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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11134-2015 [O&M]

Date of Decision : August 08, 2018

Satya Prakash

.... Petitioner.

Versus

M/s Sehrawat Construction Company
and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Argued by Mr. Surinder Gaur, Advocate
for the petitioner.

Mr. Vishva Nath Sharma, Advocate,
for Mr. Sandeep Singal, Advocate,
for respondent No.1

Mr. Surinder Dhull, Advocate ,
for respondent No.2.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari to quash award dated 05.12.2014 (Annexure P/5) passed by learned Industrial Tribunal-cum-Labour Court, Rohtak (for short, "**the Tribunal**") whereby the reference was answered against him.

2. Facts relevant for the purpose of decision of this writ petition; that the petitioner herein has come with the plea that he was an employee of respondent No. 2, UHBVPN Limited (for short "UHBVPN") and on

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25.09.2001, he was illegally transferred to the respondent no.1, M/s Sehrawat Construction Company (hereinafter referred to as **“the Company”**) on the instructions of UHBVPN as per verbal orders and subsequently, the petitioner was removed from service without assigning any reason with effect from 31.1.2007. The petitioner issued a demand notice raising his claim and on the basis of that, reference was made to the Tribunal and the award was pronounced on 5.12.2014 (Annexure P/5) which is under challenge before this Court.

3. In the reply filed by respondent No.1/Company, plea was taken that the petitioner was not their employee and there is no relationship of employer and employee between them. More so, as per the case of the petitioner before the Tribunal as well, he is employee of UHBVPN and in the writ petition, he is claiming to be employee of respondent No.2/UHBVPN only. As such, the present writ petition is not maintainable qua respondent no.1/company. The petitioner failed to summon the record from the management to prove his plea and the Tribunal rightly recorded the finding that he has failed to prove that he has worked for 240 days in the preceding year from the date of termination and pronounced the impugned award against the petitioner.

4. In the separate reply filed by respondent No.2/UHBVPN, the relationship of employer and employee between UHBVPN and the petitioner has been denied. Respondent No.2 has also denied the fact that the workman was transferred to respondent No.1 on 25.09.2001, rather he never remained employed with respondent No.2. As such, there is no question of transfer of the petitioner to respondent no.1/Company. No

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demand notice was ever served upon respondent No.2 and the Tribunal has rightly recorded the findings on these facts and the present writ petition deserves dismissal.

5. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the matter in controversy revolves around the fact as to whether the petitioner-workman was an employee of respondent No. 2 i.e., UHBVPN or in the alternative, he was the employee of respondent No.1/ Company. The petitioner had taken the plea that he was working with respondent No.2 and on 25.9.2001, he was transferred to respondent No.1. However, the petitioner has not given any date of appointment and thereafter, his services were terminated on 31.1.2007 by respondent No.1 without payment of any retrenchment compensation. Broadly, there are two aspects in this case. Firstly, the petitioner has not been able to establish in any way that he was ever appointed by respondent No.2 and served respondent No.2 for a specific period. There is absolutely no documentary evidence regarding production of appointment order, any document showing payment of wages to the workman or deductions towards Provident Fund etc. during his alleged employment with respondent No.2. There is no such document available on the file with the Tribunal that petitioner was transferred by respondent No.2/UHBVPN to respondent No.1/Company. As such, the Tribunal has rightly returned the finding against him and the said findings do not call for any interference.

6. As regards to employment of the petitioner with respondent No.1/Company, learned Tribunal while placing reliance upon Ex. MW-1

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and attendance register, Ex. M-3 has held that the petitioner was an employee of respondent no.1/Company, but the petitioner failed to prove by leading any evidence before the Tribunal that he continuously worked for 240 days in the preceding calendar year before the date of alleged termination i.e. 31.1.2007 and as such, the petitioner was not held entitled to receive any compensation from respondent No.1 as well. The said findings recorded by the Tribunal are also based on facts of the case and correct appreciation of law and the same do not call for any interference by this Court.

7. In view of the above, there is no merit in the present writ petition and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

August 08, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes