

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

CWP-12177-2022 (O&M)
Date of Decision: 31.08.2023

SH. PARKASH CHAND

...Petitioner

Versus

PRESIDING OFFICER INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, PANIPAT AND ANR.

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Balkar Singh, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

Petitioner (Parkash Chand) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of *certiorari/mandamus* for quashing the impugned award dated 12.12.2019 (Annexure P-1); whereby, the reference under Section 10(1)(c) of the Industrial Disputes Act, 1947 (here-in-after referred to as 'the Act, 1947') has been answered against him.

2. Briefly, the petitioner herein, raised an Industrial Dispute, wherein it was claimed that he was appointed as Fitter by respondent No.2- (Manager, M/s Medium Packing Private Limited, Kila No.16, Near CRPF Camp, Khevra Road, Bahalgarh, District Sonapat) in the month of March-2013 against monthly salary of Rs.7000/-. Petitioner claimed that he was discharging his duties till 26.06.2014 and his work and conduct had remained good throughout during the tenure of his service. It is the case of the petitioner that on account of filing a complaint by the Workers' Union against the respondent-Management before the Labour Officer, Circle-II, Sonapat on 29.05.2014, the respondent-Management illegally terminated the

services of the petitioner without giving him any notice or pay in lieu thereof and retrenchment compensation, which is in violation of Section 25-F of the Act, 1947; accordingly, the petitioner claimed that he is entitled for reinstatement with continuity of service and full back wages along with his withheld salary for the month of April-2014. Upon reference being made to the learned Tribunal, the claim petition was filed, which was contested by the respondent-Management, wherein the Management outrightly denied that there was any relationship of employer and employee between the Management and the petitioner. It was categorically pleaded that the petitioner never worked under respondent No.2 (Manager, M/s Medium Packing Private Limited).

3. On the basis of the pleadings of the parties, the following issues were framed on 12.04.2017 :-

(1) Whether the termination of services of workman Sh. Parkash Chand is legal and valid. If not so, to what relief, the workman is entitled? OPW

(2) Whether there exists a relationship of employer and employee between the parties? OPM

(3) Relief

4. Before the learned Tribunal, the petitioner appeared as WW-1 and also examined one Satbir Singh as WW-2, apart from leading documentary evidence. On the other hand, the Management examined one Rajpal Khanna, Manager as MW-1 and also led documentary evidence.

5. On the basis of material available on the record, the learned Tribunal vide impugned award dated 12.12.2019 returned the finding that the petitioner had failed to discharge his onus to prove the existence of relationship of employer and employee. A further finding was returned that it has been established on record that the petitioner had never worked with

respondent No.2-Management. Accordingly, the reference of the Industrial Dispute was answered against the petitioner herein, vide award dated 12.12.2019 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat, by holding as under :-

“9. Before seeking relief under the Act, the claimant was liable to prove that their existed relationship of employee and employer between him and the respondent however, he failed to produce any appointment letter, pay slip or any other document, which could have proved the relationship of employee and employer between the parties, if any. As WW-1, the claimant admitted during his cross-examination that he had no proof regarding his working with the respondent and payment of salary by the respondent. He further admitted that neither he was issued any appointment letter by the respondent nor ESI and PF was deducted. In these circumstances, the contention raised on behalf of the claimant that he had worked with the respondent from March 2013 to 26.06.2014 stood not proved.

10. On the other hand, Sh. Rajpal Khanna, Manager as MW-1 has categorically deposed that the claimant had neither worked with the respondent nor there was any relationship of employee and employer between claimant and the respondent. Then, a bare reading of Ex.MW-1/1 and Ex.MW-1/2 i.e. copy of salary and attendance register shows that name of claimant does not found mentioned therein. Needless to say that both the said documents, substantiates the case of the respondent.

11. It is settled law that the burden to prove the existence of relationship of employer and employee is upon the person, who sets up such a plea. Reliance in this regard can be placed upon Workmen of Nilgiri Coop. Marketing Society Ltd. Vs. State of Tamil Nadu etc., 2004 LLR 351. On one hand, the claimant failed to discharge

his onus and on the other hand, as observed earlier, it stood established on record that the claimant had never worked with the respondent. To put it otherwise, the argument raised on behalf of claimant that he was an employee of the respondent, is not tenable. In the absence of evidence that there existed relationship of employee and employer between the parties, there was no occasion for alleged termination of the claimant. Resultantly, both issues stands decided against the claimant.

Relief :

12. In view of my findings on both issues, the claim statement dated 14.05.2017 is hereby dismissed and reference stands answered in negative. Copy of this Award be sent immediately to Deputy Labour Commissioner, Rohtak for information and necessary action.”

In the afore-mentioned circumstances, the petitioner had filed the instant writ petition before this Court.

6. On a pointed query by this Court to the learned counsel for the petitioner, to refer to any evidence which would show the existence of relationship of employer and employee between the petitioner and respondent No.2-Management, learned counsel for the petitioner has referred to Annexure P-2, which is the statement by way of an affidavit of one Satbir Singh son of Puran Ram resident of House No.22, Near Petrol Pump, Ambedkar Basti, Khewra-72, District Sonapat; which reads as under :-

“Stated that I am having Grocery Shop with the premises of M/s Medium Packing Pvt. Ltd. Company for the last fifteen years. Workmen working in the aforesaid company used to purchase grocery items from my shop. I know Prakash Chand since 2013. He was working in the aforesaid company since 2013 and used to purchase

grocery items from me and he had purchased from my shop around 1-1/4 years while returning from the company.”

7. I have considered the afore-said submission of learned counsel for the petitioner. However, a bare perusal of the statement of Satbir Singh, would reveals that he is neither a workman of respondent No.2-Management nor he is an official of respondent No.2-Management. Thus, the afore-said statement of Satbir Singh, does not advance the case of the petitioner in any manner. Except the *bald* statement of petitioner himself and the statement of above-mentioned Satbir; learned counsel for the petitioner has neither placed on record any material/document nor he has referred to any document to show the relationship of employer and employee between respondent No.2-Management and petitioner herein.

8. Since, the petitioner has failed to discharge the initial burden to prove the existence of relationship of employer and employee; accordingly, I do not find any illegality or perversity in the impugned order award dated 12.12.2019 (Annexure P-1) passed by learned Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat.

9. No other argument has been raised.

10. Accordingly, the instant writ petition is dismissed, being bereft of any merit.

11. All pending application/s, if any, shall also stand closed.

August 31st, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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