

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.17979 of 2015

Date of Decision: 28.08.2015

The Punjab Scheduled Castes Land
Development and Finance Corporation

... Petitioner

Versus

Presiding Officer, Industrial Tribunal
Jalandhar & anr.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Bhuwan Luthra, Advocate,
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

1. It is conceded by the learned counsel that in the reference proceedings under Section 10 (1) (c) of the Industrial Disputes Act, 1947 ('the Act') between the same parties findings have come from the earlier Labour Court that an employer-employee relationship existed between the petitioning Corporation and respondent-2-driver, though the workman was non-suited and relief denied on the ground that he had not served for 240 days in the 12 calendar months preceding the date of termination. Accordingly, the industrial reference was declined. However, the present petition arises out of a claim for money instituted by the workman under Section 33-C (2) of the Act against the Corporation. The claim has been allowed.

2. Learned counsel appearing for the Corporation submits that the writ petition filed by the workman is pending in this Court against the

award and therefore, it is too early to say whether the finding on relationship is final and the present petition be tagged with the aforesaid writ petition and the impugned order be stayed. But at the same time he does not dispute that the Corporation has not filed a petition in this Court challenging the findings on the employer and employee relationship which is crucial as a jurisdictional fact to determine as that would go to the root of the matter even though the award was in favour of the Corporation. It is also conceded that the Corporation has not filed a cross writ petition/cross objections to the writ petition filed by the workman in this Court.

3. In any case, the reference Court has found in the award [under challenge in separate writ] that the name of the second respondent was sent to the Corporation through the employment exchange. On the evidence adduced by the parties on record, the Labour Court in the present case in execution proceedings has reached the conclusion that work was performed as driver and wages were not paid as claimed and therefore claim fell within its jurisdiction and become money due and a pre-existing right determinable in proceedings under Section 33-C(2) of the Act. On these premises the impugned order dated January 20, 2015 has been passed by the learned Labour Court, Jalandhar in favour of the workman and against the Corporation and an amount of Rs. 29770/- has been determined as money due and payable to the workman for the work performed between November, 2000 to June, 2001. Therefore, the cause of action and the subject matter of the present proceedings and the proceeding under Section 10 (1) (c) of the Act are different and do not

depend on each other. I therefore reject the prayer of the learned counsel for clubbing the two cases as they are based on different rights and causes of action which do not depend on the results of either. The industrial reference in the pending petition was whether the termination of service of the workman was justified and if he was entitled to relief of reinstatement etc. That prayer was declined and aggrieved by the award the workman is in challenge in the pending writ.

4. If the Corporation seriously disputed the employer-employee relationship when it did not engage the workman directly by a formal order in writing then the onus had shifted on the Corporation to prove that the petitioner had not worked for the period claimed under its employment since it was the assertion of the workman that he had worked during the disputed period and wages were not paid for work done. It is that onus which has not been discharged properly by producing evidence contra.

5. Lastly it is contended that at best, the workman may have been engaged by one of the officials of the Corporation to drive an officer's car. In case it is so, the management is jointly, severally and vicariously liable for the lawful acts of its servant using the driver's services and they are always free to dispute with their officer and recover the wages from his salary but it must pay the workman for work proved to be performed in the first instance. No evidence has been led on this point as to the relationship of the respondent-2 with the functionary of the Corporation. The Corporation did not produce the officer is alleged to have engaged the driver and this missing link forecloses the case of the

Corporation that there was no direct engagement. Nevertheless, the contention has been noticed by this Court in view of the submissions vehemently addressed at the Bar during the hearing eliciting court response to the argument.

6. For the foregoing reasons, I would not consider the present case a fit one for interference with the findings of fact recorded by the learned labour court in the impugned order dated January 20, 2015 and would accordingly dismiss the writ petition in limine as presenting no palpable error of law or fact apparent on the face of the record presented in the writ petition. The petitioner is directed to implement the order and discharge the amount determined by the learned labour court by paying the sum of money due as determined to respondent-2 within 6 weeks from the date of receipt of a certified copy of this order and to place on record a compliance report for the perusal of the Court. A copy of this order be sent by the office immediately to respondent-2.

(RAJIV NARAIN RAINA)
JUDGE

28.08.2015
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