

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

CWP-11218-2016(O&M)

Date of decision:-6.10.2021

Mahinder Singh (since dead) through his LR's and others

...Petitioners

Versus

Haryana Power General Corporation Ltd. and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.J.S. Maanipur, Advocate
for the petitioners.

Mr.Adwiteya Grover, Advocate
for respondents No.1 to 3.

H.S. MADAAN, J.

Petitioner Mahinder Singh through his legal representatives and 26 others had brought the instant civil writ petition under Article 226 of the Constitution of India against respondents i.e. Haryana Power Generation Corporation Ltd. through its Managing Director, Chief Engineer, Deen Bandhu Chhotu Ram Thermal Power Project, Haryana Power Generation Corporation Ltd., Yamuna Nagar, Resident Engineer, WYC HE Project, HPGCL, Bhudkalan, District Yamuna Nagar and M/s Friends Associates, Panchkula through its Manager praying for issuance of a writ in the nature of certiorari for quashing the letter/order dated 16.5.2016 (Annexure P6) sent by respondent No.2- Chief Engineer, Deen Bandhu Chhotu Ram Thermal Power Project, Haryana Power Generation Corporation Ltd., Yamuna Nagar being illegal and unjust contrary to the policy dated 12.1.2011 (Annexure P1) and settled law on the issue.

As per the case of the case of the petitioners, they had been working in Haryana Power Generation Corporation Ltd. - respondent No.1 doing unskilled job on payment of minimum wages since July – August, 1995; they had been engaged by different contractors, namely, S/Sh.Alis, Tajewala, Surja Ram, Arriyanwala, Lader, Mindru, Om Kumar, Subhash Saini, Malik, M/s Kanhaiya Engineering Works and M/s Friends Associates (respondent No.4); the services of the petitioners were dispensed with all of a sudden. According to the petitioners, as per settled law no contractual employees can be replaced by another set of contractual employees until and unless their work and conduct is found unsatisfactory. The petitioners had requested the respondents several times to allow them to work and had served legal notice dated 11.4.2016 also but to no effect. As such, they had filed the present civil writ petition.

On notice, respondents put in appearance through counsel. Respondents No.1 to 3 filed a joint written statement *inter alia* raising preliminary objections that the answering respondents had hired contractors for cleaning of trash racks installed at various Hydel project; the contractors were supplying labour and no recruitment was made by the respondents; since the contractor has changed, therefore, the persons employed by the contractor are also required to leave; there is no relationship of employer and employees between the respondents and petitioners; the writ petition against the answering respondents is not maintainable; respondent No.4 M/s Friends Associates – contractor is doing his work for more than one year, therefore the petitioners cannot ask relief of reinstatement against the answering respondents. On merits

the material assertions in the petition were controverted, whereas pleas taken in the preliminary objections were reiterated while praying for dismissal of the writ petition.

The petitioners filed replication to the written statement filed on behalf of respondents No.1 to 3 controverting the allegations in the written statement, whereas reiterating the averments in the writ petition.

I have heard learned counsel for the parties besides going through the record and I find that the present writ petition is doomed for dismissal. The reasons for the same are as follows:

As per the own case of the petitioners, they were hired by various contractors and not respondents No.1 to 3 directly that means they are employees of the contractors, who used to supply the work force to respondents No.1 to 3. The contractors for supplying the work force stood changed from time to time. There is no relationship of employer and employees between respondents No.1 to 3 on one side and petitioners on the other side. As such, the present writ petition filed by petitioners against respondents No.1 to 3 is not maintainable.

As regards, respondent No.4, which is a private entity, the writ petition against it is also not maintainable.

Secondly as has been observed by a Co-ordinate Bench in CWP No.21042-2020(O&M) decided on 18.12.2020, the petitioners, who were hired by a contractor, which had entered into contract with respondents No.1 to 3 to supply the work force fall within definition of workmen and they have equally efficacious remedy of applying for a reference under the Industrial Disputes Act, 1947. Finding that the

petitioner in that case was not entitled to issuance of a writ, the petitioner was relegated to the alternative remedy. Such view taken by the Single Judge was affirmed by Division Bench while disposing of LPA No.40 of 2021(O&M) in CWP No.121 of 2021 on 14.1.2021. For ready reference, the relevant part of the judgment is being reproduced as under:

ISSUE No. 1.

*[4] The concept of workman is central to the concept of an industrial dispute as an industrial dispute can be raised either by a "workman" or an "employer." Since the Industrial Disputes Act, 1947 (for short "**ID Act**") is a piece of beneficial legislation, the courts have enlarged the scope and applicability of this Act by giving wide interpretation to the term "workman." Section 2(s) defines workman as any person (including an apprentice) **employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work, for hire or reward**, terms of employment be express or implied and includes any such **person who has been dismissed, discharged or retrenched in connection with, or as a consequence of dispute**. It excludes persons employed in army/Navy/Air Force/Police and those employed in mainly managerial or administrative, supervisory capacity and drawing wages of more than Rs. 6500.*

[4.1] The basic purpose of statute is to settle all the disputes that arise amongst the parties in an expeditious manner after taking in evidence from both the sides. Further, the proceedings being summary in nature, rigors of Evidence Act are not as strictly applicable as they are applicable to a civil suit. Still further, proceedings under the ID Act, 1947 culminate into an award at a much faster pace as compared to civil suits filed for similar claims.

Thus, any person who falls within the definition of “workmen” under Section 2(s) of the ID Act, 1947 and is working in an Industry as defined under Section 2(j) of ID Act, 1947 must be relegated to their alternative efficacious remedies.

*[4.2] In the instant case, it is seen that learned Single Judge has relegated the appellants under the ID Act, 1947 which has been opposed by them before us only on the ground of not being covered under the definition of “workmen” by relying upon the judgment of Hon’ble Supreme Court in **MGT Som Vihar’s case (supra)**. A bare perusal of the Judgment shows that the issue involved in the said case and the issue raised in the present case are completely different. The Hon’ble Supreme Court had held that a person working in an apartment is not covered under the definition of “workmen” as defined under the ID Act, 1947 and therefore award passed by Tribunal under the ID Act was incorrect. In the present case, the appellants are working as Data Entry Operators under respondent No.2-HSVP, which is not a ‘Housing apartment’, but a statutory authority constituted by State Legislature. That apart, no other basis has been shown, even prima facie, that appellants are not covered under the definition of “workmen”. Thus, the reliance placed upon the judgment by appellants is totally misconceived and therefore, the argument is rejected.*

Therefore, the petitioners have got alternative remedy under the Industrial Disputes Act. Furthermore, the petitioners being employees of the contractor, their claim is against the former and not against respondents No.1 to 3 with whom they are not having any direct connection.

Under the circumstances, the petitioners cannot find any fault with the letter issued by Chief Engineer/DCRTPP, HPGCL, Yamuna

Nagar, which is nothing but reply sent by him to Advocate, who had served notice upon the former on behalf of the petitioners. It has been categorically mentioned therein that petitioners were outsourced through contractor and HPGCL has no direct relationship of employer and employees with the said labour, therefore claim of regularization in the Hydel Project, HPGCL, Bhudkalan did not arise. No fault can be found with such reply sent to the legal notice. As already observed since the petitioners were not hired by respondents No.1 to 3 by way of any selection process, they do not have any claim for regularization of their services against such respondents. The judgments mentioned in the petition and otherwise relied upon by counsel for the petitioners are not helpful to the petitioners in any manner. The petitioners are not entitled to get wages at enhanced rate from respondents No.1 to 3 and their claim, if any, is against respondent No.4. They may agitate their such claim against respondent No.4 in particular forum or Court but not by way of filing the present writ petition.

Even otherwise, a writ is to be issued in exceptional cases and not in routine. Here I do not find any reason to exercise such power.

The instant writ petition is dismissed accordingly.

6.10.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No