

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 11207 of 2012

DATE OF DECISION : April 07, 2015

Jagbir Singh

..... PETITIONER(S)

VERSUS

**The Presiding Officer, Industrial Tribunal-cum-Labour Court,
Rohtak & anr.**

.... RESPONDENT(S)

CORAM : HON'BLE MR. JUSTICE ARUN PALLI

**Present: Mr. Sandeep Singal, Advocate, for the petitioner.
Mr. M.S. Kathuria, Advocate, for
Mr. Rakesh Nehra, Advocate, for respondent No.2.**

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- 1. Whether Reporters of local newspapers may be allowed to see the judgment? YES/NO**
- 2. To be referred to the Reporter or not? YES**
- 3. Whether the judgment should be reported in the digest? YES/NO**

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ARUN PALLI, J. (Oral)

**Award rendered by the Industrial Tribunal-cum-Labour
Court dated 15.12.2010 (Annexure P-1), vide which the claim of
the petitioner (workman) was declined, is being assailed herein.**

Parties to the lis, hereinafter, would be referred to by their original positions before the Labour Court.

In short, the claim set out by the workman before the Labour Court was that he was appointed on 01.03.1993 as Photostat Operator/Dispatcher, on daily wages. However, his services were abruptly brought to an end on 14.08.1999, without assigning any reason. As he had served for more than 240 days in one calendar year preceding his termination, and since provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act'), were not complied with, his termination was illegal. Further, there was an apparent breach of the provisions of Sections 25-G and 25-H of the Act, as persons junior to the workman were retained in service and principle of 'first come last go' was not adhered to.

In defence, it was pleaded, inter alia, that the workman was never employed by the Management as Photostat Operator/Dispatcher. In fact, he was supplied by M/s Yash Security as a Horticulture Labour and, therefore, he was not an employee of the Management. Therefore, there was no occasion to terminate his services.

Labour Court, on a consideration of the matter in issue and the evidence on record, observed that Satpal Singh (WW-1), Assistant, ESI, Rohtak and Sanjeev Kapoor (WW-2), SSA o/o E.P.F., Rohtak, though testified that the Management had made its Provident Fund and ESI Contributions qua the workman, but that would not establish that the workman was, indeed, employed by the Management. As, workman was

covered under the provisions of Employees State Insurance Act, 1948 (for short '1948 Act') and the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short '1952 Act'), and any person employed for wages in connection with the work of the establishment, employed directly or through contractor is deemed to be an employee for the purpose of afore-indicated two enactments. And the Management is obliged to submit its contributions. This is how, management made its contributions qua the workman. But that would not prove that workman was employed by the Management. Further, onus of proof to prove that there indeed was a relationship of an employee and employer between the parties was upon the workman himself, but no evidence was led to substantiate such a claim. So much so, the declaration form i.e. Exhibit W-1, dated 08.05.1995, placed on record by Satpal Singh (WW-1), Assistant ESI, Rohtak, showed that the services of the workman were, in fact, provided to the Management, through a contractor. That being so, it was concluded that there was absolutely no evidence on record to show that the workman was ever employed by the Management in any capacity. Accordingly, the reference was answered against the workman. And thus, this petition.

I have heard learned counsel for the parties and perused the records.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant petition is devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

The case set out by the workman was that he was employed as Photostat Operator/Dispatcher on 01.03.1993 and continued in service till 14.08.1999. Whereas, a specific plea set out by the Management was that he was supplied by M/s Yash Security, a duly licensed contractor, as horticulture labour and was never in its employment. That being so, the burden of proof strictly lay upon the workman to prove that there was relationship of an employee and employer between the parties, which he apparently failed to discharge. No evidence was led, least cogent, by the workman to substantiate his claim. Concededly, no application was moved by the workman before the Labour Court to requisition the relevant record to prove his case. So much so, he never even chose to appear in the witness box in support of his claim. The testimony of Satpal Singh (WW-1), Assistant, ESI, Rohtak, and Sanjeev Kapoor, SSA o/o E.P.F., Rohtak, that Management had deposited E.S.I. and Provident Fund contributions qua the workman, also pale into complete insignificance in the wake of the document Exhibit W-1 dated 08.05.1995, brought on record by Satpal Singh (WW-1). Which is a declaration form and proves that the services of the workman were provided to the Management, through a contractor. Not just that, agreement, licence of the contractor and Management were duly proved on record as Exhibits M2, M3 and M1. Further, workman was covered under two enactments i.e. 1948 Act and 1952 Act, and no doubt the Management deposited its share of contributions to meet its obligation under the aforesaid enactments, but would not mean

that workman was appointed by the Management and there was a relationship of employee and employer between the two.

Learned counsel for the petitioner could not point out as to how the conclusion arrived at by the Labour Court was either contrary to the position on record or suffers from any material illegality.

In the wake of the position as set out above, there hardly exists any ground, least plausible in law, to interfere with the award being assailed. The petition, being devoid of merit, is hereby dismissed.

APRIL 07, 2015
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(ARUN PALLI)
JUDGE