

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

1 CWP No.6793 of 2015 (O&M)
Date of decision: 13.05.2015

Executive Engineer, Dakshin Haryana
Bijli Vitran Nigam Ltd.

... Petitioner

Vs.

The Presiding Officer and others

... Respondents

2 CWP No.6785 of 2015 (O&M)

Executive Engineer, Dakshin Haryana
Bijli Vitran Nigam Ltd.

... Petitioner

Vs.

The Presiding Officer and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Present:- Mr. Suvir Sehgal, Advocate and
Mr. Daman Dhir, Advocate
for the petitioner.

Mr. Jagat Singh, Advocate
for respondent No.2 in CWP No.6793 of 2015.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two writ petitions
bearing Nos.6793 and 6785 of 2015.

For the sake of convenience, the facts are being taken
from CWP No.6793 of 2015.

Challenge in the present writ petitions is to the award dated 05.12.2014 (Annexured P-9) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar, whereby, the Labour Court while holding that there was no relationship of the employer and employee between the workman and the Nigam, but in fact, with the HESL. In relief clause, the Labour Court has directed respondents No.1 and 2 i.e. the petitioner and respondent No.2 to reinstate the workman into service with all consequential benefits with immediate effect but denied relief qua back wages.

Mr. Suvir Sehgal, learned counsel for the petitioner submitted that there is clear cut illegality and perversity in the relief clause. In order to lend support to the aforementioned argument, he has drawn attention of this Court to the finding rendered in paragraph 14 and 15 which read thus:-

“14 From the evidence on the file, the claim of the petitioner that he was employed by the Nigam directly and he remained in the employment of the Nigam continuously for the period from 27.11.2005 to 19.08.2012 is not proved. In fact it is borne out from the evidence on the file that the Haryana Government vide letter dated 01.09.2006 Ex.M-13 took a policy decision for outsourcing services/activities to meet the emergent requirement of staff. Said policy was adopted by the Nigam vide letter dated 14.09.2006 and it was reviewed

from time to time. It was in pursuance of said policy the Nigam decided to outsource the numerous services activities as and when required which included meter reading, bill distribution and cash collection. The work of meter reading, bill distribution and cash collection was given by the Nigam to HSEL. An agreement to that effect was executed between the Nigam and HESL on 31.10.2005 Ex.M-1 for a period of one year. After the expiry of said year of one year a fresh agreement dated 31.10.2006 Ex.M-2 was executed for a period of two years and it was extended from time to time up to 31.03.2010 vide letters Ex.M-5 to Ex.M-11 when a fresh agreement dated 01.11.2011 Ex.M-4 was executed. The agreement dated 01.11.2011 was also for a period of 2 years. To carry out the work of meter reading, bill distribution and cash collection, HESL employed number of persons and petitioner was one of them. As such, there was no relationship between the work force engaged by the HESL to carry out the contractual work and the Nigam. All the payments of the work executed by the HESL were made by the Nigam to HESL directly and it was HESL which used to pay the salary to the work force employed by the HESL to carry out the contractual work. In that regard Clause ((B) of the terms and conditions of

the contract agreement between the Nigam and HESL Ex.M-1 is relevant which reads as under:-

“For the purpose of payment, the District President of the Ex-Services League will raise the bill to the concerned Xen-Operation within 3 days of the end of every month, giving details of Meter Reading, Bill Distribution and Cash Collection Sub-division wise. The monthly bills once presented along with the meter reading register on monthly basis to the Executive Engineer of the concerned division, will be honored, based on 'Self-Certification' by the Nodal Officer of the Ex-Services League of the concerned district, on the same day. The bills will thereafter be scrutinized, checked and passed in the normal course (3-4 weeks). Deductions, if any, will be adjusted in the next month's bill.”

15. *As such there was no relationship of employer and employee between the petitioner and the Nigam. In fact said relationship was between the petitioner and the HESL. Although it is pleaded by the respondents No.1 and 2 i.e. HESL that the petitioner was employed on commission basis and not on payment of fixed salary, but they did not lead any evidence to prove said fact. Therefore, the claim of the petitioner that he was employed on payment of fixed salary will have to be*

accepted.”

The Labour Court since already held that there was no relationship of the employer and employee between the workman and the Nigam, yet in relief clause, the Labour Court has directed respondents No.1 and 2 to reinstate the workman, which according to the finding rendered in paragraphs supra is totally vague/converse.

In view of the fact that the Labour Court has already held that there is no relationship of employer and employee between the workman and the Nigam but, in fact, between the workman and the HESL, thus, no direction can be issued to respondent No.1 before the Labour Court and petitioner herein. Accordingly, the relief clause is modified to the extent that respondent No.2 is, hereby, directed to reinstate the workman into service with all consequential benefits.

It is made clear that in view of the finding of the Labour Court extracted supra, there is no relationship of employer and employee between the workman and the Nigam-petitioners, therefore, respondent No.1 is not entitled to give benefits of service, if any, to the workman.

Writ petitions stand disposed of.

(AMIT RAWAL)
JUDGE

May 13, 2015
savita