

CWP-2093-2019(O&M) and other connected cases 1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

220 CWP-2093-2019(O&M)

THE EXECUTIVE ENGINEER, ENGINEERING, DIVISION NO.2,
BHIWANI AND ANR Petitioners

Versus

VINOD KUMAR AND ANR Respondents

220-2 CWP-2141-2019

THE EXECUTIVE ENGINEER, ENGINEERING, DIVISION NO.2,
BHIWANI AND ANR Petitioners

Versus

BALWAN SINGH AND ANR Respondents

220-3 CWP-2163-2019(O&M)

THE EXECUTIVE ENGINEER, ENGINEERING, DIVISION NO.2,
BHIWANI AND ANR Petitioners

Versus

VINAY KUMAR AND ANR Respondents

220-4 CWP-2198 OF 2019(O&M)

THE EXECUTIVE ENGINEER, ENGINEERING, DIVISION NO.2,
BHIWANI AND ANR Petitioners

Versus

SURESH KUMAR AND ANR Respondents

Neutral Citation No: 2024.PHHC.070614 

CWP-2093-2019(O&M) and other connected cases 2

220-5 CWP-2200-2019

THE EXECUTIVE ENGINEER, ENGINEERING, DIVISION NO.2,
BHIWANI AND ANR Petitioners

Versus

GAJE SINGH AND ANR Respondents

220-6 CWP-3425-2019(O&M)

THE EXECUTIVE ENGINEER, ENGINEERING, DIVISION NO.2,
BHIWANI AND ANR Petitioners

Versus

MAHIPAL AND ANR Respondents

Decided on:17.05.2024

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Satish Singla, AAG, Haryana.

Mr. Ajay Chaudhary, Advocate
for respondent No.1.
(CWP-3425, 2163, 2093 and 2198 of 2019).

None for respondent No.1 (in CWP-2200 and 2141 of 2019).

SANJAY VASHISTH, J.(Oral)

1. By way of this common order passed in CWP-2093 of 2019
titled as The Executive Engineer, Engineering Division No.2, Bhiwani
and anr Vs. Vinod Kumar and Anr, all the aforementioned 06 writ

CWP-2093-2019(O&M) and other connected cases

3

petitions are being disposed of as a common question of law and facts is involved in all these writ petitions.

The summarized details of aforementioned six writ petitions are as under:

Sr. No.	Case No.	Case Title	Reference No. before Labour Court	Appoint ed as	Date of appointment	Date of termination	Date of award
1.	CWP-2093 of 2019	The Executive Engineer, Engineering Division No.2, Bhiwani and Anr Vs. Vinod Kumar and Anr	44 of 2016	‘Key Man’	01.10.2013	14.03.2016	09.08.2018
2.	CWP-2141 of 2019	The Executive Engineer, Engineering Division No.2, Bhiwani and Anr Vs. Balwan Singh and Anr	35 of 2016	‘Beldar/ Key Man’	01.05.2007	29.02.2016	09.08.2018
3.	CWP-2163 of 2019	The Executive Engineer, Engineering Division No.2, Bhiwani and Anr Vs. Vinay Kumar and Anr	45 of 2016	‘Beldar/ Key Man’	01.08.2012	02.09.2015	09.08.2018
4.	CWP-2198 of 2019	The Executive Engineer, Engineering Division No.2, Bhiwani and Anr Vs. Suresh Kumar and Anr	47 of 2016	‘Beldar/ Key Man’	04.05.2006	29.05.2016	09.08.2018
5.	CWP-2200 of 2019	The Executive Engineer, Engineering Division No.2, Bhiwani and Anr Vs. Gaje Singh and Anr	43 of 2016	‘Key Man’	01.03.2009	20.09.2015	09.08.2018
6.	CWP-3425-2019	The Executive Engineer, Engineering Division No.2, Bhiwani and Anr Vs. Mahipal and Anr	37 of 2016	‘Beldar ,	01.03.2007	29.02.2016	04.10.2018

Learned Labour Court while deciding the aforementioned references in favour of the workman(s) ordered for their reinstatement on the



same post with continuity of service alongwith all other consequential benefits, but held that workman(s) shall not be entitled for back wages.

After passing of the impugned award, the writ petitions are pending before this Court since the year 2009 and application(s) under Section 17-B of the Industrial Disputes Act, have been filed in four **writ petition(s) i.e. CWP-2093 of 2019, CWP-2163 of 2019, CWP-2198 of 2019 & CWP-3425 of 2019**, and same are also pending adjudication since the time of its filing by the workman(s).

Reply to the applications in four writ petition(s) have also been filed and same have already been taken on record, but petitioner has not complied with the provisions of Section 17-B of the Act of 1947, by making payment of the last wages drawn. However, said aspect would also be dealt with in the concluding part of the present judgment.

Although, the relevant facts are being extracted from **CWP-2093 of 2019**, yet in the facts and circumstances of each and every case mentioned hereabove, the question to be adjudicated is one and same, therefore, the same principle of law would be applicable in all such cases.

2. Petitioners i.e. (i) The Executive Engineer, Engineering, Division No.2, Bhiwani; (ii) The Sub Divisional Engineer, Public Health Engineering, Sub Division No.2, Bhiwani (Employer/Management), have assailed the award dated 09.08.2018 (Annexure P-1), passed by the Industrial



Tribunal-cum-Labour Court, Hisar, whereby reference No. 44 of 2016, has been answered in favour of workman.

While holding that the termination of the workman is illegal, as the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short, the Act of 1947') have not been complied with, learned Tribunal ordered for reinstatement of the workman on the same post with continuity in service and all other consequential benefits, except of the back wages.

3. Pledged case of the workman before Labour Court is that he was appointed by the Management on 01.10.2013 as 'Key Man' and posted at Dadri Road Booster, Bhiwani. He worked with various regular employees, namely, Raj Kumar, Sube Singh, Naresh Kumar, Dharambir, Mahabir, Rama Sajjan etc, and also worked under the supervision of different Junior Engineers (JEs) namely, Charna Singh, Nirmal Kumar and Ashwani Kumar etc. It was on 15.03.2016, when the workman reported for duty, he was verbally told that his services were no longer required.

It was further pleaded that already more than 200 workers were working with the Management and no permission has been sought from the appropriate Government before removal of the workman from the services, thus, the violation of provisions of Section 25-N of the Act of 1947 was also pleaded. Also pleaded that by continuously working from 01.10.2013 to



14.03.2016, the workman had completed 240 working days in the preceding one year of his termination and, therefore, without issuance of any notice, notice pay, retrenchment compensation, his services were terminated in violation of provision of Sections 25-F, 25-G, 25-H and 25-N of the Act of 1947. Thus, the workman prayed for his reinstatement with continuity in service alongwith back wages and all other consequential benefits.

4. On the other hand, in the written statement filed by the Management (petitioners herein), there is a total denial of the Employer and employee relationship. A specific stand has been taken by the Management that the workman was never appointed as 'Key Man' on D.C. rates on 01.10.2013 as alleged. It was further pleaded that the workman might have worked under various contractors on various sites as per the requirement of the work. Once, the workman was never appointed by the Management, no question of his removal/termination from service arises.

5. After completion of the pleadings of the parties, following issues were framed by the Labour Court:

“1. Whether the termination of services of the petitioner is legal or not?if so, to what relief he entitled to?OPP.

2. Relief.”

6. The workman produced the witness namely, Naresh Kumar as WW1 and Chandan Sharma as WW2, who proved a fact on record that the workman had worked alongwith them under their supervision. Workman himself also appeared as WW3 and reiterated the averments of his claim



statement. The workman got summoned the record and same was produced by the official of the Management, namely, Suresh Kumar, Clerk and his statement was recorded on 28.09.2017. From the log book, charge book, light Register and bleaching power Register of Dadri Road Booster for the period 01.02.2014 to 14.03.2016, he proved the working of the workman from 01.12.2014 to 14.03.2016. The said set of documents have been placed on record Ex. W1 to Ex.W6.

7. For proving the defense taken by the Management, witness, namely, Subhas Chand Yadav, Executive Engineer, Public Health Engineering Division No.2-Bhiwani appeared as MW1 and deposed that the department never employed any employee, but the workman was engaged through the Contractor. However, said witness could not disclose the name of the Contractor.

8. For the reason that in support of the bold and specific stand taken by the Management, neither the name of the Contractor; nor any other detail to prove the said plea has been brought on record, learned Labour Court recorded its findings against the Management. Undoubtedly, once the rendering of services to the Management and the service period of the workman is not under dispute, the only question left before the Court is that for the violation of the provisions of the Act of 1947, whether it is Management who would be responsible or the Contractor, as pleaded by the Management to escape from its liability.



9. Once, Court finds that there is not an iota of evidence or any other substance/material to conclude that the work power was taken by the Management from the Contractor, no other option is left with the Court except to believe the plea taken by the workman, especially when other facts are not in dispute.

Similar is the findings recorded by learned Labour Court. For the purpose of reference and convenience, the same are reproduced herebelow:

“9. To prove his case, the petitioner examined Naresh Kumar as WW1 and Chandan Sharma as WW2, who inter alia, stated that they have been employees of the respondents and that the petitioner had worked along with them under their supervision. The petitioner himself appeared as WW3 and reiterated the averments of his claim statement. The petitioner also summoned the record from the respondents and the same was produced by Suresh Kumar, clerk and his statements were recorded on 28.09.2017 and 28.09.2017. In his statement recorded on 28.09.2017 he produced logbook. Charge book, light register and bleaching power register of Dadri Road Booster for the period from 01.02.2014 to 14.03.2016. He stated that name of the petitioner appears in the logbook, charge register and bleaching powder register. As per the above said record, the petitioner has continuously worked from 01.12.2014 to 14.03.2016. He produced records as Ex.W1 to Ex. W6.

10. On the other hand, respondents examined Sh. Subhas chand Yadav, Executive Engineer, Public Health Engineering Division No.2 Bhiwani, as MW1. He reiterated the case of the respondents as pleaded in the written statement. In his cross-examination, he stated that no employee was engaged by the department and they had been engaged through the contractor but he did not know the name of the contractor. He admitted that post of Beldar, Keyman and water pump operators are of regular nature.

11. The learned authorized representative for the petitioner referred to the pleadings and the evidence



on record and contended that the petitioner has worked with the respondents as Keyman for the period from 01.10.2013 to 14.03.2016 continuously and his services were terminated on 15.03.2016. He further contended that this fact is not only proved from the record produced by the respondents but also admitted by Suresh Kumar who has produced the record before this court on 28.09.2017 and stated that as per the record, the petitioner has continuously worked in the Department from 01.12.2014 to 14.03.2016. He further contended that case of the respondents in the written statement is that of total denial and they have pleaded that the petitioner might have worked through the contractor but no name of any contractor has been disclosed. He submitted that admittedly the petitioner has worked for more than 240 days in the preceding 12 months of his termination and since no notice, notice pay or retrenchment compensation was given to him, mandatory provisions of Section 25F of the Industrial Disputes Act, 1947, were violated. Hence, he argued that the present petition may be allowed and the petitioner may be ordered to be reinstated with continuity in service and all other consequential benefits. He, however, made a statement that the petitioner did not claim back wages and forgoes the same.

12. On the other hand, learned Govt. Pleader appearing for the respondents vehemently resisted the said contentions and submitted that the petitioner has not been an employee of the respondents and he might have worked through the contractors. He further submitted that, thus there is no relationship of employer and employee but when the parties and the petitioners is not entitled to any relief that in the grab of filing the present petition, the petitioner is seeking regularization of his services which is not permissible under the law. Hence, he argued that the present petition may be dismissed.

13. After giving my thoughtful consideration to the rival contentions and appreciating the entire evidence adduced in the case, I am of the considered opinion that the present petition deserves to be allowed. The case of the petitioner is that he has worked with the respondents as Keyman from 01.10.2013 to 14.03.2016 and that his services were illegally terminated with effect from 15.03.2016 and he was verbally told that his services were no longer required. On the other hand, case of the respondents in the written statement is that of total denial but their own official-Suresh Kumar, who produced the summoned record on 28.09.2017, stated that as per



the record, the petitioner has worked continuously in the department from 01.12.2014 to 14.03.2016. The record produced by said Suresh Kumar also corroborates his version. Thus, as per the own showing of the respondents, the petitioner has worked with them during the aforesaid period. It is, therefore, explicit that the respondents have taken a factually false plea in their written statement when they denied any relationship of employer and employee between the parties. The case of the respondents is that the petitioner might have worked through the contractors but no name of any such contractor has been disclosed and this plea remains unsubstantiated. Further, Suresh Kumar, Clerk, from the office of the respondents, admitted in his statement while producing the record that name of the petitioner appeared in the charge book/register and he had worked as keyman. Thus, it is proved from the overwhelming oral and documentary evidence as well as from the own admission of the official of the respondents that the petitioner has worked as Beldar from 01.12.2014 to 14.03.2016 and therefore, he had completed more than 240 days in the preceding 12 months of his termination on 15.03.2016. Since, no notice, notice pay or retrenchment compensation was given to the petitioner, mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 were violated by the respondents.”

10. In view of the discussion made and recorded hereabove, this Court does not find any infirmity in the well reasoned conclusion recorded by learned Labour Court that the termination of the workman is in violation of provisions of Section 25-F of the Act and thus, workman is entitled for reinstatement with continuity in service and all other consequential benefits. Accordingly to that extent the award is maintained and **the writ petition(s) filed by the Management is/are hereby dismissed.**

11. However, it is noticed that the termination of the workman(s) from their services is in the year 2015/2016 and award has been passed by the Labour Court in the year 2018, but nothing has been ordered to be paid



by the Labour Court towards back wages from the period the workmen were terminated till the time of award. Undisputedly, no amount has been paid to the workman(s) from the period of passing of the award till date even towards the monthly wages as required under the Mandatory provision of law i.e. Section 17-B of the Act of 1947.

12 Thus, it would be just to direct the petitioners-Management to pay the last drawn salary from the date of passing of the award by learned Labour Court in the year 2018.

While holding them entitled for post award period, the Court has taken a moderate view because nothing has been paid by the learned Labour Court towards back wages for the period they were terminated from the services till passing of the award i.e. from the year 2015/2016 to year 2018.

13. It is also made clear that the amount of last wages drawn is to be paid to the workman(s) by the petitioner-Management within a period of three months from today i.e. 17.08.2024, failing which petitioner-management would pay the said amount alongwith complete arrears for the already said period alongwith interest @ 6% applicable from the date of passing of this order i.e. 17.05.2024.

14. With the aforementioned observations, all the writ petitions are hereby disposed of.

Neutral Citation No: 2024.PHHC.070614 

CWP-2093-2019(O&M) and other connected cases 12

15. A photocopy of this order be placed on the files of other connected cases.

17.05.2024	[SANJAY VASHISTH]
rashmi	JUDGE
Whether speaking/reasoned	yes
Whether reportable?	yes