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2023:PHHC:166551

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-11091-2023

DECIDED ON: 3rd AUGUST, 2023

SAVITA AND ANOTHER

.....PETITIONERS

VERSUS

EDUCATIONAL TRIBUNAL AND OTHERS

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Lajpat Rai Sharma, Advocate
for the petitioners.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been invoked for issuance of a writ in the nature of *Certiorari* for quashing of impugned order dated 04.02.2022 (Annexure P-1) whereby, the appeal filed by Chand Singh (Since deceased) husband of petitioner No.1 against the order of termination dated 28.03.2013 has been dismissed.

2. The brief facts of the present case are that the husband of petitioner No.1 namely Chand Singh worked with respondents No.2 and 3 w.e.f. 01.01.2009 to 28.03.2013 as Driver and his services were terminated by respondent No.2 vide order dated 28.03.2013.

3. Mr. Lajpat Rai Sharma, learned counsel for the petitioner has vehemently contended that the petitioner had continuously worked as

Driver with the respondent till 28.03.2013. As such he had completed a period of more than 240 days in a calender year. His last drawn salary was Rs.5200/-. It is further contended that the services of the petitioner were illegally terminated by the respondent on 28.03.2013 as neither any notice of termination was given to him nor any enquiry was held. The mandatory provisions of Industrial Disputes Act, 1947 had not been followed. It is submitted on behalf of petitioner that no retrenchment of compensation was paid to the petitioner.

4. No any other argument has been raised by the counsel for the petitioner.

5. Heard learned counsel for the petitioner.

6. The case of the petitioner is that he had been working as a driver with the respondent-college since 01.01.2009 and his services were illegally terminated by the respondent. The respondent-college is admittedly a self-financed/unaided private educational institution. It is well settled that educational institution is an industry and though not all of its employees are workmen, however, a driver employed by an educational institution school being a skilled person is a workman for the purpose of the Act, 1947. Since the petitioner claimed himself to be employed as driver by the respondent, therefore, he can be considered to be a workman.

7. As far as the question with regard to the relationship of employee and employer between the parties is concerned, a perusal of record reveals that the petitioner was employee of its contractor M/s.Bhagwati Enterprises and he neither filed any rejoinder to controvert this fact nor any documentary evidence had been produced by him on

record to prove so. *Per contra*, respondent had produced on record certificates issued by the competent authority under the Act, 1970 to show that it was registered under the Act, 1970 and had been given permission to take service of contractor for engaging workers.

8. It is evident from the impugned order that the petitioner himself admitted that an application for impleading the contractor M/s Bhagwati Enterprises was filed by him before Industrial Tribunal-cum-Labour Court, Panipat and in the written statement filed by M/s Bhagwati Enterprises, the petitioner was shown to be an employee of the said firm. The said fact has not been controverted by the petitioner before the Tribunal, therefore, there is no reasons to disbelieve the fact that the petitioner was not a direct employee of respondent and in fact, he was an employee of contractor M/s Bhagwati Enterprises. Moreover, from the muster roll of M/s Bhagwati Enterprises, it is abundantly clear that M/s Bhagwati Enterprises was the contractor of the respondent and the petitioner was its employee. Therefore, no direct relationship of employee and employer can be stated to be existing between the parties.

9. M/s Bhagwati Enterprises might have violated the provisions of the Act, 1970/rules framed thereunder by terminating services of the appellant in an illegal manner but due to that reason, appellant cannot be treated as workman/employee of the respondent i.e. principal employer. Reliance can be placed upon in the case of **Labour Advisor and Industrial Relation Officer, Calcutta Port trust and others Vs Manoranjan Barui and others 1993 (63) FLR 605** wherein it was held that merely because the contractor or employer had violated any provision of the Act, 1970, the

person employed or hired by principal employer through contract would not be workman of principal employer. Further reliance can be placed upon *Dena Nath and others Vs National Fertilizers Limited and others 1992 (64) FLR 39* wherein it has been held that the persons appointed by principal employer through contract would not be deemed to be direct employees of the principal employer only due to the reason that there was non-compliance of provisions of Sections 7 and 12 of the Act, 1970.

10. The case for reinstatement in services can not be considered at this state, as the present petition has been preferred by legal representatives of Chand Singh (since deceased). As far as the relief seeking the payment of full back wages is concerned, the same can be claimed by the legal representatives of Chand Singh (since deceased), however, in view of discussion made hereinabove, to the effect that the relationship of direct employer has not been established between the parties, therefore, no relief of grant of back wages can be claimed against the respondent.

11. In view of the discussions made hereinabove, this Court does not find any ground to interfered in the impugned order dated 04.02.2022, thus, the same is dismissed with no order as to costs.

(SANDEEP MOUDGIL)
JUDGE

3rd AUGUST, 2023

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| 1. Whether speaking/ reasoned : | Yes / No |
| 2. Whether reportable : | Yes / No |