

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

[1] CWP No.6965 of 2017
Date of Decision : 24.07.2019

Md. IqbalPetitioner

v/s

Central Govt. Industrial Tribunal-cum-Labour Court-II,
Chandigarh and othersRespondents

[2] CWP No.24860 of 2017

Sanjay KumarPetitioner

v/s

Central Govt. Industrial Tribunal-cum-Labour Court-II,
Chandigarh and othersRespondents

[3] CWP No.24922 of 2017

Ram MilanPetitioner

v/s

Central Govt. Industrial Tribunal-cum-Labour Court-II,
Chandigarh and othersRespondents

[4] CWP No.24593 of 2017

SatbirPetitioner

v/s

Central Govt. Industrial Tribunal-cum-Labour Court-II,
Chandigarh and othersRespondents

[5] CWP No.24858 of 2017

RamaPetitioner

v/s

Central Govt. Industrial Tribunal-cum-Labour Court-II,
Chandigarh and othersRespondents

[6] CWP No.24861 of 2017

Devi SinghPetitioner

v/s

Central Govt. Industrial Tribunal-cum-Labour Court-II,
Chandigarh and othersRespondents

[7] CWP No.24882 of 2017

Bansi LalPetitioner

v/s

Central Govt. Industrial Tribunal-cum-Labour Court-II,
Chandigarh and othersRespondents

[8] CWP No.24639 of 2017

Sunil KumarPetitioner

v/s

Central Govt. Industrial Tribunal-cum-Labour Court-II,
Chandigarh and othersRespondents

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

Present: Mrs. Abha Rathore, Advocate for the petitioner(s)
(in all the writ petitions).

Mr. Paul S. Saini, Advocate for respondent No.2/IOC
(in all the writ petitions).

Mr. Rajiv Sharma, Advocate for respondent No.3/Rites India Ltd
(in all the writ petitions).

Mr. Pawan Kumar Longia, Advocate for respondent No.4/Peeway Care
(in all the writ petitions).

Mr. Abhinav Kalia, Advocate for respondent No.5/M/s K.Lal & Sons
(in all writ petitions).

B.S. Walia, J. (Oral).

[1] This order shall decide CWP Nos.6965, 24860, 24922, 24593,
24858, 24861, 24882 and 24639 of 2017 as common question of law and facts
are involved in all the petitions. However, for the purpose of deciding the writ
petitions, it is relevant to take note details of service rendered by the petitioners

of different writ petitions as also the relief granted by the Central Govt. Industrial Tribunal-cum-Labour Court-II, Chandigarh (hereinafter referred to as the Tribunal) to them. The same is as under:-

S. No.	CWP No.	Name	Period of Services	Relief
1	6965/2017	Md. Iqbal	15.09.2005 to 30.10.2012	50,000/-
2	24593/2017	Satbir	09.07.2003 to 30.10.2012	50,000/-
3	24858/2017	Rama	25.05.2003 to 30.10.2012	50,000/-
4	24639/2017	Sunil	15.07.1999 to 30.12.2012	50,000/-
5	24861/2017	Devi Singh	01.01.2010 to 30.10.2012	50,000/-
6	24922/2017	Ram Milan	01.04.2003 to 30.10.2012	50,000/-
7	24882/2017	Bansi Lal	01.04.1999 to 30.10.2012	50,000/-
8	24860/2017	Sanjay Kumar	09.11.2010 to 30.10.2012	50,000/-

[2] For the purpose of decision of the above mentioned writ petitions, facts are being taken from CWP No.6965 of 2017.

[3] Brief facts of the case, leading to the filing of the present writ petition are that respondent No.2/Indian Oil Corporation Limited, Panipat (hereinafter referred to as the 'IOC') engaged respondent No.3/Rites India Limited, Panipat (hereinafter referred to as 'Rites') as Contractor for annual maintenance of Railway Siding, Panipat Refinery from the year 1999 onwards. Rites i.e. respondent No.3 engaged the services of Peeway Care, Uttar Pradesh i.e. respondent No.4 as Sub contractor (hereinafter referred to as 'PWC'). The petitioner was engaged as unskilled labour on the post of Gangman by PWC on 15.09.2005 and worked continuously as such till 30.10.2012. However, the services of the workman were retrenched on 01.11.2012 without payment of retrenchment compensation or any notice. The petitioner filed a claim statement on the averments that he had been appointed on the post of Gangman on 15.09.2005 against monthly salary of ₹5158/- and had served continuously from 15.09.2005 to 30.10.2012 without any break and thus had worked more than 240 days in the 12 months preceding date of retrenchment i.e. 01.11.2012, from which date he was not allowed to join duty, that his services had been

terminated without giving any notice or retrenchment compensation, as required under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act'), that after terminating his service, work was being taken from new workers through a new contractor, that termination of his services was without any reason, whereas he had a right of re-employment under Section 25-H of the 'Act'. Further that the termination was in derogation of settlement dated 10.04.2012, in which, it had been agreed that no workman would be removed but despite the settlement, his services had been terminated.

[4] Respondent No.4 filed a written statement (Annexure P/5) taking up the stand that the petitioner and other workmen were continuing with it up to the duration of the contract by respondent No.3, in its favour i.e. 31.10.2012 and in view of expiry of term of contract from 31.10.2012, notice dated 26.09.2012, detailing completion of contract and termination of engagement from 31.10.2012 was issued to each and every workman under their acknowledgment and after expiry of their contract, the work was allotted to M/s K. Lal and Sons/ Respondent No.5 by M/s Rites Limited/Respondent No.3. It was also mentioned that on expiry of the contract, they were ready to pay the benefits as applicable under Section 25-F of Act, but the workers wanted employment under the new contractor, that the workman had filed a similar case in the Court of learned Civil Judge (Senior Division), Panipat, challenging notice dated 26.09.2012, that the workman had withdrawn the amount lying in his PF Account, that he had been continued in service till the time respondent No.4 had worked. Therefore, the question of continuation of service or taking back the workman in employment did not arise.

[5] Likewise, Rites also filed reply (Annexure P/4) that after completion of work order in favour of PWC on 31.10.2012 (wrongly written

as 2013), the casual labour were retrenched due to no work and due notice was given to them by PWC and they were also paid their gratuity which the workers refused, that there was no work for 10 days after their retrenchment and after engagement of new agency, a notice was put up on the office notice board, offering employment by new agency M/s K.L. and Sons i.e. respondent No.5, but only 07 out of 30 workmen appeared and were engaged, rest of the workmen did not show any desire to work with the existing agency, that its liability was limited to what was stipulated in the reply.

[6] Respondent No.5 i.e. M/s K. Lal and Sons also filed a reply (Annexure P/6), stating that Rites had awarded the contract to it w.e.f. 09.11.2012 and that PWC had stopped work of maintenance w.e.f. 31.10.2012 on expiry of their contract and that it had posted a notice on notice board of the office at refinery premises and offered the workmen to report for work with respondent no.5 for new appointment but only 07 workmen joined, whereas others wanted to work at their own terms, which was not possible, that the status was that out of the workmen, only 07 had been re-engaged and rest of the workmen were freshly recruited on D.C. rates, as admissible to IOC/Panipat Refinery.

[7] IOC took up the stand before the Tribunal that it had nothing to do with the labour engaged by the contractor i.e. respondent Nos.3 & 4 and that the workmen had been engaged by respondent Nos.3 & 4 i.e. its Contractors.

[8] The Tribunal on the basis of evidence led before it came to the conclusion that it was not disputed that IOC had given contract for the annual maintenance of Railway Siding, Panipat Refinery from 1999 onwards to Rites and that Rites engaged the services of PWC as Sub Contractor, that the terms

the reason that no such terms had been reduced into writing, that it was the admitted case that the annual maintenance contract of PWC was not extended after 31.10.2012 instead was given by respondent No.3 to respondent No.5, that a notice had been given to each and every workman on 26.09.2012 (Ex. M-5), informing that their engagement would come to an end from 31.10.2012, as the contract for maintenance of railway track would come to an end. Accordingly, since there was no work with respondent No.4, the services of the workman were terminated after giving him notice on 26.09.2012. The learned Tribunal took into account that it had neither been pleaded nor proved that there was any contract between respondent No.4 and the workman that the services of the workman would come to an end automatically on the termination of the contract between respondent Nos.3, 4 & 1.

[9] The learned Tribunal took into account that although respondent No.4 had given a notice to the workman (Ex. M-5) dated 26.09.2012, it had neither been pleaded nor proved that the workman had been paid retrenchment compensation. On the contrary, it had been pleaded by respondent No.4 that it was ready to pay the benefits as applicable under Section 25-F of the Act but the workman wanted employment under the new contractor. Thus, it was admitted by respondent No.4 that no retrenchment compensation was paid to the workman on 31.10.2012 as and when his services were retrenched. Consequently, the termination of the services of the workman was illegal.

[10] In the background of the contract for maintenance of railway track between IOC on the one hand and respondent Nos.3 & 4 on the other hand having come to an end, the learned Tribunal held that the workman could not be ordered to be reinstated (inadvertently written as above, although it ought to read as since contract for maintenance of railway track between

be reinstated in service particularly under respondent No.5 with whom he had never worked), therefore, the petitioner-workman was ordered to be paid retrenchment compensation of ₹50,000/-. It was further ordered that the workman would be entitled to recover a sum of ₹50,000/- from respondent Nos.2 to 4 jointly and severally and if respondent No.2 paid the amount, it would be at liberty to recover the same from respondent Nos.3 & 4.

[11] The main submission of learned counsel for the petitioner is that in view of settlement dated 10.04.2012 (Annexure P/1) between respondent Nos.3 & 4 and the Oil & Refinery Workers Union under Section 12(3) read with Section 18(3) of the Act in respect of 30 workers including the petitioner, agreeing that till such time the maintenance contracts remained with respondent No.3, respondent No.3 would ensure that no new workman was appointed in place of the present workman till the date of retirement/resignation of the workman, therefore, the settlement was binding on respondent Nos.3 & 4 as per Section 18 of the Act, consequentially, the workman was entitled to reinstatement.

[12] Learned counsel contends that despite the settlement (Annexure P/1 i.e. Ex.WW-1/15) having been exhibited and proved before the learned Tribunal, the learned Tribunal failed to take into account the rights of the petitioner in terms of the settlement and the adverse consequences of non adherence to the settlement. A perusal of the settlement (Ex. WW1/15) i.e. Annexure P/1 dated 10.04.2012 between respondent Nos.3, 4 and the Oil Refinery Workers Union under Section 12(3) read with Section 18(3) of the Act reveals that till such time, the maintenance contract in question remained with Rites, Rites was to ensure that no new workman was engaged in case of the existing workman, till the date of retirement/resignation of such existing

[13] Learned counsel contends that it was incumbent upon Rites as the principal contractor to ensure that during the pendency of the contract with it, the settlement was adhered to and no new workman was engaged in place of the existing workman except where they had retired or resigned and that in the circumstances, it was, apparent that the intention of Rites was to flout the settlement (Ex.WW1/15) so as to deprive the petitioner(s)-workmen of their rights in terms of the settlement, by resorting to fresh recruitment and giving of new appointment to workman by assigning contract to the new contractor i.e. respondent No.5.

[14] Learned counsel contends that it would have been a different position altogether, had the petitioner-workman been continued without any break but as was evident from the stand of Rites, PWC and M/s K. Lal and Sons, the work by respondent Nos.3 & 4 stopped on 31.10.2012 and a fresh appointment was granted to the workmen under Respondent No.5 without taking into account the right's of the petitioner/workmen to have continuity in service as per the settlement. Learned counsel states that the petitioners reserve their right to take action under Section 29 of the Act for breach of the settlement but apart from the liability for penalty of breach of settlement, the petitioners are entitled to appropriate modification of the Award by reinstatement of the petitioner-workmen under respondent No.3 in view of the settlement with full back wages and continuity of service.

[15] Learned counsel for respondent No.3 on the other hand contended that they were ready to pay retrenchment compensation as per Section 25 F of the Act at every stage since the date of expiry of contract and said offer had been extended even before the conciliation officer also, however the workmen themselves denied accepting compensation and

they had not joined despite a notice having been put up calling the old workmen to join. Therefore there was no violation of the mandatory provisions of the Act or of the settlement on the part of the respondents.

[16] I have considered the submissions of the learned counsel for the parties and perused the relevant record. In my considered opinion, the settlement (Annexure P/1) is crystal clear and the parties to it are bound as per Section 18 of the Act to adhere to the terms & conditions contained therein or face penalty contemplated under Section 29 of the Act. However, the learned Tribunal did not take into account the settlement (Ex.WW1/15). Reply filed by respondent No.5-M/s K. Lal and Sons also reflects in paragraph No.4 that what was offered to the petitioner was fresh (new appointment) whereas settlement was arrived at on 10.04.2012 between the management of respondent Nos.3 & 4 and the Oil and Refinery Worker Union under Section 12(B) read with Section 18(3) of the Act Ex.WW1/15 (Annexure P/1), that till such time the maintenance contract in question remained with Rites, Rites would ensure that no new workman was appointed in place of the existing workman till the date of retirement/resignation. Relevant extract of the settlement is reproduced as under:-

“Terms of the Settlement:-

1. It is agreed that till the time the maintenance contracts in question is with RITES Ltd, RITES Ltd will ensure that no new workman in place of the present workman is appointed till the date of retirement/resignation.”

Accordingly, in the light of the position as noted above, it is clear that in terms of settlement (Ex. WW1/15), it was incumbent upon respondent No.3 to ensure that no new workman was engaged in place of the existing workman, till the date of retirement/resignation of the petitioner-workman. However, as has been noted above, the services of the petitioner-workman were terminated

on 31.10.2012, without paying any retrenchment compensation, where after notice was put up on the notice board, allegedly by respondent No.5, offering new and afresh appointment. Since respondent No.4 is no longer in the picture, the responsibility for ensuring adherence to the settlement namely that no new workman would be engaged in place of existing workman, till date of retirement/resignation, rests exclusively on respondent No.3. Neither did respondent No.3 ensure adherence to the terms of settlement nor did respondent No.4 make payment of retrenchment compensation, at the time of termination of services of the petitioner-workman.

[17] In the circumstances, Award dated 08.07.2016 (Annexure P/7), is modified. Respondent No.3 is directed to ensure adherence to the terms of the settlement dated 10.04.2012 (Ex. WW1/15) attached as Annexure P/1 and as a consequence thereof, the petitioner-workman shall be reinstated. It shall be the responsibility of respondent No.3 to ensure that workman is assigned duty, in accordance with the settlement (Ex. WW1/15). The petitioner-workman is ordered to be reinstated with continuity of service and full back wages, while leaving it open to the petitioner to take out appropriate proceedings under Section 29 of the Act for violation by respondent Nos.3 & 4 of the settlement (Ex. WW1/15) if the same is not complied with as directed above.

[18] Writ petition **allowed** in the aforementioned terms.

(B.S. Walia)
Judge

July 24, 2019

‘Rajneesh’

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No