

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

**L.P.A. No.40 of 2020 (O&M) in**  
Civil Writ Petition No.23027 of 2018  
Date of decision: January 28, 2020

Municipal Council, Gobindgarh ...Appellant

Versus

Industrial Tribunal, SAS Nagar and another ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,  
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Tarun Vir Singh Lehal, Advocate  
for the appellant.

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**HARINDER SINGH SIDHU, J.**

1. The Municipal Council, Gobindgarh, Fatehgarh Sahib has filed this Letters Patent Appeal against the judgment dated 05.08.2019 in CWP No.23027 of 2018 titled 'Municipal Council, Gobindgarh vs. Industrial Tribunal, SAS Nagar and another' whereby, the writ petition filed by the appellant- Municipal Council was dismissed.
2. For the reasons stated in CM-88-LPA of 2020, the delay of 50 days in filing the appeal is condoned. Application stands allowed.
3. The appellant had filed the writ petition challenging the Award dated 20.03.2018 passed by the Industrial Tribunal, SAS Nagar directing the reinstatement of respondent No.2 with continuity of service and 50% back-wages w.e.f. the date of termination of his services.

4. Respondent No.2 was engaged as a Pump Operator on 01.06.2000. He worked as such till 17.06.2011, when his services were terminated. He raised an industrial dispute, whereafter, the matter was referred to the Ld. Labour Court, SAS Nagar.

5. Respondent No.2 claimed that he had been engaged by the appellant, whereas, the case of the appellant was that he had not been employed by it. Rather, the work of operating the Pump had been given to various contractors from time to time. It was further its contention that respondent No.2 had intentionally not disclosed the name of the Contractor. Therefore, the reference was bad for mis-joinder and non-joinder of the necessary parties. As respondent No.2 had never been appointed by the appellant, so the question of terminating his services by the appellant does not arise. Before the Ld. Labour Court, respondent No.2 produced logbooks Ex.P1, Ex.P2 to Ex.P6, which had been signed by him and counter-signed by the Sub- Divisional Engineer of the appellant which indicated that respondent No.2 had worked as an Assistant Pump Operator during that period.

6. In considering the issue as to whether respondent No.2 was an employee of a contractor or the appellant, the Ld. Labour Court noticed that though respondent No.2 had not produced any appointment letter issued by the appellant, nor did he give any proof of payment of salary by the appellant, but considering that the appellant in its written statement had specifically stated that a contract had been given to a contractor to operate the Pump, but no evidence to substantiate that had been produced. Even

the name of the contractor was not disclosed. The burden to prove that the contract to operate the pump was given to a contractor was on the appellant, which he failed to discharge. Adverse inference was drawn against the appellant and it was held that respondent No.2 was an employee of the appellant Municipal Council.

7. The termination of his services was held to be illegal as admittedly no notice was served upon him before such action, no enquiry was conducted, nor any compensation paid to him. The Ld. Labour Court also noticed that the respondent had worked continuously from 01.06.2000 to 17.06.2011. He wrote a letter dated 29.04.2011 seeking regularisation of his services and the appellant in response terminated his services on 17.06.2011 i.e., about a month and half after the letter. It was, thereby concluded, that termination of his services was in violation of Section 25F of the Industrial Disputes Act, 1947. As the appellant failed to furnish any proof that respondent No.2 had remained gainfully employed after the termination of his service, he was directed to be reinstated in service with continuity and 50% back-wages.

8. Before the Ld. Single Judge it had been pleaded on behalf of the appellant that it could not engage casual labour on its own without prior permission of Director, Local Bodies, Punjab and that no such permission had been taken by it. The Ld. Single Judge negated that plea firstly, on the ground that the appellant had not taken this plea in its reply before the Ld. Tribunal and secondly, as that plea stood negated from the entries in the logbook as well as Duty Register prepared by the appellant Municipal

Council, which showed respondent No.2 working as Assistant Pump Operator, the timing of the pump, signatures of respondent No.2 besides counter signatures of the Sub- Divisional Engineer of the appellant proving the supervision of respondent No.2 - workman by the appellant. Thus finding no infirmity in the Award of the Ld. Labour Court, the writ petition was dismissed.

9. We find no reason to disagree with the findings of the Ld. Labour Court affirmed by the Ld. Single Judge.

10. Accordingly, the appeal is dismissed.

**(RAJIV SHARMA)**  
**JUDGE**

**(HARINDER SINGH SIDHU)**  
**JUDGE**

**January 28, 2020**  
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| Whether Speaking / Reasoned | Yes      |
| Whether Reportable          | Yes / No |