

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

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CWP No.10704 of 2014 (O&M)
DATE OF DECISION: 18th APRIL, 2022

Jatinder Jaggi

.... **Petitioner**

Versus

**Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala
and another**

.... **Respondents**

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. G.C. Shahpuri, Advocate for the petitioner.

Mr. Harish Rathee, Deputy Advocate General, Haryana.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of certiorari for quashing of award dated 24.01.2014 (Annexure P-4) passed by respondent No.1, with a further prayer to issue a writ in the nature of mandamus directing respondent No.2 to reinstate the petitioner with continuity of service and with full back wages, pay and the arrears of salary with interest @ 18% per annum.

The facts in brief are that the petitioner claimed to have worked with respondent No.2-department from the year 2007 till 2011 on a tubewell. The service of the petitioner was, allegedly, terminated w.e.f. 05.10.2011. At the time of termination of service of the petitioner, he was neither given any notice nor was any retrenchment compensation paid.

Feeling aggrieved against the termination, the petitioner had raised an industrial dispute, which was ultimately referred to the Labour Court, Ambala. The said reference has been answered against the petitioner. Hence, the present petition.

Arguing the case, the counsel for the petitioner has submitted that it is not even disputed that the petitioner has worked at the said tubewell from the year 2007 till 2011. Therefore, if the respondent-department intended to terminate the service of the petitioner, it was incumbent upon it to follow the procedure as prescribed under the Industrial Disputes Act, 1947. The counsel has further submitted that the assertion of the respondent-department that the petitioner was employed under outsourcing policy is not tenable. The witnesses Rajesh Kumar, WW-5 and Ajaib Singh, WW-7, who are the co-employees of the petitioner, have deposed before the Labour Court that the petitioner was working on the said tubewell and he was marking attendance in the register maintained for that purpose. Even the SDO concerned, who has appeared as WW-6 before the Labour Court was not able to deny that no contract was ever given to a contractor for operation of the said tubewell, nor even any record has been produced by the respondent-department to show that the petitioner was not the employee of the said department.

On the other hand, the counsel for the respondents has submitted that in the claim statement itself, the petitioner has asserted that he was engaged under an outsourcing policy. The respondent-department has never paid any salary to the petitioner directly. The labourers were provided by the contractor. Even, their details were not available with the respondent-department. Rather, the record might have

been maintained by the concerned contractor. Hence, there is nothing with the respondent-department or placed on record before the Labour Court that the petitioner was the employee of the respondent-department or that he was in receipt of remuneration from the respondent-department; as such.

Having heard the counsel for the parties and having perused the record, this Court does not find any substance in the argument raised by the counsel for the petitioner. The counsel for the respondents has rightly pointed out that in the claim statement itself the petitioner has asserted that he was engaged on the tubewell under an outsourcing policy of the government. This itself shows that the petitioner was well aware of the fact that he was not employed by the respondent-department as such. Not only this, the petitioner has not led any evidence on record to show that the petitioner was ever paid any wages by the respondent-department. On the contrary, even the witness Rajesh Kumar, WW-5, who is stated to be the co-employee of the petitioner, has admitted in his cross-examination that the petitioner was not employee of the respondent-department. To the same effect is the statement of WW-7 Ajaib Singh. Moreover, the concerned SDO WW-6 has stated in categorical terms that the said tubewell was got operated through contractor from the year 2007 till 2011. The said witness has also stated before the Labour Court that the money; on account of the pay of the labourer; used to be paid to the contractor by cheque. Accordingly, it is established on record that the petitioner, though might has been working for the respondent-department, however, was not the employee of the respondent-department as such. There is no document on record to show

that the petitioner was ever paid salary by the respondent-department. Hence, this Court does not find any illegality in the findings recorded by the Labour Court that the petitioner has failed to establish the master servant relationship between the petitioner and the respondent-department.

Needless to say that any contractor has not even been impleaded by the petitioner in the conciliation proceedings or before the Labour Court.

In view of the above, finding no merit in the present petition, the same is dismissed.

The pending miscellaneous application, if any, is also disposed of as such.

18th APRIL, 2022
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(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>