

110 (29 cases)
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1) CWP-4560-2022 (O&M)

PARDEEP KUMAR ...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER ...Respondents

(2) CWP-4572-2022 (O&M)

MOMAN SINGH ...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER ...Respondents

(3) CWP-4578-2022 (O&M)

RAKESH KUMAR ...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER ...Respondents

(4) CWP-4579-2022 (O&M)

NARENDER KUMAR ...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER ...Respondents

(5) CWP-4580-2022 (O&M)

BHARAT ...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER ...Respondents

(6) CWP-4582-2022 (O&M)

BALWANT SINGH @ BALWANT KUMAR ...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER ...Respondents

(7) CWP-4588-2022 (O&M)

RAJESH KUMAR ...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER ...Respondents

(8) CWP-4590-2022 (O&M)

RAJBIR SINGH ...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER ...Respondents

(9) CWP-4592-2022 (O&M)

HARPAL SINGH ...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER ...Respondents

(10) CWP-4597-2022 (O&M)

BANSI LAL ...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER ...Respondents

(11) CWP-4598-2022 (O&M)

SURJEET SINGH ...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER ...Respondents

(12) CWP-4599-2022 (O&M)

MADAN BABU ...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER ...Respondents

(13) CWP-4605-2022 (O&M)

VED PARKASH ...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER ...Respondents

(14) CWP-4612-2022 (O&M)

SHANKAR LAL SHARMA ...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER ...Respondents

(15)

CWP-4613-2022 (O&M)

SATBIR...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER...Respondents

(16)

CWP-4616-2022 (O&M)

SURESH CHANDER...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER...Respondents

(17)

CWP-4617-2022 (O&M)

SURAJMAL...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER...Respondents

(18)

CWP-4618-2022 (O&M)

SATYAWAN...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER...Respondents

(19)

CWP-4619-2022 (O&M)

HARPAL SINGH...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER...Respondents

(20)

CWP-4625-2022 (O&M)

BHAGWAN DASS

...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER

...Respondents

(21)

CWP-4632-2022 (O&M)

SUNIL KUMAR

...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER

...Respondents

(22)

CWP-4638-2022 (O&M)

RAVINDER SINGH

...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER

...Respondents

(23)

CWP-4640-2022 (O&M)

RAM SWARTH

...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER

...Respondents

(24)

CWP-4643-2022 (O&M)

PAWAN KUMAR PANDEY

...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER

...Respondents

(25)

CWP-4646-2022 (O&M)

DHARAM PAL

...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER

...Respondents

(26)

CWP-4649-2022 (O&M)

RAJINDER KUMAR

...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER

...Respondents

(27)

CWP-4650-2022 (O&M)

VIKAS

...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER

...Respondents

(28)

CWP-4673-2022 (O&M)

SANJEEV KUMAR

...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER

...Respondents

(29)

CWP-4677-2022 (O&M)
Date of decision : 17.08.2023

RAM CHANDER

...Petitioner

Versus

GENERAL MANAGER, BSNL HISAR, RAILWAY ROAD,
RED SQUARE MARKET, RAILWAY ROAD, MAIN OFFICE,
HISAR AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ramesh Goyat, Advocate
for the petitioner.

HARSH BUNGER, J.

This order shall dispose of twenty nine petitions bearing *CWP-4560-2022, CWP-4572-2022, CWP-4578-2022, CWP-4579-2022, CWP-4580-2022, CWP-4582-2022, CWP-4588-2022, CWP-4590-2022, CWP-4592-2022, CWP-4597-2022, CWP-4598-2022, CWP-4599-2022, CWP-4605-2022, CWP-4612-2022, CWP-4613-2022, CWP-4616-2022, CWP-4617-2022, CWP-4618-2022, CWP-4619-2022, CWP-4625-2022, CWP-4632-2022, CWP-4638-2022, CWP-4640-2022, CWP-4643-2022, CWP-4646-2022, CWP-4649-2022, CWP-4650-2022, CWP-4673-2022 and CWP-4677-2022* filed by petitioners namely, *Pardeep Kumar, Moman Singh, Rakesh Kumar, Narender Kumar, Bharat, Balwant Singh @ Balwant Kumar, Rajesh Kumar, Rajbir Singh, Harpal Singh, Bansi Lal, Surjeet Singh, Madan Babu, Ved Parkash, Shankar Lal Sharma, Satbir, Suresh Chander, Suraj Mal, Satyawan, Harpal Singh, Bhagwan Dass, Sunil Kumar, Ravinder Singh, Ram Swarth, Pawan Kumar Pandey, Dharam Pal, Rajinder Kumar, Vikas, Sanjeev Kumar and Ram Chander*, respectively against *General Manager, BSNL Hisar, Railway Road, Red Square Market, Railway Road, Main Office, Hisar and another* as all are directed against the same Award dated 17.03.2021 (Annexure P-5); whereby, the claim petitions of said 29 petitioners-Workmen have been decided.

2. Prayer in all the afore-stated twenty nine petitions, filed under Articles 226 and 227 of the Constitution of India, is for issuance of an

appropriate writ, order or direction, seeking setting aside of the impugned Award dated 17.03.2021 (published on 22.11.2021) (Annexure P-5), vide which, the reference of the petitioner(s) has/have been rejected. A further prayer has been made for issuance of direction to the respondents to reinstate the petitioner(s) with continuity of service and full back wages.

3. For the sake of reference, the facts are being extracted from ***CWP-4560-2022*** titled as ***Pardeep Kumar Versus General Manager, BSNL Hisar, Railway Road, Red Square Market, Railway Road, Main Office, Hisar and another.***

4. Briefly, the petitioner-workman (Pardeep Kumar) and also the other workmen raised an industrial dispute regarding the alleged termination of their services by respondent No.1-General Manager, BSNL Hisar, by filing their respective claim petitions before the Central Government Industrial Tribunal-cum-Labour Court-II, Sector 18-A, Chandigarh. The core issue being whether the alleged termination of the workmen with effect from 10.11.2013, is legal and if not, what relief the workmen were entitled to.

5. Petitioner (Pardeep Kumar) claimed that he was appointed as a labourer with the respondent-Management (BSNL) on 01.07.2004 and he worked continuously for a period of more than nine years and his services were terminated vide an oral order dated 10.11.2013, in violation of the mandatory provisions of the Industrial Disputes Act, 1947 (for short 'the Act, 1947'). It is the pleaded case of the petitioner that he was doing the work in Sirsa area at minimum wage rate prescribed by the Central Government and he was doing the work under BSNL, Hisar. However, the respondent-Management had shown the petitioner's employment (in

records) under different contractors, which amounted to unfair labour practice. As per the petitioner, his work and conduct remained good and satisfactory during the tenure of his service. It is alleged that the petitioner along with other workers of Hisar as well as Sirsa had raised the demand for paying wages as per minimum wages prescribed by the Government and for their regularization in service; however, no heed was paid to their demands by the Management. Accordingly, the workers constituted a Union namely, BSNL Thekedar Workers' Union, Haryana, under Registration No.1963 and when the respondent-Management learnt about the said fact, then the services of the petitioner and other workers were terminated on 10.11.2013. The petitioner and also the other workers claimed that their services were terminated without any notice, inquiry or retrenchment compensation, as required under the Act, 1947. It was also claimed that they have got preferential right to be absorbed, however, the management had made fresh appointments after termination of the services of the petitioner and other workers and had not given any preference to them. It was further claimed that junior(s) of the petitioner-workman had been retained in service and even new men have been appointed, which is a punishable offence. Thus, it was claimed that the order of termination was in violation of Sections 25-F, 25-G and 25-H of the Act, 1947. Accordingly, it is prayed that appropriate directions may be issued that the workmen may be taken back in service with continuity of service and full back wages.

6. The afore-said claim of the petitioner and other workers was contested by the respondent (BSNL, Hisar) by filing its written statement; wherein it was stated that BSNL Hisar awards work of upkeep and

maintenance of some infrastructure on contract basis as per BSNL guidelines. It was stated that the Management, while awarding contract, binds the contractors through legal agreement to fulfill all labour laws in relation to manpower engaged by them. It is the stand of the respondent-BSNL that it out-sources work with definite scope of work to agencies on certain terms and conditions. It is also the stand of the respondent-Management (BSNL) that it has no direct role to play for manpower engaged by out-sourcing agencies for execution of work awarded to them. It is stated that the BSNL makes the payment to the work contractors on approved rates for providing maintenance services not as per number of employees engaged by the work contractors. Thus, the BSNL has no direct or indirect liability of any kind for manpower engaged by work contractors for execution of work awarded to them. It is claimed that the contractors are independent agencies with full control over their manpower and they are fully empowered to maintain/deposit EPF/ESI contribution, being registered by EPF/ESI agencies as employers. It was also claimed that BSNL does not regulate their service conditions and also does not watch their conduct. It is claimed that contractor's manpower is not bound to follow BSNL employee conduct rules as they are not BSNL employees. It is further the stand of the management (BSNL) that it has no role to remove any manpower on contractor's employee roll. It is the categorical stand of the respondent-BSNL that the workman (petitioner) was never appointed by the management as claimed in the claim statement. As per the respondent-BSNL, whenever an employee is appointed by the management (BSNL) then it issues a proper appointment order and further issues a unique employee ID code, which is known as HRMS number

through which the employee gets his salary from the management. It is the case of the respondent-BSNL that no such HRMS number was issued to the workman (petitioner) as he was not the employee of BSNL. It is claimed that when the workman (petitioner) is not the employee of the management; therefore, there is no question of his termination.

Respondent-BSNL states that the workman (petitioner) might have worked with some contractor and it has no knowledge regarding constitution of any BSNL Thekedar Workers' Union, Haryana. However, it was stated that the name of the Union itself reveals that he is a worker of the Thekedar (contractor) and not the worker of BSNL. Rendering of 240 days' services by the workman (petitioner) was also disputed by the respondent-BSNL. Respondent-BSNL also denied the averment of the workman that it (BSNL) had retained anyone in services as claimed in the claim petition. The allegation of fresh appointment made by the workman was also denied. Accordingly, it was contended that the respondent-BSNL has not violated any provisions of the Act, 1947 nor it has adopted any unfair labour practice. Therefore, it was prayed that the claim petition filed by the workman may be dismissed.

7. The parties led their respective evidence in support of their claims. Petitioner-workman (Pardeep Kumar) tendered his affidavit in his evidence and was subsequently cross-examined. On the other hand, the respondent-BSNL examined one Paramjeet Kaur, working as Assistant General Manager (Legal), in support of its claim. Apart from Paramjeet Kaur, another witness namely Balbir Singh was also examined by respondent-BSNL in some of the cases after the transfer of

witness-Paramjeet Kaur, Assistant General Manager (Legal) to some other place.

8. After considering the respective claims of the parties and also the evidence available on the record, the Central Government Industrial Tribunal-cum-Labour Court-II, Haryana, Chandigarh, decided the references vide common Award dated 17.03.2021 (Annexure P-5); whereby, the references were answered against the workmen.

9. In the afore-mentioned circumstances, the petitioner along with other workmen have filed their respective writ petitions against the common award dated 17.03.2021.

10. I have heard learned counsel for the petitioner and perused the paper book with his able assistance.

11. The categorical case of the workman (petitioner) is that he was appointed directly by the respondent-BSNL and petitioner had worked for 240 days in the last twelve calendar months preceding the date of termination, whereas on the other hand, it is the stand of the respondent-BSNL that petitioner-workman was never appointed by it and rather the workman (petitioner) was employed by the contractor and since the workman (petitioner) was never in employment of respondent-BSNL, thus there is no question of rendering work for 240 days in the last twelve calendar months preceding his date of termination. Thus, the primary issue is: *“whether there is relationship of employee and employer between the petitioner and Respondent-BSNL.”*

12. It is well settled law that the onus to prove the relationship of employee and employer between the workman and the Management is upon the workman by adducing evidence in the form of appointment letter

or record of the engagement of workman by Management for 240 days or more in a Calendar year preceding the date of termination or such evidence in the form of receipt of salary for 240 days.

13. In the instant case, a perusal of the claim petition filed by the workman (petitioner) would manifest that the pleadings qua relationship of employee and employer between the petitioner and respondent-BSNL is lacking and even no evidence has been led in that regard. Learned counsel for the petitioner has not been able to refer any document to show that workmen/claimants were directly employed by the respondent-BSNL. It has come on record that workman Bharat Sharma and others have accepted that neither any appointment letter nor any termination letter was issued by the respondent-BSNL. The learned Tribunal below has returned the following findings on the issue of relationship of employee and employer between the workman and respondent-BSNL:-

*“9.The issue as to whether the workmen were engaged by the employer/management directly or through contractors is the bone of contention between the parties. There is no dispute about preposition of law that onus to prove that claimants were in the employment of management is always on the workmen/claimants and it is for the workmen to adduce evidence to prove factum of their employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of their appointment or engagement for that period to show that they have worked with the respondent-management for 240 days or more in a calendar year. In this regard, reference may be made to judgment of Hon’ble Supreme Court in case of **Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries***

terminated Division Vs. BhikubhaiMeghajibhaiGavda
(2012) 1 SCC 47.

10. Question remains to be seen whether these workmen have proved that they were directly engaged under the respondent-management from the year 1994 or afterwards and regularly continued till their termination. This fact has to be proved by the documentary evidence as well as oral evidence. At the very outset, it may be mentioned that there is no single reliable document to prove that workmen/claimants were directly employed by the respondent-management. In this connection, workman Bharat Sharma and others have accepted that neither any appointment letter nor any termination letter was issued by the respondent-management. Undoubtedly, witness examined by the respondent-management namely Smt. Paramjeet Kaur and Balbir Singh have categorically stated in their evidence that they were not employed by the management as such, neither notice nor retrenchment compensation was given by management.

11. The Hon'ble Supreme Court after analyzing the catena of cases as laid down in **Balwant Rai Saluja Vs. Air India Limited in Civil Appeal No.10266 dated 25.08.2014**, two well recognized tests to find out whether the labours are the contract employees of the principal employer as follows:-

- 1) Whether the principal employer pays the salary instead of contractor and
- 2) Whether the principal employer controls and supervise the work of the employees?

The facts regarding the payment of salary by the management or contractor has not been specifically stated in the claim petition of the workmen. In fact, claim petition is totally silent regarding the payment of wages, salary, letter of appointment or anything likewise. Similarly, workmen namely Bharat Sharma or others

have not mentioned anything regarding the mode of payment of wages, salaries etc. in their affidavits. Thus, this basic features for holding the relationship of employer and employee is totally lacking not in the pleading but also in the evidence submitted by the workmen. In this connection, learned AR for the workmen has contended that payment of salary was subject to the control and supervision of the management and virtually it was paid by the management as is alleged by the witness during the course of cross-examination. I am not satisfied with the arguments of the learned AR of the workmen as nothing is mentioned in pleading/claim petition as well as affidavits submitted by the witnesses in support of the claim petitions. It is also pertinent to mention that nothing is on record in the form of documentary evidence that these workmen were directly paid by the management. It is surprising that none of the witness has stated in his affidavit about the amount of salary or wages payable to him either by the management or by the contractor. Thus, on this issue, firstly, it can be incurred that there is nothing on record to prove the factum of direct payment of salary by the management.

12. Secondly, so far as, the question of controls and supervision is concerned Witnesses examined by the workmen have categorically stated that their works were supervised by the officials of the management. Except this, nothing is brought on record to prove that it is management who were supervising and controlling the work of claimants. The Apex Court while explaining the factor of supervision and control in the case of International Airport Authority of India vs. International Air Cargo Workers Union [209(13) SCC374] has held as follows :-

“If the contract is for supply of labour, necessarily, the labour supplied by the contractor

will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides whether the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.”

13. Thus, the principal enunciated by the Hon’ble Supreme Court clearly establishes that mere supervision of work is not sufficient to prove the relationship of employer and employee till it is proved that there was a complete control and supervision. The management control includes the authority of dismissal, taking of disciplinary action and continuity of service etc. Claim petition filed by the claimants are mum on this score and witnesses examined by the claimants have not mentioned any specific averments in their affidavits regarding the appointment, authority of dismissal or taking of disciplinary action by the management. There is nothing

on record to prove that it is the management who grants their leave or has authority to take any disciplinary action. In my considered opinion, mere saying of supervision regarding the execution of the work as alleged by the witnesses may not be called effective and absolute control. Such control is being emphasized to control the work of the management for a specific work in efficient manner done by the management in the establishment.”

14. As regard the contention of the counsel for the petitioner that there was a claim petition filed with respect to payment of minimum wages under the Minimum Wages Act before the Regional Labour Commissioner, Chandigarh, wherein during re-conciliation between the representative of the workers and officers of Management-BSNL, an assurance was given by the Management to ensure payment of minimum wages to the workman and the said re-conciliation is an ample proof that workman (petitioner) was rendering service directly under BSNL; suffice it to say that the said submission is based upon mere assumptions of the workman (petitioner) and no benefit can be extended to the workman (petitioner) in this regard, especially in view of the observations of the learned Industrial Tribunal in para 15 of the impugned Award, which reads as under:-

“15. Perusal of the claim petition filed under Section 20(2) of the Minimum Wages Act by workmen Sunil Kumar and 24 others through AR Jang Bahadur against General Manager BSNL and M/s Ashok Gupta contractor at the relevant time reveals that it was the definite stand of the workmen that they were rendering their services under the control of BSNL Hisar from the last many years under different contractors and lastly from 11.06.2013 they were working under respondent no.2 i.e. contractor M/s Ashok Gupta. In Para 2 of the

claim petition, it is also mentioned that workmen were doing work of respondent no.1 under the direction and control of various contractors at minimum wages fixed by the Central Government. Learned counsel of the management contended that as per pleading of the workmen/claimants under Minimum Wages Act is a proof that they were rendering their services under different contractors for the work of the respondent-management. Learned counsel further argued that this is the admission of the workmen itself before the concerned authority and there is no need on behalf of the management to prove that they were the employees of the contractors at relevant time because admission does not require any further proof under Section 58 of the Evidence Act. It appears from the record that there was a dispute with respect to the payment of minimum wages with the contractor Ashok Gupta resulting this petition before the authority under the Minimum Wages Act. The contents of the petition certainly demolish the stand of the claimant/workmen under the Industrial Disputes Act that they were directly engaged by the respondent-BSNL, Hisar and working under the officials of the management. I am of the considered opinion that it is not possible for the workmen to take different stand on different Courts by asserting different facts about their status as an employee of the contractor or as of BSNL-establishment. In brief, it may be observed that the evidences adduced by these workmen with respect to their services rendered in respondent-establishment and attending the complaints or pertaining to other activities is not sufficient to prove the direct relationship of employer and employee or master and servant between these workmen and BSNL-establishment. Contrary to this, documentary evidence of the workmen itself is proof

that they have accepted working under the contractors in different times for the work of the establishment.”

15. As regards the submission of the counsel for the petitioner - workman that the workmen were infact working under the establishment-Management itself however they were shown as employees of the contractors under the contract, which was a camouflage and thus the veil should be lifted to conclude that workman (petitioner) was under direct employment of respondent-BSNL; it is observed that in the case of ***International Airport Authority of India v. International Air Cargo Workers' Union and Anr., (2009) 13 SCC 374***, Hon'ble Supreme Court considered the decision in the case of ***Steel Authority of India Ltd. and Ors. v. National Union Waterfront Workers and Ors., 2001) 7 SCC 1***, and held that where there is no abolition of contract labour under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (in short "CLRA Act"), but the contract labour contends that the contract between the principal employer and the contractor is sham and nominal, the remedy is purely under the ID Act. It was further observed that the industrial adjudicator can grant the relief sought if it finds that the contract between the principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employee and that there is in fact a direct employment, by applying tests like: *who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short, who has direct control over the employee.* It was further observed that where there is no notification under Section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was a sham/nominal and camouflage, then the question of directing

the principal employer to absorb or regularize the services of the contract labour does not arise.

16. Coming to the case in hand, it is the pleaded case of petitioner that the respondent-Management had shown the petitioner's employment (in records) under different contractors, thus the employment under contractor is admitted by the petitioner. Further, the workman has admitted in his cross-examination that no advertisement was issued by BSNL when he was appointed and neither any appointment letter was issued to him by BSNL. He further admitted that he has no attendance sheet issued by BSNL. Even the salary was stated to be paid to him in cash and without obtaining any receipt from him. The relevant extract of cross-examination of petitioner reads as under: -

“...The entry in the register are in my hand. I am now not working with BSNL. It is incorrect that I was appointed through contractor.No appointment letter was issued to me by BSNL. No advertisement was issued by BSNL when I was appointed. I have no attendancesheet issued by BSNL. Salary was paid to me by SDO in cash and without obtaining any receipt from me. There is BSNL Thekedar Worker Union, Hisar. It is incorrect that I was not employed by the BSNL. It is incorrect that I was not paid any wages by BSNL. It is incorrect that I have deposed falsely. It is incorrect that certificate produced by me false documents.”

It would be apposite to note here that in some of the connected cases, it has also come on record that the workmen did not give any application to BSNL for employment neither any appointment letter was issued to them by the BSNL. It has also come on record that there is no proof of salary paid by the BSNL to the workmen.

17. When the above referred stand of the workman is considered in the light of the legal position indicated above, it is manifest that the submission of the counsel for the petitioner - workman that the workmen were infact working under the establishment-Management itself and they were shown as employees of the contractors under the contract as a camouflage, is misplaced and is rejected.

18. As regards the claim of the petitioner (workman) regarding non-compliance of the provisions of Section 25-F of the Industrial Disputes Act by respondent-BSNL, it has come on record that an agreement was executed between contractor A.K. Gupta and respondent-BSNL on 11.06.2013, while the alleged termination/retrenchment took place on 10.11.2013, thus these workmen were rendering their services under contractor-A.K. Gupta since 5 months prior to the alleged termination. It has further come on record that the documents filed by the management with respect to the payment, attendance, PF dues relates to the contractor A.K. Gupta. Therefore, since the workman (petitioner) failed to prove that he has worked under respondent-BSNL for 240 days in the twelve calendar months immediately preceding the date of his alleged termination, therefore, he is not entitled to take the benefits of the provisions of Section 25F of the 1947 Act. In this regard, the learned Industrial Tribunal returned the following findings:-

*“17...In the light of the specific denial by the management for rendering 240 days service before alleged termination, burden lies on the workmen to prove this fact. Hon’ble Supreme Court in the case of **Range Forest Officer Vs. S.T. Hadimani, (2002)3***

SCC 25, has held that if there is no proof of receipt of salary or wages of 240 days or order or record in this regard was produced then mere non-production of the muster roll for a particular period is not sufficient for the Labour Court to hold that workmen had worked for 240 days as claimed. Thus, as per the Hon'ble Supreme Court in order to prove the working of 240 days, receipt of salary or wages as the case may be are relevant for the consideration by the Tribunal. Learned AR of the workmen contended that all these documents are with the management and they have not submitted before this Tribunal. Learned counsel of the management contended that this is a case of specific denial by the management as such, question of submission of any document pertaining to the payment of wages or salary or attendance register or muster roll etc. does not arise to be submitted by the management. Learned AR of the workmen contended in the light of the judgment of the Hon'ble Supreme Court in the case of M/s Bharat Heavy Electricals Ltd. Vs. State of U.P. and others, Civil Appeal No.2459-61 of 1999 decided on 21.07.2003 that adverse inference should be drawn against the management for the non-production of the documents. Learned counsel of management relying in the case of Municipal Corporation, Faridabad Vs. Siri Niwas (supra), argued that presumption as to adverse inference for non-production of evidence is always optional rather obligatory as is alleged by the AR of the workmen. The Hon'ble Supreme Court in the case of Municipal Corporation, Faridabad Vs. Siri Niwas (supra), has held that provisions of the Indian Evidence Act per se are not applicable in an industrial adjudication the general principle provides are however applicable. It is also in pray for the Industrial Tribunal to see that principal of natural justice are

complied with the burden of proof is on the claimant/workman to show that they had worked for 240 days in preceding 12 months prior to their alleged retrenchment/termination in terms of Section 25 of the Industrial Disputes Act, an order retrenching a workman could not be effective unless the condition precedent therefore satisfied. From the perusal of the file, it appears that the workmen has not adduced any evidence whatsoever in support of their contention that they have completed 240 days continuously before alleged termination/retrenchment and complied with the requirement of Section 25-B of the Industrial Disputes Act, 1947.

18. Learned counsel of the management Sh. D.R. Sharma has drawn my attention towards the photocopy of the petition moved by these workmen and attached with the file with respect of the payment of Minimum Wages Act and contracts entered into between the management as well as contractors M/s A.K Gupta which is on record. As per the learned counsel of the management during the alleged termination/retrenchment an agreement was in force between BSNL-establishment as well as M/s Ashok Gupta from 10.06.2023 to 09.12.2014 which is admitted facts from the petitions filed by the workmen under Minimum Wages Act attached with the file. Learned counsel further argued that in the light of the admission of the workmen even in their own pleading, this contract cannot be deemed to be camouflage or manipulated. It is pertinent to mention that agreement was executed on 11.06.2013 while alleged termination/retrenchment took place on 10.11.2013, meaning thereby these workmen were rendering their services under contractor A.K. Gupta since 5 months prior to the alleged termination. The documents filed

by the management with respect to the payment, attendance, PF dues relates to the contractor A.K. Gupta. In these circumstances, it is not possible to observe that it was the BSNL-establishment who allegedly retrenched/terminated the services of the workmen from 11.06.2013 on the basis of the demand mentioned in the claim petitions.”

19. I have gone through the findings returned by the Tribunal below, which are based upon correct appreciation of evidence and as per law.

20. Furthermore, the peripheries of certiorari jurisdiction of High Court stands authoritatively delineated in ***Syed Yakoob v. K. S. Radhakrishnan, AIR 1964 Supreme Court 477***, wherein Hon'ble Supreme Court held as under:-

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard, to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court

exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised. 8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion

of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconducted or contravened."

21. No other point has been urged.
22. In view of above discussion, I do not find any merit in these

writ petitions i.e. *CWP-4560-2022, CWP-4572-2022, CWP-4578-2022, CWP-4579-2022, CWP-4580-2022, CWP-4582-2022, CWP-4588-2022, CWP-4590-2022, CWP-4592-2022, CWP-4597-2022, CWP-4598-2022, CWP-4599-2022, CWP-4605-2022, CWP-4612-2022, CWP-4613-2022, CWP-4616-2022, CWP-4617-2022, CWP-4618-2022, CWP-4619-2022, CWP-4625-2022, CWP-4632-2022, CWP-4638-2022, CWP-4640-2022, CWP-4643-2022, CWP-4646-2022, CWP-4649-2022, CWP-4650-2022, CWP-4673-2022 and CWP-4677-2022* and the same are accordingly dismissed.

23. Pending application/s, if any, shall also stand closed.

August 17th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No