

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

304

CWP No.10927 of 2003 (O&M)
DATE OF DECISION : 5th AUGUST, 2022

Rajinder

.... Petitioner

Versus

**Director, Maharaja Aggarsain Institute Medical Research and
Education College, Agroha District Hisar & another**

.... Respondents

A

CWP No.13867 of 2003

Nathu Lal

.... Petitioner

Versus

**Director, Maharaja Aggarsain Institute Medical Research and
Education College, Agroha District Hisar & another**

.... Respondents

B

CWP No.13595 of 2003

Jaswinder

.... Petitioner

Versus

**The Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar
& another**

.... Respondents

C

CWP No.13596 of 2003

Om Pal

.... Petitioner

Versus

**The Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar
& another**

.... Respondents

D

CWP No.13597 of 2003

Hanuman

.... Petitioner

Versus

**The Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar
& another**

.... Respondents

E

CWP No.13598 of 2003

Kulbir

.... Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar
& another

.... Respondents

F

CWP No.13692 of 2003

Ram Kumar

.... Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar
& another

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr. Sunil Kumar Nehra (Sirsa), Advocate
for petitioner in CWP-10927, 13597 13692 & 13867-2003.

Mr. Rajesh Khandelwal, Advocate for the petitioner
for the petitioners in CWP-13595 & 13598-2003.

None for the petitioner in CWP-13596-2003.

Mr. Raman B. Garg, Advocate
for respondent-Management.

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RAJBIR SEHRAWAT, J. (Oral)

1. This order shall dispose of the above said writ petitions because similar aspects of the legal propositions are involved in the same. In all these cases the reference made to the Labour Court has been answered against the petitioners-workmen.
2. Broadly speaking, the facts are that the petitioners in CWP-10927-2003, CWP-13867-2003 & CWP-13595-2003 were employed

w.e.f. April, 1998 and their services were terminated w.e.f. 01.04.1999; the petitioners in CWP-13596-2003, CWP-13597-2003 & CWP-13692-2003 were appointed on 11.02.1995 and their services were also terminated w.e.f. 01.04.1999 and in the case of CWP- 13598 of 2003 the petitioner claimed working since 13.12.1995 and his services were, allegedly, terminated on 07.04.1999. Hence services of the petitioners in all the petitions were terminated in April, 1999. However, there is no serious dispute from either side that the petitioners had completed 240 days in preceding twelve calendar months with the respondent-management. The real issue between the parties is that the respondent-management had introduced outsourcing policy; by engaging a contractor to provide the man-power to the respondent-management. The contract was actually made effective w.e.f. 01.11.1998. Accordingly, the common pleading in these cases, on the part of the petitioners, is that since the petitioners were initially employed directly by the respondent-management, therefore, they are direct employees of the respondent-employer. The contract with the man-power provider contractor was only a camouflage created by the respondent-management to alter the employment status of the petitioners. On the other hand, the respondent-management has taken a stand that since it was a policy decision, therefore, the manpower was outsourced through the outside contractor because of the stoppage of the grant-in-aid by the State Government. The material, including the contract signed by the contractor, as well as, the register of duty roster, which is signed by the contractor, has been placed on record.

3. The counsel for the petitioners has submitted that the instrumentality of the contractor was introduced only as a camouflage. The respondent-management has not led any evidence to show that the contract was not a sham transaction. Hence a direct relationship of employee-employer existed between the petitioners and the respondent-management. That introduction of the contractor would not take away the statutory right of the petitioners available under the **Industrial Disputes Act, 1947**.

4. On the contrary, the counsel for the respondent-management has submitted that there is no question of contract being a sham transaction. The entire material has already been placed on record to establish the contract and genuineness of the same. No person had ever disputed the said contract as such. Although, the petitioners have placed on record the affidavit of the contractor in which it is asserted by him that he was not the contractor with respondent-management, however, the said person has not been produced as witness to face the cross-examination. Moreover, even the said affidavit is not part of the record as such.

5. The counsel for the respondent-management has further submitted that in a similar case, pertaining to the same agreement with the same contractor, the issue had been raised before this court and the Division Bench of this Court had accepted the version of the management and the award of the Labour Court, reinstating the workman with consequential benefit, was set aside vide judgment dated 27.08.2008 rendered in **CWP No.2045 of 2007** titled as **Medical College, Agroha**

(Hisar) Vs. Presiding Officer. Hence the present petitions also deserve to be dismissed.

6. Having heard the counsel for the parties, this court does not find any substance in the argument of the learned counsel for the petitioners-workmen. Sufficient material has been placed on record to show that there was a contract with one Suresh Kumar and one Sher Singh to provide man-power to the management. The documents of agreement qua that fact have been led in evidence as Exhibit MW-1 and MW-2. Therefore, *per se*, it cannot be said that w.e.f. 01.11.1998, the petitioners had any status of direct employees of the respondent-management. With effect from 01.11.1998 the agreement had come into being. The same agreement was the subject matter of **CWP No.2045 of 2007** mentioned above. The said agreement has been relied upon even by the Division Bench in favour of the management, while reversing the award passed by the Labour Court. Therefore, this court does not find that the contract involved in the case, is a sham transaction.

7. If the contract of providing labour is not a sham transaction, then mere lack of license or violation of provisions of the **Contract Labour (Regulation and Abolition) Act, 1970**, would not entail the creation of a relationship of employee and employer between the petitioners and the respondent-management. The law to this effect has already been clarified by Hon'ble the Supreme Court in the cases of **Steel Authority of India Ltd. Vs. National Union Water Front Workers, 2001(7) SCC 1** and **Director Steel Authority of India Ltd. Vs. Ispat Khadan Janta Mazdoor Union, 2019(7) SCC 440**. This court is bound

by the aforesaid judgment rendered by the Supreme Court, as well as, by the judgment rendered by the Division Bench of this court in **CWP No.2045 of 2007** mentioned above.

8. In view of the above, finding no merit in the present petitions, the same are dismissed.

9. All the pending applications, if any, stand disposed of accordingly, in all the cases.

5th AUGUST, 2022
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No