

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

CWP No. 4488 of 2015
Date of decision: 24.09.2016

Executive Engineer

....Petitioner

Versus

Ramesh Chand and another

....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Deepak Balyan, Advocate,
for the petitioner.

Mr. Naveen Daryal, Advocate,
for respondent No. 1.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, the petitioner has questioned the validity of the award passed by the labour Court, Panipat dated 09.01.2014 (Annexure P-3).

The respondent was appointed as Road Roller Driver on 02.08.2005. His services were terminated on 31.07.2008 without compliance to Section 25-F of the Industrial Disputes Act. Thus, reference was made which was the subject matter before the labour Court. The labour Court passed award on 09.01.2014 vide Annexure P-3, which is the subject matter of this petition.

The learned counsel for the petitioner submitted that the respondent was never employed by the petitioner. Hence, there is no relationship of employer and employee. Thus, the labour Court has erred in holding that there is relationship of employer and employee between the petitioner and the respondent. It is further contended that

the respondent-workman has not worked for 240 days continuously during the preceding full calendar months from the date of termination of his services. It was further submitted that the respondent-workman was appointed through contractor even though necessary evidence was not adduced before the Labour Court. He further submitted that by way of miscellaneous application, document has been produced to show that payment has been made to the Contractor on 04.02.2005, therefore, the labour Court should not have allowed the claim of the workman.

Per contra learned counsel for the respondent-workman submitted that the respondent was appointed by the petitioner to work as a Road Roller Driver to the Road Roller No. 9321. In order to prove the same document Ex. WW2/1 namely, log book was placed on record before the labour Court and it is also evidence from the log book that the respondent-workman has worked during the period from 14.08.2005 to 27.05.2008, which is evident that he has worked for more than 240 days. Therefore, there is no error committed by the labour Court so as to interfere with the award. In so far as contention of the learned counsel for the petitioner that the respondent-workman was engaged through contractor, no material has been produced except stating that respondent was working through contractor and so far as reliance on document relating to payment made to the contractor is concerned, it is dated 04.02.2005, whereas the respondent-workman was appointed on 02.08.2005. It was further submitted that the payment made to the contractor do not reveal that

such payment has been made in respect of appointing respondent as a driver. Therefore, the contention of the learned counsel for the petitioner that the respondent-workman was appointed through contractor is not tenable.

Heard learned counsel for the parties.

Perusal of para 12 and 13 of the labour Court, it is evident that there is relationship of employer and employee between the petitioner and the respondent-workman. Further, it is evident that respondent-workman has discharged the duties of the post held by him for the period from 14.08.2005 to 27.05.2008 from the log book placed on record before the labour Court. Payment made to the contractor to appoint driver. The petitioner has not produced agreement entered between the petitioner and contractor. Therefore, no inference can be drawn that respondent was appointed through contractor.

In view of these facts and circumstances, the petitioner has not made out a case so as to interfere with the award passed by the learned labour Court, Panipat dated 09.01.2014 vide Annexure P-3.

Accordingly, the petition stands dismissed.

24.09.2016
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(P.B. BAJANTHRI)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No