

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: April 28, 2015

1. Civil Writ Petition No.18991 of 2012

Haryana State Handloom & Handicraft Corporation Ltd., Chandigarh

...Petitioner

Versus

Madan Lal & others

...Respondents

2. Civil Writ Petition No.21605 of 2012

Haryana State Handloom & Handicraft Corporation Ltd., Chandigarh

...Petitioner

Versus

Krishan & others

...Respondents

3. Civil Writ Petition No.21617 of 2012

Haryana State Handloom & Handicraft Corporation Ltd., Chandigarh

...Petitioner

Versus

Suraj Bhan & others

...Respondents

4. Civil Writ Petition No.21623 of 2012

Haryana State Handloom & Handicraft Corporation Ltd., Chandigarh

...Petitioner

Versus

Dharamvir & others

...Respondents

5. Civil Writ Petition No.21627 of 2012

Haryana State Handloom & Handicraft Corporation Ltd., Chandigarh

...Petitioner

Versus

Phool Singh & others

...Respondents

6.

Civil Writ Petition No.21628 of 2012

Haryana State Handloom & Handicraft Corporation Ltd., Chandigarh

...Petitioner

Versus

Bishanpal & others

...Respondents
7.

Civil Writ Petition No.21630 of 2012

Haryana State Handloom & Handicraft Corporation Ltd., Chandigarh

...Petitioner

Versus

Sheo Ram & others

...Respondents
8.

Civil Writ Petition No.21659 of 2012

Haryana State Handloom & Handicraft Corporation Ltd., Chandigarh

...Petitioner

Versus

Rajpal & others

...Respondents
9.

Civil Writ Petition No.21685 of 2012

Haryana State Handloom & Handicraft Corporation Ltd., Chandigarh

...Petitioner

Versus

Suresh Kumar & others

...Respondents
10.

Civil Writ Petition No.21706 of 2012

Haryana State Handloom & Handicraft Corporation Ltd., Chandigarh

...Petitioner

Versus

Atam Parkash & others

...Respondents
11.

Civil Writ Petition No.22172 of 2012

Haryana State Handloom & Handicraft Corporation Ltd., Chandigarh

Civil Writ Petition No.18991 of 2012

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...Petitioner

Versus

Ramesh Kumar & others

...Respondents

12. **Civil Writ Petition No.6086 of 2013**

Haryana State Handloom & Handicraft Corporation Ltd., Chandigarh

...Petitioner

Versus

Duli Chand & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Dhiraj Chawla, Advocate,
for the petitioner (in all the cases).

Mr.S.K.Verma, Advocate,
for respondent No.1 (in all the cases except CWP Nos.22172 &
21628 of 2012).

None for the respondents in CWP Nos.22172 & 21628 of 2012.

AMIT RAWAL, J. (Oral)

Written statement filed on behalf of respondent No.1 in CWP
No.6083 of 2013 is taken on record. Copy supplied to the counsel opposite.

This order of mine shall dispose of twelve writ petitions, i.e.,
CWP Nos.18991, 21605, 21617, 21623, 21627, 21628, 21630, 21659,
21685, 21706, 22172 of 2012 and 6086 of 2013 as question of law involved
in all the cases is the same and identical. The facts are being taken from
CWP No.18991 of 2012.

The Management has challenged the award dated 1.6.2012

(Annexure P-1), vide which the reference qua alleged termination of the workmen has been allowed and compensation of ₹1,30,000/- has been awarded on account of non-compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short “the Act”).

Mr.Dhiraj Chawla, learned counsel appearing for the Management contends that the workmen were employed in 1980 at *piece rate basis* and, therefore, their services were terminated in October, 1994 as the Management was running into losses and workmen were paid lay off compensation as per Section 25-C of the Act as the Corporation was wound up in the year 2001. Thus, he submits that the Labour Court ought not to have awarded the compensation by holding that there was a violation of provisions of Section 25-F of the Act.

Mr.S.K.Verma, learned counsel appearing for respondent No.1 in all the cases except CWP Nos.22172 and 21628 of 2012 submits that the workmen were not paid the compensation as per Section 25-F of the Act and the award of the Labour Court is absolutely justified and well reasoned. There is no illegality, much less, irregularity in the award as it is a matter of record that the workmen were engaged as Weaver on various dates and their services were terminated in October, 1994 without complying with the provisions of Section 25-F of the Act and even as per provisions of Section 25-FFA of the Act, in case the employer intends to close down the undertaking for any reason whatsoever, 60 days notice was required to be served upon the workmen, but no such procedure has been followed.

I have heard the learned counsel for the parties and appraised the paper book.

The argument is that since the workman were given work on *piece rate basis*, they would not fall under the definition of “workmen”. The Hon'ble Supreme Court in **M/s. Shining Tailors Versus Industrial Tribunal II, U.P., Lucknow and others**, AIR 1984 Supreme Court 23, while interpreting the provisions of Section 2(s) of the Act, culled out a ratio decidendi that the piece rated workers in an establishment are workmen. Similar is the position in **P.M.Patel & Sons Versus Union of India and others**, 1986 ILLJ 88, wherein the Hon'ble Supreme Court had an occasion to ponder upon a question raised as to whether the workmen engaged in the manufacture and sale of beedis would fall in the definition of “workman” or not and the Hon'ble Supreme Court, after discussing the evidence and law threadbare held that for arriving at a conclusion that the person is a workman or not, it is to be seen whether there was relationship of master and servant, i.e., whether there was any relationship existed between the employer and the workman.

It may not be out of place to mention here that after terminating the services of various workmen, they had approached this Court by filing Civil Writ Petition No.15102 of 1994 on the ground of violation of provisions of Section 25-F of the Act, but the said writ petition was dismissed by the learned Single Judge of this Court on 2.4.1997. Feeling aggrieved against the said judgment, the Management filed Letters Patent Appeal No.35 of 1998 before the Division Bench and while disposing of the Letters Patent Appeal and remanding the matter back to the learned Single Judge, the LPA Bench held that all the similarly situated persons would fall in the definition of “workman”. The relevant portion of the order is

extracted herein below:-

“Having noticed the tests laid down by the Courts for determining whether an employee, who is paid on piece rate basis, can be treated as a workman within the meaning of Section 2(s) of the Act, we may now advert to the facts contained in the pleadings of the parties. While the appellants averred that they were engaged at Bhiwani and Panipat centres established by the Corporation and they used to work under the supervision and control of the management of the Corporation, the latter controverted the same and alleged that they were engaged purely on contract basis. One of them, i.e., petitioner No.25 was working on part-time basis. It was also alleged that due to failure of the writ petitioners to meet the targets, the Corporation had suffered huge loss necessitating closure of the two centres. In our opinion, the hollowness of the stand taken by the Corporation is exposed by the fact that the management had entered into a settlement with the representatives of the workmen under Section 12(3) of the Act. This could not have been possible unless the workers were treated as workmen within the meaning of Section 2(s) of the Act. A careful reading of the settlement shows that the Corporation had amicably resolved the dispute relating to payment of rates of wages and production targets. The workmen had agreed to call off the strike w.e.f. 18.8.1989 and resumed the work with effect from the date. Both the parties agreed that a Committee be constituted to fix the production targets. It was also decided that the workers shall achieve the production norms given by the Committee. If any workman failed to achieve the target, then the management was given freedom to initiate disciplinary action against him. It was also agreed that if the management is unable to provide work to the workmen and some time is wasted beyond the control of the workmen, then the wages for that period will be paid to the workmen. It was further agreed

that while fixing the piece rate wages, the minimum rate of wages payable by the government shall be acceptable to both the parties and whenever there was any increase in the minimum wages by the State Government, the piece rate wages shall be proportionately increased and paid to the workmen. It was also agreed that the workers shall report at the factory and work honestly and sincerely in a disciplined manner and the management shall not victimise any worker. In the agenda item prepared for 81st meeting of the Board of Directors of the Corporation, it was mentioned that the Corporation has been paying lay off compensation to 46 weavers in view of settlement dated 17.8.1989 and the total amount of compensation paid was Rs.2.5 lacs per year.

All this show that the appellants were working under the direct control and supervision of the Corporation. They were also under the disciplinary control of the management. It is beyond comprehension as to how the Corporation could exercise disciplinary control over the appellants, if they were not its employees or did not work under its control. Unfortunately, the learned Single Judge overlooked the most important document, i.e. , settlement (Annexure P.3), the fact that the appellants were paid lay off compensation from 1993 and they they were under the disciplinary control of the Corporation. Therefore, the finding recorded by him that the appellants are not workmen cannot be sustained.

The plea of the Corporation that the appellants were engaged on purely contract basis, even if accepted as correct, cannot deprive them of the status as workman under Section 2 (s) of the Act because no evidence has been produced before the Court to show that they had freedom to work according to their choice and the management did not exercise supervision and control on their work and conduct.”

In view of the observations culled out by the LPA Bench, it

leaves no manner of doubt that all the respondents are workmen and the Management has not complied with the provisions of Section 25-F of the Act and, therefore, the Labour Court has rightly directed the Management to pay compensation of ₹1,30,000/- at the rate of ₹10,000/- for each completed year of service.

There is no merit in the writ petitions. The award of the Labour Court is legal, justified and there is no illegality and perversity in the same. The award is accordingly upheld and the writ petitions are dismissed.

April 28, 2015
ramesh

(AMIT RAWAL)
JUDGE