

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

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CWP No.19865 of 2017 (O&M)

DATE OF DECISION: 01st AUGUST, 2022

Raheesa and others

.... Petitioners

Versus

Presiding Officer, Labour Court, Ambala and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. R.S. Sathi, Advocate,
for the petitioners.

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 for issuance of a writ in the nature of Certiorari for quashing the impugned award dated 31.03.2017 (Annexure P-1) passed by respondent No.1, with certain other prayers made in the present petition.

The facts, as reflected in the present petition, are that the petitioners asserted that they worked as Sweeper in Labour Room of General Hospital, Sector 6, Panchkula since December, 2013. They were paid wages on monthly basis. Two other persons were also similarly engaged as Sweeper in November, 2012 in the Labour Room. Services of

the petitioners were terminated in April and May, 2015 respectively. However, at the time of termination of service, neither any notice was given nor any retrenchment compensation was paid to the petitioners. Asserting these facts, the petitioners raised an industrial dispute, which was referred to the Labour Court. The said reference has been answered against the petitioners. The Labour Court has held that there was no employer-employee relationship, as such, and hence the petitioners are not entitled to any benefits under the Industrial Disputes Act, 1947 (for short, the Act). Challenging the said award, the present petition has been filed.

Arguing the case, learned counsel for the petitioners has submitted that the petitioners had completed 240 days of service in the employment of the respondents. Therefore, the petitioners were entitled to the benefits and protection under the Act. The counsel has further submitted that even if the stand of the respondents is taken into consideration, the petitioners were being paid per delivery and therefore, being piece-rate paid employees, the petitioners were covered by the provisions of the Act. The counsel has relied upon the judgment rendered by Hon'ble the Supreme Court in the case of ***Devinder Singh Versus Municipal Council, Sanaur, 2011 (6) SCC 584***, to submit that mode of payment, source of recruitment and nature of work are immaterial; while considering the case of a workman for the purposes of the Industrial Disputes Act.

On the other hand, learned counsel for the respondents has submitted that there is no illegality in the award passed by the Labour Court. The petitioners were never engaged or appointed by the

respondents on any post, as such. Rather, the National Health Mission had floated a scheme for improving the maternity services in the government hospitals. That scheme envisaged hiring of persons for cleaning of the labour-room on the basis of Rs.50 per delivery. The petitioners were continued for the duration till the scheme was in operation. However, the said scheme was withdrawn by the Central Government vide letter dated 23.02.2015. Hence, there was no scheme under which the petitioners could be called for duty. Accordingly, on completion of the said scheme, the petitioners were not called for any work.

Having heard the counsel for the parties, this Court does not find any substance in the arguments raised by the counsel for the petitioners. There is nothing on record to show that the petitioners were appointed to any particular post by the respondents. There is no evidence on file to show if there was any fixed working hours for the petitioners. As per the nature of work; it was not even necessary that the petitioners would be working with the respondents on each and every working day. Under the scheme, the petitioners were to be called for duty, if only there was a necessity on account of delivery and they were to be paid a fixed amount of Rs.50/- for the job done by them per delivery. Hence, it is obvious that neither there was any post with the respondents, nor the petitioners were appointed to any post as such. They were called for performing a particular work under a particular scheme. The scheme, undisputedly, was withdrawn on 23.02.2015. Moreover, in absence of any appointment letter and any terms of appointment or any fix duty hours, it cannot be said that the petitioners were having any attributes of

an employee, as such. Therefore, this Court does not find any illegality in the finding recorded by the Labour Court that there was no employee-employer relationship between the petitioners and the respondents.

Although, the counsel for the petitioners has relied upon the judgment rendered by Hon'ble the Supreme Court in the case of **Devinder Singh** (supra), however, a perusal of the said judgment also shows that for establishing an employer-employee relationship, there has to be specified terms of employment; like the power to take disciplinary action, the power to regulate working hours and work production. However, as mentioned above, in the present case, none of these elements were applicable. It was pure and simple arrangement for calling for a work, if there was requirement and if the petitioners were available and they were to be paid on per delivery basis. Mere fact that the petitioners had worked though on per delivery basis; would not be the sufficient determinant of the fact that there were such terms and conditions applicable to the said work which created employer-employee relationship between the petitioners and respondents. Hence, even the above said judgment of Hon'ble the Supreme Court is of no help to the petitioners. In the present case, as observed above, it was a temporary requirement depending upon the contingency envisaged under a scheme. The scheme had itself been withdrawn. Therefore, no fault could be found with the action of the respondents, if they had stopped calling the petitioners for cleaning work in the Labour Room.

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.

01st AUGUST, 2022
‘sandeep’

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>