

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

CWP-19123-2015
Date of Decision: 20.02.2023

Sona Devi

....Petitioners

Versus

Presiding Officer Industrial Tribunal and Anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Mukesh Yadav, Advocate, for the petitioner.

Mr. Dinesh Babu Khurana, Advocate, for
Mr. Rishi Pal Rana, Advocate, for respondent No.2.

HARNARESH SINGH GILL, J.

Challenge in the present petition is to the award dated 21.01.2013 passed by the Industrial Tribunal-cum-Labour Court, Hisar (for short `the Tribunal'), whereby reference made to it was decided against the petitioner.

As per the facts on record, it is the case of the petitioner that she was appointed as an Attendant by the respondent-University in 2000; that she continued working as such till 04.08.2010; that when she reported for duty on 05.08.2010, she was not allowed to join and verbally told that her services were not required any longer and that the services of the petitioner had been terminated in an illegal and arbitrary manner and in violations of Sections 25 of the Industrial Disputes Act, 1947.

The Special Secretary, Government of Haryana, had made a reference to the Tribunal on 02.05.2011. Upon receipt of such reference, the Tribunal, set the proceedings in motion and had framed two issues i.e. i) Whether the termination of services of work lady is legal or not? If not to what relief, she is entitled to? OPA, and ii) Relief.

Under issue No.1, it was found by the Tribunal, that the petitioner had failed to prove the direct employment with the respondent-University and she, as a matter of fact, had been employed through an outsourcing agency. Accordingly, the reference was answered against the petitioner.

Learned counsel for the petitioner would vehemently contend that the Tribunal had wrongly decided the reference against the petitioner; that one Balwan Singh was examined by the petitioner as WW2 and he had clearly stated in his deposition that when he joined his duties as a Security Guard on 01.10.2008, the petitioner had been working as an Attendant in Girls' Hostel No.2 and that her services were terminated on 05.08.2010 and that the salary to the petitioner was being paid by the warden of the hostel. It is further contended that upon the directions issued by the Tribunal the respondent-University had produced the relevant record, proved on record as Ex. W.3 to Ex. W.14 and that as per the said record, the respondent-University had been granting licence to different contractors for running the mess in the Girls' Hostels and those contractors had been employing the workers to run the mess and the petitioner was one of them. It is, thus, submitted that once the said

witness had supported the version of the petitioner, the finding of the Tribunal that the petitioner had failed to prove direct employment with the respondent-University, is legally untenable.

On the other hand, learned counsel appearing for respondent No.2, while defending the award passed by the Tribunal, would contend that the entire record pertaining to the employment of the outsourced staff, had been produced before the Tribunal and that it was clearly established that there was no employee-employer relationship between the petitioner and the respondent-University. It is further submitted that the respondent-University was not privy to the contract between contractor and the outsourced employee and, therefore, the petitioner cannot seek continuity in service as against the respondent-University.

I have heard the learned counsel for the parties and have also gone through the impugned award passed by the Tribunal and the summoned record.

As per the records relied upon by the petitioner i.e Ex.W.3 to W.14, the petitioner had been employed by contractor, who was statelty having contract to run the mess. The counsel for the petitioner could not point out any documentary proof on record to establish that the petitioner was a direct employee of the respondent-University.

The Tribunal, while dealing with the said issue also found that no direct relationship could be established by the

petitioner. The relevant extracts from the Award of the Tribunal, would read as under:-

“13. From the evidence on the file, it is borne out that the University on the recommendations of the Mess Contract Committee and with the approval of the Vice Chancellor has been granting licence to different contractors to run the mess of the girls’ hostels. As per terms and conditions of the licence, it is the duty of the contractor to provide services of Mali, Peons, Sweepers, Security Guards and Plumber-cum-Electricians in the hostels. The contractors have been employing persons to execute the works assigned to them and the petitioner could be one of them. There are three girls’ hostels and a working women hostel in the University. The respondent has placed on the file the list of the contractors of all the four hostels as Ex. W11 to Ex.W14, Ex. W.11 is of girls’ hostel No. 1. Ex.W12 is of Girls’ hostel No.2, Ex.W13 is of girls’ hostel No. 3 and Ex.W14 is of working women hostel. Ex.W11 & Ex.W12 are for the period from 2000 to 2010 whereas Ex.W13 and Ex.W14 are for the period from 2006 onwards. Ex.W13 and Ex.W14 are not relevant for the decision of the present dispute because as per case of the petitioner she had worked only in girls’ hostel No.1&2. Perusal of Ex.W11 and Ex.W12 would also show that the contractors in terms of the licence/contract with the University have been providing the services of the attendants to girls’ hostel No. 1 and 2. It belies the claim of the claim of the petitioner that she was employed by the respondent directly and supports the claim of the respondent that it has been employing Attendants for girls’ hostels through contractors and the petitioner could be one of them.”

As it stood proved on record before the Tribunal that the petitioner was employed through a contractor and there was no direct relationship of employer and employee between the petitioner and the respondent-University, the remedy of the petitioner does not lie against the principal employer and rather her grievance, if any, could have been against the contractor. However, under the guise of her stated continuous working in the respondent-University through a contractor, she cannot seek her retention in service from the principal employer. Moreover, the terms of employment between a contractor and a workman, cannot be invoked against the principal employer.

No other point has been urged.

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

20.02.2023
ds

(HARNARESH SINGH GILL)
JUDGE

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