed only as a device. That assertion is central to his case, but it is also a highly disputed question of fact. The documents on record show that appointment letters were issued at different stages by Randstad India Ltd., Crux Management Services Pvt. Ltd., G.A. Digital Web Word Pvt. Ltd. and, finally, Respondent No. 2. Some of these documents expressly state that the



Petitioner would remain an employee of the contractor. At the same time, certain clauses indicate that he was deployed at ICAI's premises and would receive day-to-day instructions from the personnel of ICAI. The record, therefore, carries features pointing in more than one direction. Whether the contracting arrangement was genuine or a camouflage cannot be decided by selecting one set of clauses over another in writ proceedings, merely on affidavits.

15. The difficulty is compounded by the nature of the inquiry itself. Determining the true nature of a contracting arrangement requires a holistic examination of the relationship between the parties and cannot be resolved merely by reference to isolated contractual terms or assertions made in the pleadings. In *Steel Authority of India Ltd. & Ors. v. National Union Waterfront Workers & Ors.*⁷, the Supreme Court observed that where the contract labour system is alleged to be a mere ruse or camouflage and not a genuine arrangement, the issue must be examined on evidence by the appropriate industrial adjudicatory forum. *Balwant Rai Saluja & Anr. v. Air India Ltd. & Ors.*⁸ likewise emphasises that the determination of an employer-employee relationship depends upon a cumulative assessment of several factors, including appointment, remuneration, disciplinary authority, continuity of service and the degree of control and supervision, the relevant test being one of effective and absolute control rather than a mere supervisory oversight. Tested on these principles, the Petitioner's plea that ICAI was the true employer raises matters requiring evidentiary adjudication and cannot be finally determined in writ proceedings on affidavits.

⁷ (2001) 7 SCC 1.

⁸ (2014) 9 SCC 407.



16. The Petitioner's shifting stand under the ID Act also bears upon the maintainability objection. Before the conciliation authority, the dispute was raised as an industrial dispute, and the Petitioner was described as a "*workman*". In the pleadings now pressed before this Court, the Petitioner takes a different position. He states that he is an engineer and, for that reason, does not fall within Section 2(s) of the ID Act. The Rejoinder carries the point further by contending that the industrial forum is unavailable to him precisely because he is outside the statutory definition of "*workman*".

17. This change of position does not advance the writ petition. Whether a person is a "*workman*" cannot be decided by the designation assigned to him, nor by the label used by either side in pleadings before one forum or another. The inquiry turns on the dominant nature of the duties actually performed. A person described as a "*Civil Engineer*" or "*Management Trainee*" may, in a given case, fall outside Section 2(s), but not merely because of that description. The Court would have to examine the actual work performed, the degree of supervision or control exercised over him, the nature of functions discharged, and whether the duties were managerial, supervisory, technical, clerical or operational in substance. These are matters for evidence, not for summary determination on affidavits.

18. Nor do ICAI's objections before the labour authority vest jurisdiction in this Court. ICAI's plea that the Petitioner is not a "*workman*", or that ICAI is not an "*industry*", was a jurisdictional defence taken in those proceedings. It was not an adjudicatory determination. The Petitioner cannot treat an objection raised by the opposite side before one forum as a positive foundation for invoking Article 226, especially when the facts necessary to sustain his claim remain in dispute.



19. The Petitioner is correct to that limited extent that the common order dated 17th November, 2021, passed by this Court in ***Santosh Kumar Sharma*** and ***Narender Singh***, does not determine his individual status under Section 2(s) of the ID Act. Its significance, however, lies elsewhere. In those matters, this Court declined to entertain similar claims for reinstatement against ICAI and held that questions concerning the existence of an employer-employee relationship between the petitioners and ICAI required determination by an Industrial Adjudicator. The Court also observed that issues such as whether ICAI is an “*industry*” and whether the contractual arrangement was genuine or a sham or camouflage were matters for consideration before the appropriate industrial forum.

20. The Petitioner’s reliance on Articles 19(1)(a) and 19(1)(c) of the Constitution does not alter the nature of the *lis*. The Court does not doubt that a contractual clause which, in absolute terms, restrains a person from joining a union would raise serious legal concerns. But the present petition is not a stand-alone challenge to a statutory rule or public regulation restricting speech or association. It arises from the Petitioner’s discharge from an outsourced engagement, and the relief sought is reinstatement with full back wages. Before that relief can be examined, the Petitioner must first establish the foundational facts on which his claim rests: who his real employer was, what legal relationship existed between him and ICAI, whether the discharge was founded merely on union membership or on the alleged acts of strike, demonstration and instigation, and whether the action was punitive or retaliatory in substance. These questions are all disputed. They cannot be assumed in the Petitioner’s favour merely because Articles 19(1)(a) and 19(1)(c) have been invoked.



21. The position, then, is this. Even if ICAI is amenable to writ jurisdiction in respect of its statutory functions under the CA Act, the impugned action is not shown to arise from, or bear any direct nexus with, those functions. The Petitioner does not seek enforcement of a statutory duty owed to him under the CA Act. He seeks reinstatement with back wages in relation to an outsourced engagement whose very character is disputed. The constitutional plea, therefore, cannot by itself convert the dispute into a public law cause maintainable under Article 226.

22. Nor does the Petitioner's uncertain position under the ID Act assist him. If he is ultimately found to be a "workman" and the dispute is industrial in character, the remedies available under that statutory framework would fall for consideration before the competent forum. If he is not a "workman", he may pursue such remedies as private law otherwise permits, subject to maintainability, limitation and proof. But neither possibility enables him to invoke Article 226 against ICAI for reinstatement in a contested contract-of-service dispute which discloses no public law element. The unavailability, or doubtful availability, of one statutory remedy does not transform a private employment dispute into a constitutional cause.

B. Maintainability of the Writ Petition against Respondent No. 2

23. The challenge against Respondent No. 2 stands on an even narrower footing. Respondent No. 2 is a private entity. The Petitioner has not identified any statutory provision or public duty which makes Respondent No. 2 answerable to a writ of *mandamus* in relation to the impugned discharge. The discharge letter dated 4th October, 2019 was issued in the context of the appointment and outsourcing documents dated 2nd July, 2019. The relief sought against it is, in substance, reinstatement with consequential



benefits in a contractual engagement. In the absence of any public law element, such a claim cannot be entertained under Article 226.

24. The fact that the Petitioner was deployed at ICAI's premises does not alter this position. A private contractor does not become amenable to writ jurisdiction merely because it supplies manpower to, or enters into a commercial arrangement with, a statutory body. The Petitioner would still have to show that the particular action complained of is traceable to a statutory duty or public obligation. No such source has been identified. The principles already discussed, therefore, apply with greater force to Respondent No. 2.

25. The Petitioner's reliance on Clause 9 of the outsourcing letter does not alter this conclusion. The discharge letter refers to that clause and alleges strike, demonstration and instigation at ICAI's premises. The Petitioner denies those allegations and asserts that he was discharged only because he joined a registered trade union. Respondent No. 2 maintains that the action followed misconduct and disruption at ICAI's premises. This controversy cannot be resolved without evidence. The Court would first have to determine the true factual basis of the discharge and the legal relationship between the parties before any further issue concerning the validity or invocation of Clause 9 could arise. Those matters are not suited to adjudication in writ proceedings against a private contractor. Therefore, the petition, insofar as it is directed against Respondent No. 2, is also not maintainable.

Conclusion

26. For the reasons recorded above, the present petition is not maintainable under Article 226 of the Constitution. The same is,



accordingly, dismissed. Pending applications, if any, stand disposed of.

27. It is clarified that this Court has not returned any final finding on whether the Petitioner is or is not a “*workman*”, whether ICAI is or is not an “*industry*”, whether there existed an employer-employee relationship between the Petitioner and ICAI, whether the contractual arrangement was genuine or a sham, or whether the discharge dated 4th October, 2019 was lawful on merits. Those questions are left open for consideration by the competent forum, should the Petitioner avail of such remedy as may be available in law. Any such proceeding shall be decided on its own merits and in accordance with law, uninfluenced by any observations contained in the present order, except to the extent that this Court has held the writ petition to be not maintainable.

SANJEEV NARULA, J

MAY 21, 2026/nk