

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

206

CWP No.21899 of 2013 (O&M)
DATE OF DECISION: 13th MAY, 2022

M/s Hindustan Silk Mills

.... Petitioner

Versus

Shiv Rati (since deceased) through her LRs and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Abhilaksh Grover, Advocate
for the petitioner.

Ms. Saloni Sharma, Advocate for
for LRs of respondent No.1.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India for quashing of the impugned award dated 15.05.2013 (Annexure P-4), passed by respondent No.3.

The brief facts, as involved in the case, are that the respondent-workman asserted that she was appointed with the petitioner-employer on 08.08.2005 on the post of helper in the packing department. She continued there upto 10.05.2008. She was drawing the salary of ₹3510/- per month. An ESI card was also issued to the respondent-workman. The petitioner-employer terminated her services on 10.05.2008 without complying with the provisions of the Industrial Disputes Act, 1947. The respondent-workman raised an industrial disputes and the same was referred to the Labour Court. The reference has been answered

in favour of the respondent-workman. Hence, the present petition has been filed by the petitioner-employer.

Arguing the case, the counsel for the petitioner-employer has submitted that the award passed by the Labour Court is illegal. The respondent-workman was never employed by the petitioner-employer. In fact, she was supplied as a contract labour by another firm i.e. M/s Trishul Industrial Services, MCF Block, E/5702, Sanjay Colony, Sector-23, Faridabad. Hence, the petitioner-employer was not responsible for any service or removal from the same; qua the respondent-workman. It is further submitted that the Labour Court has wrongly relied upon the notification dated 09.07.1981 issued under the Contract Labour (Regulation and Abolition) Act, 1970 (for short, 'The Contract Labour Act'), which, purportedly, prohibited employment through labour contractor in certain industries. Although the industrial establishment of the petitioner is covered by the categories of industrial establishments prescribed in the said notification, however, the place where the respondent-workman actually posted; was not covered by the said notification. Therefore, the Labour Court has wrongly decided the case against the petitioner.

On the other hand, the counsel for LR of respondent No.1-workman has submitted that the respondent-workman was working with the petitioner establishment. The said fact is not even disputed. The counsel has further submitted that the Labour Court has rightly held the respondent-workman as the direct employee of the petitioner-employer because the engagement as a contract labour in the said establishment was prohibited by law. It is not even in dispute that the respondent-

workman had completed 240 days of work with the petitioner-employer. Hence, the respondent-workman was entitled to retrenchment compensation and the notice, in case, the petitioner-employer intended to terminate the service of the respondent-workman. The same was not done by the petitioner. Hence, the Labour Court has rightly held the termination to be illegal and has answered the reference in favour of the respondent-workman by ordering her reinstatement in service with continuity of service and 50% of back wages with effect from the date of termination, as well as, the interest thereon at the rate of 9% per annum.

Having heard the counsel for the parties, this Court finds substance in the argument raised by the counsel for the respondent-workman. It is not even much in dispute that the respondent-workman has worked with the petitioner-employer for more than 240 days in the twelve calendar months immediately preceding termination of her service. Therefore, in ordinary course, the petitioner-employer was required to follow the procedure meant for retrenchment for an employee, if the petitioner-employer was to terminate the service of the respondent-workman. To avoid that responsibility, the petitioner-employer had taken a stand that the respondent-workman was not the employee of the petitioner, rather, she was a contract labourer provided by another contract labour provider firm. However, that assertion of the petitioner has rightly not found favour with the Labour Court. It is not even in dispute that the petitioner-employer is Textile Mills. Therefore, the notification issued under the Contract Labour Act, 1970, would be applicable to the petitioner mills, as such; qua employment of contract labour through a contractor. The notification issued by the competent

authority has prohibited the employment of contract labours in packing in the Textile Mills. It is the positive assertion of the respondent-workman that she was engaged on the post of helper in packing department. Hence, the notification would be directly applicable qua the engagement of the respondent-workman. Since, the statutory notification issued by the competent authority prohibited the engagement of labourer through a contractor and there cannot be any estoppel against a statutory instrumental, therefore, the respondent-workman having actually worked with the petitioner, would be deemed to be the workman directly employed by the petitioner-employer. It is established law that if a contractor providing labour under the Contract Labour Act, is not having proper licence and he is not entitled to provide labour as per the provisions of the Act & the rules, then the principal employer itself shall be held to be the employer of the worker. This has been so held even by Hon'ble the Supreme Court in the case of ***Director Steel Authority Ltd. Vs. Ispat Khadan Janta Mazdoor Union, 2019 (7) SCC 440***. Hence, the respondent-workman has to be treated as the workman directly employed by the petitioner-employer.

To move out of the effect of the notification issued by the competent authority under the Contract Labour Act, the counsel for the petitioner-employer has submitted that the respondent-workman was not posted in packing operation in the Mills, as such, rather, she was posted at a shop of the Mills. Although there is no evidence led on record to establish the fact that the respondent-workman was posted at the shop of the Mills, however, had there been even evidence to that effect, that fact would have been totally irrelevant. The establishment of the petitioner,

undisputedly, is the Textile Mills. Whether the employer posts a workman employed by it for packing operations at once place or the other, that would not make any impact upon the legal operation of the notification issued by the competent authority qua the Mills of the petitioner-employer. Hence, even this argument of the counsel for the petitioner-employer is not sustainable.

In view of the above, this Court does not find any ground to interfere, in favour of the petitioner, with the award passed by the Labour Court.

However, there is another intervening factor, which requires modification of the award as such. During the pendency of the present petition, the respondent-workman is stated to have expired. Hence, it is only the monitory benefits, which can be ordered in favour of the respondent-workman now, which can be passed on to the legal representatives of the deceased-workman. Hence, instead of awarding reinstatement with full back wages, it would be in the interest of justice, if the payment of compensation is ordered in favour of the legal representatives of the respondent-workman and against the petitioner. Moreover, the compensation has to be awarded as per the standards applied and followed in the judgment rendered by Hon'ble the Supreme Court in case of ***BSNL Versus Bhurumal, 2014 (3) SCT 49***, wherein the award of compensation of Rs.2.00 Lakh was upheld for a workman, who had completed 240 days in service, as well as, keeping in view the amount which the respondent-workman would have got as the back wages, had she remained alive.

Accordingly, the present petition is dismissed qua the claim of the petitioner. However, the award passed by the Labour Court is modified by holding the respondent-workman to be entitled to an amount of Rs.5.00 Lakh with interest as awarded by the Labour Court, as compensation towards full and final settlement of the claim. The said amount of Rs.5.00 Lakh is ordered to be paid to the legal representatives of the respondent-workman, who has already been impleaded as party in the present petition.

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

13th MAY, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes