

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

FAO No.2821 of 2012 (O&M)

Date of decision: 20.07.2015

**Executive Engineer, Dakshin Haryana Bijli Vitran Nigam Ltd. and
another**

..... Appellants

versus

Joginder Singh and another

.....Respondents

CWP No.3869 of 2012 (O&M)

Rajbir Singh Kundu

.....Petitioner

versus

Dakshin Haryana Bijli Vitran Nigam Limited and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.P.J.S.Sullar, Advocate for the appellants
and for the respondents in CWP No.3869 of 2012
Mr.Dhrinder Chopra, Advocate for respondent No.2
and for the petitioner in CWP No.3869 of 2012
Mr.Rajesh Lamba, Advocate for respondent No.2
in FAO No.2821 of 2012

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J. (Oral)

This order will dispose of FAO No.2821 of 2012, filed by the Executive Engineer, Dakshin Haryana Bijli Vitran Nigam Limited and another against the order dated 22.11.2011, passed by the Commissioner under the Workmen's Commissioner Act, Circle, Fatehabad, vide which, compensation to the tune of Rs.2,83,901/- was awarded to the applicant-respondent No.1. It was also held that since respondent No.3 i.e. R.S.Kundu, Junior Engineer had

employed the applicant on contract basis, therefore, the department was held liable to pay the said compensation. The department is aggrieved by the said order.

This order will also dispose of CWP No.3869 of 2012 filed by Shri R.S.Kundu for quashing the order dated 2.12.2012 (Annexure P5), passed by the department vide which the recovery of the said amount paid in terms of the order of the Commissioner is sought to be recovered from him under the Punishment and Appeal Regulation 2006.

Facts of the case are that Joginder Singh applicant claimed that he was employed by Sh.R.S.Kundu, Junior Engineer – respondent No.3 before the Commissioner. On 11.9.2006 at about 3.00/3.30 PM, he was bringing down the defective meters from the slab for loading the same in vehicle. The slab collapsed. As a result of which, he received injuries on the various parts of the body and was taken to CMC Hospital, Ratia. As per disability certificate, he has become 70% disable.

To prove his claim, the applicant examined himself, one Jasbir Singh, Head Constable Satish Kumar as well as Dr.V.K.Jain. Respondent did not enter the witness box.

After going through the documents, the impugned order was passed.

I have heard learned counsel for the parties and have carefully gone through the file.

First of all, I will take up the impugned order which has been challenged by the department on the ground that it has got no

liability. The learned counsel for the department has argued that in this case, there was no relationship of employer and employee between the department and Joginder Singh. Therefore, the department could not be made liable. The learned counsel has referred to the claim as well as statement of Joginder Singh applicant made in the Court wherein he has stated that he was employed on contract by Shri R.S.Kundu, Junior Engineer. It has been argued that Junior Engineer is not authorized to employ anybody, either permanently, or on ad hoc or on contract basis or even orally or even privately, for the purpose of official business. Therefore, at the most, it was purely the private act of Sh.R.S.Kundu, Junior Engineer and for that he had no authorization from the department. Therefore, department could not made liable. This Court has been further informed that in pursuance to the order of the Commissioner, the department was forced to pay entire compensation which has been disbursed to Joginder Singh. It is further contended that the department then started recovery proceedings from Sh.R.S.Kundu, Junior Engineer and for which, notice (P5) was issued and that the department was got right to make recovery from its defaulting employee.

On the other hand, the learned counsel for the applicant - Joginder Singh has argued that under Section 2dd of Employees Compensation Act, 1923 the word 'employee' has been defined which is wide enough to cover the employment on contract, whether the contract is expressed or implied, oral or in writing. Therefore, even if there was no writing to employ Joginder Singh on contract,

even then the facts and circumstances go to show that he was employed by the Junior Engineer. This is fortified from the fact that the accident took place in the office of the Junior Engineer while the applicant was handling the electric meters belonging to the department, which were to be loaded in the vehicle. Joginder Singh was shifted from the office of the Junior Engineer to the hospital. Joginder Singh had also lodged a daily diary report in the police station, which was produced by the Head Constable Satish Kumar, wherein also it is alleged that the applicant Joginder Singh was employed by the Junior Engineer and that while working in his office, he met with accident, resulting in 70% disability as per statement of Dr.V.K.Jain.

On the other hand, learned counsel for Sh.R.S.Kundu, Junior Engineer has argued that the employment is not proved. There is no writing. The mere assertion made in the statement is not sufficient to hold him liable. It has been further argued that the department has passed order Annexure P5 without following the procedure under the Punishment and Appeal Rules to make the recovery. Therefore, same is not sustainable in the eyes of law.

I have given thoughtful consideration to the rival contentions of the parties. It comes out that before the Commissioner, Shri R.S.Kundu did not appear in the witness box to deny the claim of the applicant that he was orally employed on contract by Shri R.S.Kundu, Junior Engineer and that accident took place in his office. In this way, Shri R.S.Kundu did not offer himself for cross-examination so that the truth could be extracted during

cross-examination. His non-appearance would mean that the evidence of the applicant will remain unrebutted to the fact that he was orally employed on contract by the Junior Engineer. At the same time, it is observed that the employment was unauthorized and without any sanction from the department. Therefore, the act of employing a private person was in breach of the service conditions, as applicable to the employees of the appellant department.

The net result is that because of unauthorized act of the Junior Engineer, the department was forced to pay the compensation, as it was held vicariously liable for the act of its employee.

I am of the view that from the evidence of applicant Joginder Singh as well as statement of Head Constable Satish Kumar, it is proved that the accident took place in the office of Junior Engineer when the applicant was handling the electric meters and therefore, the Junior Engineer is liable to pay the compensation to the employee under the Employees Compensation Act, 1923, as even the oral contract is covered under the definition of employee under Section 2dd of the said Act. Since the act of the Junior Engineer was unauthorized the department even then is vicariously liable but it has got the right to recover the compensation so paid from the Junior Engineer under the relevant service rules. In this case, statement of the doctor shows that applicant suffered 70% disability and virtually he has been crippled for whole of life.

It being so, it is held that there was not direct relationship of employer and employee between the department and the

applicant. However, for the unauthorized act of its junior engineer, the department is first liable to pay the compensation and then recover the same from the defaulting Junior Engineer.

Consequently, FAO No.2821 of 2012 is partly allowed to that extent.

Now coming to the CWP No.3869 of 2012. It comes out that Sh.R.S.Kundu, Junior Engineer has committed the default and on account of his default, the department was made liable to pay the compensation to Joginder Singh. Therefore, the department has got every right to recover the same from the defaulting employee. However, it has been pointed out that while imposing the recovery vide order (Annexure P5), no show cause notice was issued. Even for effecting the recovery, a show cause notice has to be issued. Reply has to be obtained and then orders have to be passed.

Consequently, order (Annexure P5) is set aside on the ground that proper procedure under the Punishment and Service Appeal Rules was not followed. However, at the same time, the department shall be entitled to follow fresh procedure for effecting the recovery and till that recovery is made, as held by this Court, the department shall be entitled to retain the sum equivalent to the amount sought to be recovered from the petitioner out of the service benefits as the petitioner is stated to have retired from service.

CWP No.3869 of 2012 is accordingly partly allowed to that extent.

20.07.2015
gk

(Kuldip Singh)
Judge