

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

**Civil Writ Petition No.7756 of 2013**

**Date of decision: 8.9.2015**

Satinder Kumar Sharma

**... Petitioner**

**Versus**

State of Haryana and others

**... Respondents**

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

**Present:** Mr.R.N.Sharma, Advocate,  
for the petitioner.

Mrs.Vibha Dhiman, Assistant Advocate General, Haryana  
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1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

**RAJIV NARAIN RAINA, J.**

1. This petition is directed against the award dated 25<sup>th</sup> October, 2012 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T., Chandigarh. For the reasons below the petition is liable to be dismissed. Detailed reference to facts are not required as the case chiefly turns on parol evidence produced by the petitioner which is against him. The documentary evidence adduced on record is far too weak to justify relief of reinstatement there being no direct employment or contract of service and at best there could be a contract for service. The testimonies of the witnesses supports the conclusion of an intermittent and desultory type of work performed through a an intermediary contractor to keep in electrical

repair the residence of the Chief Minister, Haryana.

2. AW-5 Narinder Kumar, Beldar (Electrical) brought by the petitioner as his witness before the Labour Court deposed in his cross-examination that petitioner Satinder Kumar was engaged through a contractor. He deposed that to his best of knowledge the Department executes its electrical works through a contractor. Both Narinder Kumar and Satinder Kumar were colleagues serving at the residence of the Chief Minister, Haryana in Chandigarh. AW-3 Jaspal Singh Electrician in the office of PWD, (B&R), Haryana, Sector 33, Chandigarh admitted that he had deputed Satinder Kumar on 13<sup>th</sup> June, 2002 and 17<sup>th</sup> November, 2002 to carry out electrical work. He admitted the duty roster for the period from 12<sup>th</sup> August, 2001 to 15<sup>th</sup> August, 2001 where Satinder Kumar is mentioned as deputed to work in CM house. There is no dispute that Satinder Kumar worked intermittently in CM house whenever called upon but there is no direct evidence on record to connect him to the management in a relationship of employer and employee drawing salary every month. He produced only his identity card which apparently was for security purposes to enter the CM house.

3. The previous litigation filed by Satinder Kumar claiming regularization of service has no longer any bearing on the case in hand in challenge to the award dated 25<sup>th</sup> October, 2012 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, U.T., Chandigarh partially allowing the reference to the extent of lump sum compensation of ₹ 50,000/-. Prayer for reinstatement has been disallowed.

4. The only point which deserves to be noticed from past litigation is CWP No.3435 of 2004 filed by the petitioner where he claimed

regularization of his services. The prayer was declined by reason availability of alternative remedy before the Labour Court. The observations made on facts brought to notice before the Division Bench of this Court have been noticed in the award and can profitably be reproduced : -

“It is further intimated that this office is not engaging labour directly for any purpose. Labour is being engaged by this office from contractual agency for specific works on monthly work order basis and contractors engage their own workforce. The contractual agencies go on changing as the work orders are issued to the contractors on the basis of their evaluation.

So far as the civil writ petition No.3435 of 2004 tilted Satinder Sharma versus State of Haryana and others is concerned, it is intimated that the Hon'ble High Court has issued direction to decide the petitioners claim of regularization of service within three months by passing speaking orders. In view of the orders of the Hon'ble High Court the claim of the petitioner regarding regularization of service will be decided in due course.”

5. The Labour Court in para. 10 of the award has returned a positive finding that no appointment letter was issued by the respondents to Satinder Kumar nor was he paid wages directly by the management. Though both these factors are not conclusive on disclaimer of employment but are material with other link evidence. If he was not paid wages directly by the management then it is good indication of lack of relationship of employment, then compensation in lieu of reinstatement should not have been granted against the management as there was no direct relationship of employer-employee proven by the petitioner by production of credit worthy evidence and the debt created by the Labour Court in a sum of Rs 50,000/- could only actually be fastened on the contractor or the person who asked the petitioner to work in CM residence who remains omniscient author

without identification on record.

6. The Labour Court appears to have been swayed by the identity card and a temporary gate pass issued by the Security Officer facilitating entry to the CM residence and the Civil Secretariat, Haryana as proof of employment as an electrician at CM's residence. The Labour Court has found it difficult to discard this evidence and has read it as supporting the case of the workman. The Labour Court records in para. 10 as follows on the point of maintainability of the reference: -

“It is difficult to discard the above discussed evidence supporting the case of the workman. Documents relied upon by the management are not sufficient to prove that the workers were provided by the alleged contractor Shri Parmjit whose name finds mention in the work order from for providing labour for December, 1999. Work order from Exhibit 'M3' relates to only one month that is December, 1999. The management has failed to rebut evidence of the workman that he was employed for performing duties under the management at Chief Minister's residence. The management has violated Section 25-F by terminating the service of the workman. Reference is therefore maintainable.”

7. Section 25F of the Industrial Disputes Act, 1947 postulates relationship of master and servant before the protections in the Act can come into play. If the management was not the employer, it was not obligated to comply with Section 25F but yet the Labour Court has held without due application of mind that violation of Section 25F of the Act has occurred while terminating the services of the workman by an oral order.

8. A reading of the award reveals that it is vague, dissatisfactory and dubious in its weak line of judicial reasoning and this court has hardly

any doubt that the impugned award does not deserve to be maintained. The award in denying reinstatement is right in its conclusion but wrong in its reasoning. Section 25F of the Act has no place in the award when the relationship of employment between the parties is not proved in the presence of an intermediary contractor inducting the petitioner and deputing him to carry out repairs in electric supply and for its maintenance from time to time.

9. The burden of proof was on the petitioner to prove his case of illegal termination but he produced no probative evidence on file which might tend to prove his case except tendering an identity card and a gate pass. Regularity of payment of salary on fixed monthly wages has not been established on record by evidence which was the bare minimum requirement albeit that Section 2 (s) of the Act permits engagement of a workman for hire or reward, whether the terms of employment be express or implied.

10. However, since the State has not challenged the award, I would not disturb the lump sum compensation of ₹ 50,000/- which will remain a State debt owed to the petitioner-workman. The award of interest @ 12% will stand deleted from the award and the compensatory part of the award will henceforth be read as a solatium of ₹ 50,000/- by way of apology for the costs of long drawn out litigation. There is no other way to describe what the labour court has meted out quite recklessly.

11. The discretion exercised by the Labour Court or its evaluation of the evidence on record in arriving at the conclusion that the alleged termination suffered from the vice of non-compliance of the mandatory requirements of Section 25F of the Act is neither judicial nor judicious exercise of jurisdiction since the reasons for partly allowing the reference in

awarding compensation is not in accordance with law.

12. The correct position in law is encapsulated as hereafter, where there is no employer under Section 2 (g); no workman under section 2(s); no industrial dispute in existence either under Section 2A or under Section 2 (k) of the Act; no reference under Section 10(1)(c); no retrenchment under 2 (oo); no breach of Section 25F; no retrenchment compensation is payable for lack of the above conditions precedent available on record. Resultantly, no compensation in lieu of reinstatement is grantable; no relief whatsoever is admissible under the Act. The industrial formula in its statutory and component units as above fails as the jurisdictional facts required to ignite the jurisdiction of the industrial adjudicator are missing and are not proved to exist on the record of this case. The labour court misled itself in awarding compensation but the State has not challenged the award on the moot point of compensation and therefore with these words I would leave the matter at rest where it stands as there is no occasion to set aside the award in *toto* when the monetary part is not litigated by the State and is final against it.

13. For the reasons recorded above, this petition is found without life and is accordingly dismissed. In the peculiar facts and circumstances of the case the partially favourable award in terms of money will remain executable, though this order will have no precedential value.

**(RAJIV NARAIN RAINA)**  
**JUDGE**

**September 8, 2015**  
Paritosh Kumar