

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

(1)

CWP No.29889 of 2019

Date of decision: 17.10.2019

Municipal Council, Jaitu

...Petitioner

versus

Presiding Officer, Industrial Tribunal, Bathinda and others

... Respondents

AND

(2)

CWP No.30231 of 2019

Date of decision: 17.10.2019

Municipal Council, Jaitu

...Petitioner

versus

Presiding Officer, Industrial Tribunal, Bathinda and others

... Respondents

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

Present: Mr. Joginder Sharma, Advocate for the petitioner.

B.S. Walia, J.

1. This order shall decide CWP No.29889 of 2019 as well as CWP No. 30231 of 2019, as the same have been filed by the Municipal Council, Jaitu (hereinafter referred to as the petitioner) although against different workmen, however, the point in issue in both cases is the same.

2. Facts of the case are being taken from CWP No.29889 of 2019.

Prayer in the writ petition is for the issuance of a writ of Certiorari for

quashing award Annexure P/6 dated 25.01.2019, passed by the learned Industrial Tribunal, Bathinda (hereinafter referred to as 'the Tribunal'), allowing the reference in favour of the respondent (hereinafter referred to as the workman) ordering his reinstatement with continuity of service and 50% back wages w.e.f. the date of demand notice along with interest @ 6% per annum besides costs.

3. As per the case set up by the workman before the Tribunal, he was working at the disposal works of the petitioner since the year 1997, his presence used to be marked in the attendance register and the log book kept at the disposal works was duly checked and signed by the Executive Officer and other officers of the Municipal Council. Since the work was of regular nature, he represented for regularisation but instead of regularisation of his services, he received the shock of his life when his services were terminated on 01.08.2011 in derogation of the mandatory provisions of the Industrial Disputes Act, 1947 (in short 'the Act') without any notice, enquiry or compensation.

4. Though, stand of the petitioner was that the workman was never engaged by it at any point of time, yet in its written statement, it was admitted that disposal work was being got done by it through a contractor.

5. Learned counsel besides reiterating the submissions made before the Tribunal, contended that the workman was not the employee of the petitioner but of a contractor and the petitioner had no control over the workman, thus the Tribunal had erred in holding the workman to be the petitioner's employee.

6. I have considered the submissions of learned counsel for the petitioner. The learned Tribunal, on the basis of evidence held that the name of the workman was mentioned in the tube well log book maintained at the

disposal works of the petitioner besides in the attendance register / muster roll, of the record reflecting the number of hours for which the workman performed duty as also of the same having been checked and signed by the Executive Officer besides other officials of the petitioner. The Tribunal also recorded that the log book / attendance register nowhere mentioned any contractor supplying the workman to the petitioner for accomplishing the task of disposal works of the petitioner as also that the workman in the instant case besides Gurmeet Singh i.e. workman in connected writ petition had filed an application U/s 33 (c) (2) of the Act, for recovery of wages from November, 2005 to January, 2006 and of the same having been allowed by the Tribunal, by directing the petitioner to make payment of arrears of salary to the workman i.e. the same as is in the instant cases after making calculations with the liberty that in case the workman had been engaged through a contractor, then the petitioner would be at liberty to recover the payment made to the workman from the contractor concerned. However, the witnesses examined by the petitioner admitted not only payment having been made by the petitioner to the workmen in terms of the orders of the Tribunal u/s 33 (c) (2) of the Act but also of no attempts whatsoever having been made to recover the payment made from the so called contractor. The Tribunal also found the workman to have worked for 240 days in the 12 months preceding the date of his termination as also of his services having been terminated without complying with the mandatory provisions of the Act, consequentially, the stand of the petitioner of getting its disposal work done through a contractor / outsourcing nothing except a bald and unsubstantiated assertion and the termination illegal, consequentially, the workman entitled to reinstatement with continuity of service and 50% back

wages along with interest at the rate of 6% per annum from the date of order till realization.

7. Learned Counsel for the petitioner has failed to refer to any material to rebut the findings recorded by the Tribunal as noted above. In the circumstances, no grounds whatsoever exist warranting interference with the well reasoned award passed by the Tribunal. The writ petitions are bereft of merit and are accordingly dismissed in limine. No order as to costs.

(B.S. Walia)
Judge

17.10.2019

rajesh.k.khurana

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| 1. Whether speaking/reasoned: | Yes/No. |
| 2. Whether reportable : | Yes/No. |