

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6790-2015

Date of Decision: 26.04.2022

Rajinder Singh

..... Petitioner

Versus

The Superintendent Engineer, Public Health, Engineering Circle, Jind and

another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. N.R.Dahia, Advocate, for the petitioner.

Mr. Harish Rathee, Deputy Advocate General, Haryana,
for the respondents.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Articles 226/227 of the Constitution of India seeking issuance of a writ of certiorari for quashing the impugned award dated 24.04.2014 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar, and for issuance of a writ of mandamus directing the respondents to reinstate the petitioner on the post of Clerk (Receipt & Dispatch) at the collector rate wages with effect from 01.07.2012 and pay the arrear of the salary and also to pay the arrear of outstanding salary from December, 2011 to June, 2012 as well.

The brief facts of the case, as can be discerned from the present petition, are that the petitioner was employed by the respondent-department on the post of Clerk on 24.08.2008 on D.C. rates. He continued working on the said post upto 30.06.2012 without any break. However, from December, 2011 till June, 2012, the salary of the petitioner-workman was not paid. On

01.07.2012, when the petitioner reported for duty; as usual; he was not allowed to join. Hence, the services of the petitioner were terminated with effect from 01.07.2012. However, the respondent-department had not complied with the provisions of Sections 25F and 25H of the Industrial Disputes Act, 1947. Hence, the termination of services of the petitioner was totally illegal. Raising these assertions, the petitioner had raised an industrial dispute, which was ultimately referred to the Labour Court, Hisar. The said reference has been answered by the Labour Court against the petitioner. Hence, the present petition.

Arguing the case, learned counsel for the petitioner has submitted that it is not in dispute that the petitioner had worked for the respondent-department from 24.08.2008 till 30.06.2012. Further, the respondents have not led any evidence to show that the petitioner was given any retrenchment notice or the compensation. Assailing the award passed by the Labour Court, the learned counsel for the petitioner has submitted that the Labour Court has gone wrong in law in recording the finding that the petitioner was not employed by the respondent-department and that he was employed through a manpower supplier contractor. Any contract with any contractor to that effect has not been placed on record by the respondent-department. Hence, it is not proved on record that the petitioner was employed through a contractor. Learned counsel has relied upon the judgment rendered by the Hon'ble Supreme Court in **Devinder Singh vs. Municipal Council, Sanaur, 2011 AIR (SCW) 3455**, to contend that otherwise also, the source of employment and mode of payment of salary is

not relevant. Therefore, the petitioner shall be deemed to have been the employee of the respondent-department only. Hence, the Labour Court has gone wrong in law in answering the reference against the petitioner.

On the other hand, learned State counsel has submitted that the petitioner was never engaged by the respondent-department; as such. The entire record was duly produced before the Labour Court. There is no entry of the name of the petitioner-workman in any record of employees of the respondent-department. Rather, the petitioner had worked with the respondent-department as a labour provided by a contractor. Any claim qua service could have been against the contractor with whom the petitioner was employed. Hence, the Labour Court has not committed any illegality in recording the finding that there is no evidence on record to show that the petitioner had ever worked for 240 days; as an employee of the respondent-department.

Having heard learned counsel for the parties and having perused the record, this Court does not find any substance in the arguments raised by the learned counsel for the petitioner. Although, not so admitted, but even if it is so presumed that the petitioner had worked for the respondent-department, there is no evidence led on file to show that he worked with the respondent-department as its employee. The petitioner has not led any evidence to show that he was ever employed by the respondent-department directly. Although, the respondent-department may commit some foul play qua the petitioner and his record regarding employment, but, at least, one record would be such over which the respondent-department could not have

any control. That is the record of payment of salary to the petitioner. However, the petitioner has not brought on record even this evidence; that he was ever paid any amount as salary by the respondent-department. Moreover, the petitioner-workman had summoned the record of the relevant period, which was produced before the Labour Court as Exhibit WW1. The said record also does not mention the name of the petitioner as the employee of the respondent-department. Even, the petitioner, while appearing as a witness, had admitted in his cross-examination that he was never given any appointment letter as such, nor his attendance was marked by the respondent-department ever.

On the contrary, the respondent-department through its witness has filed an affidavit specifically stating that the petitioner was never engaged by the respondent-department as its employee. Rather, he had worked with the Public Health Engineering Circle, Jind, through a contractor and the payment of wages were also made only by the contractor. Another record as Exhibit R2 was also placed on record which also show that the petitioner was never engaged by the respondent-department directly, rather, he was paid only through contractor. Hence, this Court does not find any illegality in the findings recorded by the Labour Court that the petitioner has failed to prove on record that he had worked for 240 days as an employee of the respondent-department during the preceding 12 calendar months before termination of his services. Rather, the record shows that he was never employed by the respondent-department. Since the petitioner was never appointed by the respondent-department and, as per record, he was failed to

prove that he ever completed 240 days before termination of his services, therefore, the respondent-department was under no legal liability to serve notice before the termination of the services or to make payment of retrenchment compensation; as such.

Although, the learned counsel for the petitioner has relied upon the judgment rendered by the Hon'ble Supreme Court in *Devinder Singh's case (supra)*, to contend that the source of employment and mode of the payment of the salary are not the relevant considerations for seeing the status of a workman and his right to get retrenchment compensation, however, the facts of the said judgment are totally distinguishable as compared to the facts of the present case. In that case, undisputedly, the workman had been employed by the respondent directly, though on contract basis. Accordingly, the Hon'ble Supreme Court had held that he was an employee of the respondent and, therefore, the respondent was under statutory liability to pay the retrenchment compensation, if it intended to dispense with the services of the workman. The observations that the source of employment and mode of payment are not relevant qua the workman have to be read in that context only. This plea can be taken only against the employer; as defined under the Act. If it is not disputed that the workman is employee of a particular employer, then it is, of course, immaterial as to through which process or from which source, the person is employed or through what means he is paid. But if the workman is not proved to be the employee of a particular employer, then such an employer can never be held to be liable for anything qua the employment of such a workman. Needless to say that the

petitioner might have some claim against the contractor, however, the dispute by the petitioner was never raised against the contractor; as such.

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

(RAJBIR SEHRAWAT)
JUDGE

26.04.2022
adhikari

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