

CWP No.278 of 2015 (O&M)

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

**CWP No.278 of 2015 (O&M)
Date of decision:04.05.2015**

Pardeep Kumar

...Petitioner

Versus

The Presiding Officer and another

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mrs. Abha Rathore, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

The petitioner is aggrieved against the award/order dated 24.07.2014, passed by the Industrial Tribunal-cum-Labour Court, Panipat, by which the reference has been decided against him.

In short, the petitioner is alleged to have been appointed by respondent No.2 on the post of Lab Attendant on 19.08.2002. His services were terminated on 14.02.2005. He served a demand notice under Section 2A of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act") on 04.03.2005. The Labour Court rejected the reference vide its award dated 12.09.2011 which was challenged by the petitioner by way of CWP No.16600 of 2011 which was allowed on 20.02.2014 and the matter was remanded back to the Labour Court for fresh adjudication after re-examining the evidence produced by the parties. The Labour Court

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again decided the reference against the workman-petitioner on 24.07.2014.

Counsel for the petitioner has vehemently argued that the Court has wrongly decided that the petitioner was the employee of a contractor. It is also submitted that even if it is presumed, for the sake of arguments, though not admitted, that he was the employee of the contractor, the contractor has to be a licensed contractor.

After hearing learned counsel for the petitioner and examining the record, I have found that there is ample evidence, led by respondent No.2, that the petitioner was the employee of the contractor because in his evidence appearing as MW2, Sandeep Yadav, Assistant, HR Department of M/s Shiva Industrial Service, Rewari, has categorically stated as under:-

“2. That our establishment is supplying man power to various organizations. Contract is awarded to our firm to supply man-power. M/s N.C. College of engineering, Israna gave us contract for supply of labour relating to Sanitation, Housekeeping, Gardening & attendants jobs w.e.f. May, 2004. We were issued Form V by the management of M/s N.C. College of Engineering, Israna which we submitted for obtaining licence from office of Labour Commissioner, Haryana, Chandigarh. Licence was granted to us copy of which is Ex.MW2/1. We deployed labour in fulfillment of conditions of said contract from May 2004. Above named workman started working with us w.e.f. 01.10.2004 and wages were paid

to him from said date. We applied for renewal of licence as on 17.12.2004 copy Ex.MW2/2 in normal course. Our licence was never revoked. Same was sent as per AD receipt Ex.MW2/3.

3. That I have brought original payment sheet from May, 2004 to February 2005. the workman was paid wages vide payment sheet from May, 2004 to November, 2004 photocopy Ex.MW2/4 to MW2/10.

4. That at the time of engagement workman was allotted EPF Employee Code number as HR 8339/2639. Employer code number of our establishment is HR-8339. The contribution so deducted from earned wages of worker alongwith employer share was deposited by our firm with Regional Provident Fund Commissioner, Gurgaon.

5. That I have brought the return which M/s Shiv Industrial Services, Rewari had submitted to Regional Provident Fund Commissioner, Gurgaon for the period from March 2004 to February 2005. The said return is exhibited in court file as Ex.MW2/14. From the said return it is submitted that applicant was paid salary by M/s Shiva Industrial Services and PF contribution was deducted from his salary. M/s Shiva Industrial Services added employer share and deposited both employee and

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employer share with Regional Provident Fund
Commissioner, Gurgaon till applicant worked with us in
the month of February 2005.”

It has been observed by the Court that there was no relationship
of employer and employee between the petitioner and respondent No.2
because not only no evidence has been led by the petitioner in this regard
but also he did not even summon the relevant record from respondent No.2
to prove that he was originally employed by respondent No.2, except for his
sole self-serving deposition as WW-1.

After examining the record thoroughly, I am also of the
considered opinion that there is no merit in the present writ petition as the
petitioner has miserably failed to prove the relationship of employer and
employee in order to hold that respondent No.2 liable for violation of
Section 25-F of the Act.

Accordingly, the writ petition is dismissed being denuded of
any merit.

May 04, 2015
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(Rakesh Kumar Jain)
Judge