

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20930 of 2015
Date of Decision: 04.02.2020

Major Singh

... Petitioner

VS.

PO, Central Govt.

Industrial Tribunal, Chandigarh & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE GIRISH AGNIHOTRI

Present: Mr. Pardeep Singh Mirpur, Advocate for the petitioner(s)

Mr. Piyush Khanna, Advocate for respondents No.2&3

Mr. Nitin Rathee, Advocate for

Mr. Anil Rathee, Advocate for respondent No.4

GIRISH AGNIHOTRI, J. (Oral)

(1) This order shall dispose of CWP Nos.20930, 20982, 20990 to 20992, 21021 of 2015 as common issues are involved. For the sake of reference, the facts are being referred to and taken from CWP No.20930 of 2015.

(2) The petitioner Major Singh has filed the present writ petition *inter alia*, praying for a writ in the nature of *certiorari* to quash the award dated 03.04.2014 (P5). It has been further prayed that the petitioner be declared to be in continuous service of respondent No.4 with all consequential benefits such as arrears of full backwages etc.

(3) With the able assistance of counsel for the parties, this Court has examined the case file.

(4) A perusal of the award dated 03.04.2014 (P5) would show that the pleaded case of the workman was that he was engaged on 14.10.1993 in Telephone Exchange, Mansa. He has discharged his duties in his capacity as a workman till 01.03.1999. The pleaded case of the workman is that on

01.03.1999, his services were illegally terminated without compliance of mandatory provisions of Industrial Disputes Act, 1947.

(5) The respondent-management upon notice had taken the plea that the petitioner-workman was neither appointed nor paid by the management, at any time. It is the case of the management that it used to engage labourer through the contractor and the workman may have been engaged by the contractor. In the short award that has been passed on 03.04.2014, it has been noticed that the management only examined Baldev Krishan who filed his affidavit reiterating the stand taken by the management.

(6) On the contrary, the argument of learned counsel for the petitioner is that the workman was an employee of the management. He has further submitted that the management has intentionally withheld the record and an adverse inference may be drawn against the management. Learned counsel further submits that no issue as alleged by the management, and as also observed by the Labour Court to the effect that the workman had not been engaged by the management, had been framed. He, therefore, submits that accordingly, the impugned award has fallen into error as no evidence was also led by the workman since there was no specific issue framed in this regard.

(7) Learned counsel for respondents No.2&3 has submitted that in fact it was for the workman to prove the factum of engagement with the management. It is only once onus is discharged by the workman that onus would be shifted upon the management to prove to the contrary.

(8) A perusal of the award would further show that the Labour Court has returned its findings by observing as under:-

“It is the definite case of the workman that he worked with the management on a permanent job from 14.10.1993 to 1.3.1999 and it is for the workman to prove the said fact by leading cogent and convincing evidence on the file.

The respondent management is a statutory organization having its rules and regulations and nothing has come on the file that any procedure was followed while employing the workman. Against no evidence has come on the file to show that the workman was ever paid the wages by the management. From the bare statement of the workman it cannot be held that he was an employee of the respondent management, more especially in view of the stand taken by the respondent management that they used to employ labour through the contractor and the workman may have worked for the contractor. Thus, it cannot be said that workman was an employee of the management and was paid wages at any point of time and when it is so it cannot be said that his services were terminated by the management.”

(9) From the perusal of the above and also in view of the submissions made by learned counsel, it is evident that the submission of counsel for the petitioner deserves to be accepted. Learned counsel for the petitioner has rightly submitted that it was incumbent upon the management to prove by way of leading evidence, recording statement and exhibiting documents to establish that in fact for the entire period of service i.e. from 1993 to 1999, the workman had only worked under the contractor and not under the management. He further submits that in the absence of the same, an adverse inference ought to have been drawn. In addition to the above, this Court also noticed that in the evidence by way of affidavit of Sh. Ashok Kumar, copy of which has been placed on record as Annexure P4, it has been stated as under:-

“However, it is submitted that the respondent has entered into a contract agreement with the contractor for performance of petty job in the Department, as a result of which the contractors may have engaged some manpower. A copy of the Agreement is enclosed as Annexure R-1. The payment was directly made to the contractor as per the Agreement and the Contractor may have further paid the wages to the persons engaged by him. It may be noticed that the Contractor having various such contracts, was diverting the labour from one place to another, consequently, none of the persons deployed by the contractor continued at one place much less 240 days uninterruptedly. The Management was not maintaining any record of their service nor it can be verified that the workman has actually worked with the Department because the contractor sometime use to send one person or the other and no particular person has continuously worked. The BSNL has been registered as a Corporate Body under the Companies Act, w.e.f. 1.10.2000, therefore, the claimant cannot claim any relief from BSNL in respect of the erstwhile Department of Telecommunication Services. It is further added that since the claimant was not engaged/appointed by the Respondent, the question of termination does not arise and the Respondent have not violated the provision of Industrial Disputes Act.”

(10) Learned counsel by making reference to the above submits that even if the reference has been made to the agreement, but by way of no evidence, it has been established that the said agreement has any connection with the engagement of the workman. The said submission again deserves to be accepted.

(11) In totality of the above findings, this Court deems it appropriate to quash the award dated 03.04.2014 (P5) and remand the matter(s) back to the Labour Court for afresh adjudication. Since the reference in this case was made in the year 2001, it is deemed appropriate to direct that the

proceedings be concluded by the Labour Court expeditiously. Let both the parties be given two opportunities each to lead evidence and it will be appreciated if the fresh award is passed preferably within six months but not later than one year from the date of receipt of certified copy of this order. To ensure that the parties do not squander in approaching the Labour Court, it is directed that let the parties appear before the Labour Court on 04.03.2020 whereafter, the Labour Court shall be at liberty to fix the date as per its convenience. Learned counsel for the petitioner also submits that the liberty be given to the Labour Court to frame any other issue which may be essential for the proper adjudication of the case. So ordered.

(12) It is also made clear that nothing observed in this order shall be construed to mean as an observation on merits which may prejudice the passing of the fresh award either way by the Labour Court.

(13) The writ petition(s) stands disposed of in above terms.

04.02.2020
Vvishal

(Girish Agnihotri)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No