

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

CWP No.23027 of 2018

Date of Decision : 05.08.2019

Municipal Council, Gobindgarh, Fatehgarh Sahib

....Petitioner

versus

Industrial Tribunal, SAS Nagar, Mohali and another

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr. Harpreet Singh Gharuan, Advocate
 for the petitioner.

B.S. Walia, J.,

[1] Challenge in the writ petition is to Award (Annexure P/4) dated 20.03.2018, passed by the Industrial Tribunal, SAS Nagar, Mohali (hereinafter referred to as the 'Tribunal'), holding the respondent-workman (hereinafter referred to as the workman) entitled to reinstatement with continuity of services and 50% back wages w.e.f. the date of termination of service.

[2] Learned counsel contended that the workman was engaged to operate the tubewell of the petitioner as pump operator through a contractor from 01.06.2000 to 17.06.2011, that although the workman had mentioned the name of the respondent in the claim statement as M/s Karaj Sadhak Officer, President, Contractor, Mandi Gobindgarh, District Fatehgarh Sahib but he had intentionally not disclosed the name of the contractor, therefore, the reference was bad for mis-joinder / non-joinder of parties, besides the finding of the Tribunal that the workman was an employee of the petitioner was unsustainable, as admittedly there was no resolution by the petitioner to appoint the workman.

[3] That brief background of the case of the workman before the Tribunal was of his working under the petitioner as Tubewell Operator on monthly salary of Rs.3650/- w.e.f. 01.06.2000 and of his services having been terminated on 17.06.2011 without notice, enquiry or compensation. Petitioner on the other hand contended that the workman was never appointed by it, therefore, the question of termination of his services by it did not arise, that the reference was not maintainable, as the work of Pump Operator was given by it to various contractors from time to time and in the absence of the contractor having been impleaded as respondent, the reference was bad for mis-joinder/non-joinder of parties.

[4] I have considered the submissions of learned counsel. No doubt respondent as per the statement of claim is mentioned as M/s Karaj Sadhak Officer, President, Contractor, Mandi Gobindgarh, District Fatehgarh Sahib but as paragraph Nos.2 & 3 of the legal objections to the claim statement reveals a contradictory stand of the contractor having been impleaded as respondent but of his name intentionally not having been disclosed and in the very next breath taking up the stand of the reference being bad for mis-joinder/non-joinder as the workman had not impleaded the contractor as a respondent. In fact the petitioner itself treated the title of the respondent as given in the claim statement as a typographical error because in the reply filed, the cause title has been mentioned as *Harjit Singh s/o Sher Singh* versus *Municipal Council, Mandi Gobindgarh through its Executive Officer*. Further the reference as made under Section 10 of the Industrial Disputes Act, 1947 by the Deputy Labour Commissioner was :-

“Whether respondent-management has terminated services of Sh. Harpreet Singh s/o Sh. Sher Singh workman in illegal and unjustified manner? If so, what relief, to what extent is he entitled to?”

Thus, it is apparent that the dispute was between the workman and the Municipal Council.

[5] That it also needs mention that the petitioner never took up the stand in its reply before the Tribunal as has been taken in the writ petition that it could not engage casual labour on its own without prior permission of the Director, Local Bodies, Punjab or that no such permission was taken by it. Even otherwise, the aforementioned plea stands negated from the log book, as well as duty roster, prepared by the petitioner showing the respondent working as Assistant Pump Operator, timings of operation of the tube well, signatures of the workman besides counter signatures of the Sub Divisional Engineer of the petitioner on the same thereby reflecting supervision of the workman by the petitioner. Moreover, the petitioner never placed the name of the contractor or the agreement with the contractor to whom the contract was alleged to have been awarded by it on record. Burden to prove award of contract for operating its tube well to a contractor was on the petitioner but the petitioner miserably failed to discharge said onus. Besides, no record was referred to by the petitioner to show non payment of salary or deduction of EPF etc by it to the workman. Non production of the aforementioned record also is a factor, which goes against the petitioner in drawing an inference that the workman was an employee of the petitioner. Resultantly, the Tribunal rightly held the workman to be an employee of the Municipal Council.

[6] Admittedly no notice was served on the workman before terminating his services nor was any enquiry conducted nor any compensation paid despite the workman continuously having worked w.e.f. 01.06.2000 to 16.06.2011. Service of the workman was terminated on 17.06.2011 i.e. 1 ½ months after he represented to the petitioner vide letter (Ex.P/7) dated

Tribunal rightly held termination of service of the workman was in derogation of the provisions of Section 25-F of the Industrial Disputes Act, 1947, consequentially, illegal and unjustified, consequentially, ordered his reinstatement with 50% back wages.

[7] In the light of the position as noted above, there is no merit in the writ petition. Accordingly, the same is ***dismissed in limine***.

(B.S. Walia)
Judge

05.08.2019
'Rajneesh'

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