

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 24911 of 2014

Date of Decision: 2 .08.2018

Moti Chand

... Petitioner(s)

Versus

The Senior Divisional Manager, LIC of India and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

Present: Mr. Ravi Kant Sharma, Advocate
for the petitioner(s).

Mr. Pawan Kumar Longia, Advocate
for respondent No.1.

Shekher Dhawan, J.

Present writ petition is for quashing the impugned award dated 08.11.2013 (Annexure P6), passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Chandigarh (hereinafter referred to as “learned Tribunal”) on the ground that petitioner-workman was appointed as Care Taker-cum-Chowkidar by respondent No.1 (hereinafter referred to as “the management”) vide appointment letter dated 12.06.1989. He was initially posted at LIC Guest House in Sector 8, Chandigarh and after a period of ten years, he was transferred to LIC Guest House, Sector 15-D, Chandigarh. He worked as such upto 07.08.2001 without any break. Initially, he was paid consolidated salary of Rs.700/- per month, which was later on enhanced from time to time as per the D.C. rates fixed and revised by the Deputy Commissioner, Chandigarh. He was not given any increment.

Just to appoint some favourable person, his services were terminated. Petitioner raised industrial dispute, on the basis of which reference was made to the learned Tribunal.

The management took the plea that there was no relationship of employer and employee and petitioner was simply a contractor to whom the contract of attending the LIC Guest House at Chandigarh was given initially for a period of 12 months on payment of Rs.700/- per month. The alleged contract was extended from time to time and the same was lastly extended on 01.06.2000 for a period of 12 months on payment of Rs. 2,000/- per month.

While challenging the impugned award, learned counsel for the petitioner contended that the learned Tribunal had completely ignored the basic fact that petitioner was appointed as Care Taker-cum-Chowkidar on 07.08.2001 and he continuously served the management. He was in continuous employment and initially, he was paid wages at a rate of Rs.700/- per month, which was revised on different dates and at the time of termination of his services, he was being paid Rs.2,000/- per month.

The learned Tribunal recorded the finding that petitioner was not covered under the definition of “workman” and there was no relationship of employer and employee between the petitioner and the management. While arguing on this point, learned counsel for the petitioner contended that where a worker or a group of workers labours to produce goods or services and the same are for the business, the relationship of employer and employee comes into existence. In the present case, services of the petitioner were being used continuously for a period of about 12 years and thereafter,

the same were terminated and he is certainly covered under the umbrella of Section 25 of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”). On this point reliance has been placed on the judgment rendered by the Hon'ble Apex Court in ***Hussainbhai v. The Alath Factory Tezhilali Union and Others AIR 1978 Supreme Court 1410***, wherein such a view was taken.

While arguing this point, learned counsel for the management contended that the learned Tribunal has considered all these aspects including the document whereby the contract was awarded to the petitioner as contractor and rightly recorded the finding that there was no relationship of employer and employee and petitioner was not a workman, rather he was a contractor and on expiry of terms of the contract, he was not entitled to any retrenchment compensation as his case is covered under Section 2(00)(bb) of the Act. On this point, reliance has been placed on the judgments rendered by Hon'ble the Apex Court in ***M/s Haryana State F.C.C.W. Store Ltd. and Another v. Ram Niwas and Another 2002(3) S.C.T. 789*** and by the Hon'ble Division Bench of this Court in ***Government College, Sector-1, Panchkula (Haryana) through its Principal v. Presiding Officer, Labour Court, Ambala ad Another 2009(3) S.C.T. 392*** and ***Kulavtar Singh v. Presiding Officer, Labour Court, Ambala 2000(4) S.C.T. 1061***.

Having considered the submissions made by learned counsel for both the parties and appraisal of the record, this Court is of the considered view that the matter in controversy mainly revolves around the terms of appointment or engaging the services of petitioner. The contract for attending to LIC Guest House was awarded to petitioner-Moti Chand on

12.06.1989, copy whereof is Mark “A” for a period of 12 months only and the amount was to be paid at the rate of Rs.700/- per month. His duties as contractor was to maintain the guest house and to attend to the guests. For that purpose, he was to be provided accommodation in the guest house itself on a payment of token rent of Re.1/- per month. As per clause 11 of the same, the right was reserved by the LIC management to terminate the contract at their discretion at any time. The said document, which determines the rights and responsibilities of the parties *inter se* clearly defines that petitioner was appointed as a contractor and not as an employee. The document (Mark “A”) cannot be termed as appointment letter of petitioner-Moti Chand in any way. Merely extending the contract on yearly basis does not convert the relationship of contractor to that of employer and employee. The learned Tribunal has rightly taken this view while pronouncing the impugned award.

Learned counsel for the petitioner also advanced an argument that whenever petitioner was to proceed on leave, he used to depute somebody and his leave was duly sanctioned by the management. This Court has given due consideration on this point and is of the view that the alleged leave applications, submitted by the petitioner, were just an intimation to the contractor regarding his non-availability and during that period he used to depute somebody who was to look after the work assigned to the petitioner as contractor.

The learned Tribunal has rightly interpreted that giving of contract for different guest houses in Chandigarh does not mean transfer of petitioner by the management.

In *M/s Haryana State F.C.C.W. Store Ltd.'s case* (*supra*), the Hon'ble Apex Court, while interpreting the scope of Section 2(oo)(bb) of the Act observed that not allowing the contractor to work beyond the contract period is not covered under the definition of Section 25F of the Act for the purpose of retrenchment compensation, rather such a case would be covered under Section 2(oo)(bb) of the Act.

In case *Harmohinder Singh v. Kharga Canteen, Ambala Cantt. (2001) 5 SCC 540*, the Hon'ble Apex Court observed as under:-

“In such a case the question of complying with the conditions precedent to retrenchment of workman provided in section 25(f) of the Act will not arise. In the present case the Labour Court relying on the oral and documentary evidence cited on behalf of the management, particularly the order of the Managing Director sanctioning the engagement of the workmen concerned held that the engagement/appointment of the workmen concerned was for a specific purpose and for a particular period and since the purpose for their engagement/appointment was over and the period of appointment had expired their disengagement was in terms of the contract of service, and therefore, not a 'retrenchment' within the meaning of Section 2(oo) of the Act. The High Court has not recorded a finding that there was no contract of service between the management and the workmen concerned. In view of the evidence on record the High Court could not and indeed has not recorded any finding that there was no contract of service between the management and the workmen concerned. Since there exists a contract of service with the terms and conditions as noted earlier the position is inescapable that the case of disengagement/termination of the workman concerned did not amount to retrenchment. In particular facts and circumstances of the case the Labour Court rightly came to the

conclusion that the workmen were entitled to no relief in the case. The High Court was clearly in error in interfering with the Award passed by the Labour Court. Accordingly, the appeals are allowed. The Judgments of the High Court in CWP No.9471/99 and CWP No. 9472/99 dated 22.9.2000 allowing the writ petitions filed by the respondent workmen are set aside and the Award of the Tribunal is restored. There will, however, be no order for costs.”

Identical view was taken by the Hon'ble Division Bench of this Court in ***Government College's case (supra)*** and ***Kulavtar Singh's case(supra)***, and by the co-ordinate Benches of this Court in ***Meena Rawat, Ex.Clerk/Typist in the office of Chief Engineer, Haryana Urban Development Authority (HUDA) at Panchkula v. The Haryana Urban Development Authority, Manimajra (U.T), Chandigarh through its Chief Engineer and Another 2009(4) S.C.T. 13*** and ***Shiv Bahadur v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar and Others 2014 (10) S.C.T. 819.***

In view of above, present writ petition is without any merits and the same stands dismissed.

(Shekher Dhawan)
Judge

August 2, 2018
“DK”

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No