

Neutral Citation No: 2024.PHHC.067885



CWP-24543 of 2018(O&M) and other connected cases

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

102+226

CWP-24543 of 2018(O&M)

M/s J.K.M. Overseas Pvt. Ltd.

.... Petitioner

Versus

J.S. Shekhawat and others

....Respondents

227

CWP-24915 of 2018

M/s J.K.M. Overseas Pvt. Ltd

.... Petitioner

Versus

Dinesh Kumar and others

....Respondents

227-2

CWP-24916 of 2018

M/s J.K.M. Overseas Pvt. Ltd

.... Petitioner

Versus

Giri Raj Singh @ Girij Singh and others

....Respondents

227-3

CWP-24917 of 2018

M/s J.K.M. Overseas Pvt. Ltd

.... Petitioner

Versus

Fateh Singh and others

....Respondents

Decided on:14.05.2024

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Sachin Mittal, Advocate,
Mr. Akshat Mittal, Advocate and
Mr. Ashok Tyagi, Advocate
for respondent No.1 (in all the cases).

SANJAY VASHISTH, J.(Oral)

CM-8002-CWP-2024 in CWP-24543-2018

(i) Present application has been moved by the applicant/respondent

No.1 for placing on record written statement on behalf of respondent No.1.

(ii) Learned counsel for the applicant/respondent No.1 submits that

copy of the said written statement has already been supplied to the counsel

opposite.



(iii) Considering the averments mentioned in the application, prayer made in the application is allowed and written statement on behalf of respondent No.1 is ordered to be taken on record. Registry is directed to tag the same at the appropriate place with the paper-book.

Main case(s)

1. By way of this common order passed in CWP-24543 of 2018 titled as M/s J.K.M Overseas, Pvt. Ltd. Vs. J.S. Shekhawat and others, all the aforementioned 04 writ 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 four writ petitions are as under:

Sr. No.	Case No.	Case Title	Reference No. before Labour Court	Appointed as	Date of appointment	Date of termination	Date of award
1.	CWP-24543 of 2018	M/s J.K.M. Overseas Pvt. Ltd. Vs. J.S. Shekhawat and others	213 of 2004	‘Tailor’	25.11.2001	15.10.2004	17.10.2017
2.	CWP-24915 of 2018	M/s J.K.M. Overseas Pvt. Ltd. Vs. Dinesh Kumar and others	216 of 2004	‘Tailor’	16.05.2002	15.10.2004	17.10.2017
3.	CWP-24916 of 2018	M/s J.K.M. Overseas Pvt. Ltd. Vs. Giri Raj Singh @ Girij Singh and others	231 of 2004	‘Tailor’	17.06.2002	15.10.2004	17.10.2017
4.	CWP-24917 of 2018	M/s J.K.M. Overseas Pvt. Ltd. Vs. Fateh Singh and others	223 of 2004	‘Tailor’	26.05.2002	15.10.2004 (wrongly mentioned as 15.10.2003 in award)	17.10.2017



Learned Labour Court while deciding the aforementioned references in favour of the workman(s) ordered for their reinstatement with continuity of service alongwith full back wages within a period of two months from the date the award becomes enforceable. It was further directed that in case, there is default in complying with the award within prescribed period, workman(s) were held entitled for compensation for an amount of Rs.2,50,000/- alongwith interest @ 12 % per annum from the date of alleged termination till its payment.

In all the aforementioned writ petitions, a common point is involved whether there exists any relationship of employer and employee between the petitioner-Management and the workman(s).

Thus, for the sake of brevity, the relevant facts are being extracted from **CWP-24543 of 2018**. As 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. Respondent No.1-J.S. Shekhawat (workman) pleaded before labour Court that he was appointed on 25.11.2001 as 'Tailor' in Tailoring Department of the petitioner-Management with a monthly salary of Rs.3,400/-. It was further pleaded that never any appointment letter, salary slip, attendance card, PF/ESI slip, identity card was issued to him. When the due facilities were demanded by the workman as per Labour Laws, same



was denied. Thereafter, on 16.06.2003, a complaint was moved by the workman alongwith other workmen to the Labour Department. A resolution of General Demand Notice was passed by 54 workmen on 24.08.2003 and subsequently, on 15.09.2003, a demand notice under Section 2-K of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947') was filed against the Management. Thereafter, on 15.10.2004, workman was victimized, as he was not allowed to enter into the premises of the Company, without disclosing any reason for the same, and even the wages for the month of October, 2003 were also withheld by the Management. It was also pleaded that the workman had been removed from the service without any notice, notice pay and retrenchment compensation etc, which resulted into violation of Section 25- F of the Industrial Disputes Act, 1947 (for short, 'the Act of 1947') and he requires to be reinstated in service with continuity with full back wages alongwith interest over the amount.

3. In the written statement filed by the Management, relationship of employer and employee was seriously disputed. According to the Management, workman was deputed with it through a contractor, namely, M/s Veer Enterprises, Lado Sarai, New Delhi. The provident fund of the workman was also deducted and deposited by the said Contractor. Hence, the question of termination of services of the workman by Management does not arise at all. It was further pleaded that for want of any relationship



between workman and the Management, no question of terminating of service of workman or giving him dues, salary, overtime etc. arises.

After pleadings of the parties, learned labour Court, vide order dated 06.03.2006, framed the following issues:

- “1. Whether there existed relationship of employer and employee between the parties?OPW*
- 2. If issue no.-1 is proved in affirmative, whether the services of the petitioner have been terminated illegally?OPW*
- 3. Whether the petitioner is gainfully employed, if so, its effect?OPM*
- 4. Whether the reference is not maintainable in view of the preliminary objection no.4 taken in the written statement?OPM*
- 5. Relief.”*

4. Thereafter, the workman himself appeared as PW1 and produced Santosh as PW2, Sarfuddin as PW3 and Ramphal (Reader from D.L.C.-I, Gurgaon) as PW4. The evidence of the workman was closed on 23.01.2014.

On the other hand, Management examined one witness, namely, Ravinder Kumar as MW-1 and thereafter, its evidence was closed vide order dated 14.08.2014.

5. During the course of proceedings, Management failed to produce any evidence to prove that the workman was the employee of the Contractor. Moreover, Management tried to project that license of the Contractor is dated 01.10.2002 i.e. the date subsequent to the appointment of the workman. This was sufficient to substantially hold that it is the Management-M/s



J.K.M. Overseas Pvt. Ltd., who had appointed the workman at the first instance. The sole witness produced by the Management also brought on record the Registration Certificate of the Contractor i.e. M/s S.B. Enterprises, Lado Sarai, New Delhi and M/s Veer Enterprises, Lado Sarai, New Delhi. The said witness MW1 admitted during cross examination that Ex.M2, which is license of the Contractor is with respect to loading, unloading, housekeeping, horticulture and handling security only. There is nothing mentioned that the Contractor has got license for providing the work force for the tailoring department of the Management as well. Even, the Registration Certificate of M/s Veer Enterprises is of the period 01.10.2002 till 31.12.2013 and in favour of M/s S.B. enterprises, the period is 01.04.2003 to 31.01.2014.

6. From the said documentary evidence brought on record by sole witness of the Management, it is clear that there was no authority with M/s S.B. Enterprise (respondent No.3) and M/s Veer Enterprises (respondent No.4), to provide workforce/manpower to M/S J.K.M. Overseas Pvt. Ltd. (Management). Even, the Registration Certificate issued in favour of the said private contractors was much after the appointment of the workman(s) in all the aforementioned writ petitions. From the said details, it appears that Management changed the nature of the services and even the employer of the workman, which resulted in the change of relationship of the Employer



and the employee. In such circumstances, Section 9 (A) of the Act of 1947 read with Schedule IV, is relevant to be noted down:

“9A Notice of change- No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice: Provided that no notice shall be required for effecting any such change-

(a) where the change is effected in pursuance of any [settlement or award] or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

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THE FOURTH SCHEDULE

(See section 9A)

CONDITIONS OF SERVICE FOR CHANGE OF WHICH NOTICE IS TO BE GIVEN

1. Wages, including the period and mode of payment;
2. Contribution paid, or payable, by the employer to any provident fund or pension fund or for the benefit of the workmen under any law for the time being in force;
3. Compensatory and other allowances;
4. Hours of work and rest intervals;
5. Leave with wages and holidays;
6. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders;
7. Classification by grades;



8. *Withdrawal of any customary concession or privilege or change in usage;*

9. *Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders;*

10. *Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen;*

11. *Any increases or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift, 1 [not occasioned by circumstances over which the employer has no control].”*

7. There is no material available on record that ever at any point of time, petitioner-Management had given any notice to its workman(s) while changing the conditions of the service and even the employer also. Therefore, this Court is of the view that by virtue of Section 9(A) of the Act of 1947, the action of the petitioner-Management is completely against the law. Even otherwise, there is no material brought on record that the petitioner had ever agreed the employer and employee relationship with any other agency/contractor, rather, the admitted position from the facts is that petitioner-Management completely accepted its status of being Employer at the time of the initial appointment of the workman in its office.

8. Findings recorded by the Labour Court in its award is also well satisfying. Relevant paragraph Nos. 11 and 17 are reproduced herebelow:

“11. To discharge the said burden, claimant has examined four witnesses and has tendered alongwith his affidavit Ex. PW-1/A the documents as that of the demand notice dated 21.10.2003 Ex. PW-1/1 and the General Demand Notice under Section 2-K of the L.D. Act Ex. PW-1/2. He has also placed on record the copy of complaint as was given by him and co-workers to Deputy Commissioner, Gurgaon, on 24.10.2003 as



Mark-A. Perusal of affidavit ex PW-1/A and all these documents shows that the workman has deposed about him to have been appointed as a Tailor with the respondent no.-I with effect from 25.11.2001 and the last drawn salary being Rs. 3400/- per month. He has specifically deposed that no appointment letter, no wage slip nor even the PF slips were given to the workman. No doubt, the burden qua this issue could have been discharged if and only if the workman would have produced the relevant documents about his appointment and about the payment of his wages but Ex. PW-1/1 and Ex. PW-1/2 which have nowhere been denied by the respondent clearly shows that within the period of not more than two years of his appointment, he individually as well as alongwith his co-workers raised a complaint against respondent no.-I before the Labour Department alleging that the respondent no.-I is forcing him/them to come on the pay roll of the contractor. In response to the notices by the Labour Office, respondent appeared. They were directed to produce the documents as that of Registration Certificate and the contractor's license but the same was not produced. The proceedings failed before the Labour-cum-Conciliation Officer because the workman was asserting him to be the employee of respondent no.-I whereas respondent no.-III who appeared before Assistant Labour Commissioner was impressing him and his co-workers to be the employee of contractor respondent no.-III. But despite directions, no documents about the registration of respondent no.-II & III and about his license could be produced before the Labour-cum-Conciliation Officer. Resultantly, the proceedings failed. These all are apparent from the documents on record. Though none of those proceedings have been exhibited but this is an apparent fact that none of those proceedings are denied by the respondent. In view of the admission, the documents of Labour-cum-Conciliation Officer will be read into evidence. Respondent's witness produced the registration certificate. A perusal of the cross-examination of MW-1 shows his admission that as per Ex. M-2 M/s Veer Enterprises and M/s S.B. Enterprises are the licensed contractor of M/s J.K.M. Overseas Pvt. Ltd. but it is admitted that Ex. M-2 is with respect to loading, unloading, housekeeping, horticulture and handling security only. There is no mention in Ex. M-2 the license of the impugned contractor to be licensed about providing workforce for the tailoring, department of respondent no.-I as well. Further, it is the admission of MW-1 that the registration certificate in favour of M/s Veer Enterprises is of 01.10.2002 till 31.12.2013 and in favour of M/s S.B. Enterprises, it is with effect from



01.04.2003 to 31.01.2014. It is an admission that this certificate was applied on 30.04.2003 and 14.05.2003 respectively. From the testimony of MW-1, it is clear that irrespective there is no documentary evidence of the claimant/workman about his appointment but respondent's documents prove that at the time of workman's appointment, respondent no -III was not the licensed contractor of respondent no.-I. It also stand proved that he is not licensed even till date for provide contract labour in the tailoring department of respondent no.-I. Resultantly, the onus to this issue stands shifts upon the respondents and it was mandatory for them to prove the authority of respondent no.-III under which he was serving respondent no.-I even prior his registration certificate and the license to work for respondent no.-I. There is no such document on record. The cross-examination of MW-1 shows that he could not depose about the same.

12.xxx

13.xxx

14.xxx

15.xxx

16.xxx

17. No doubt, the onus of proving his termination as illegal is upon the workman. The workman has specifically pleaded that on 15.10.2004, he was stopped at the factory gate from entering inside and was being told verbally that his services have been terminated. The same is the deposition/the oral testimony. The said deposition has been confronted by the respondent but it is apparent that nothing could be extracted as may favour the respondent no.-I also except denying his relationship with the workman has failed to produce document in this respect and respondent no.-III has opted to not to contest the claim of the workman. Resultantly, to my opinion, the oral deposition of the workman is sufficient to hold that his services were terminated without seeking any representations from the claimant/workman i.e. without affording any opportunity of hearing to him. The said conduct of the respondent is not only violative of the principles of Industrial Disputes Act but is also highly violative of principles of natural justice. Ex. PW-1/1 and Ex. PW-1/2 the demand notices of the workman as well as his co-workers are sufficient to corroborate the same. In was incumbent for respondent no.-I to bring on record as to why and under what circumstances and how the services of



workman were terminated. But there is no such evidence on record. As discussed under issue no.-1, that there is no evidence of abandonment on part of the claimant/workman nor any evidence in the form of attendance register which might prove the alleged unauthorized absence. Adverse inference is rather taken against the respondent then petitioner. Issue is accordingly also stands decided in favour of the workman.”

9. This Court does not find any substantial reason to cause any interference with the findings recorded by learned Labour Court. Moreover, Court is informed that the impugned award is dated 17.10.2017 and its operation was stayed by this Court vide order dated 26.09.2018. After staying the operation of the award, petitioner-management never even bothered to comply with the provisions of Section 17-B of the Act of 1947.

10. Learned counsel for respondent No.1-workman submits that the application(s) under Section 17-B of the Act of 1947 is lying pending since January, 2020, but petitioner-Management neither filed any reply to the application; nor paid the last drawn wages to the workman(s), therefore, submits that in the absence of compliance of provisions of Section 17-B of the Act of 1947 and as per settled law, petitioner-Management is not entitled to contest the award. Thus, prays for dismissal of the present writ petition(s).

11. When the factum of non-payment of the amount payable under Section 17-B of the Act of 1947 is put to Mr. Sachin Mittal, Advocate, representing the petitioner-Management, he submits that there is no specific information with him to assist the Court on this issue. Therefore, submits that he is unable to controvert the plea of the workman(s). He also submits that



despite making all possible efforts for getting the necessary information, no one has contacted him telephonically or instructed him regarding the latest status of the wages payable under Section 17-B of the Act of 1947.

12. Taking note of all the facts and circumstances, the legal provisions of Industrial Disputes Act, 1947 as well as the reasoning given by learned Labour Court as reproduced hereabove, this Court does not find any reason to interfere with the award. Thus, by maintaining the same, all the aforementioned four writ petitions are **hereby dismissed**.

14.05.2024
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[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned
Whether reportable?

Yes/No
Yes/No