

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

CWP-17651-2017 (O&M)
Date of decision : 22.12.2023

GENERAL MANAGER, HARYANA ROADWAYS DEPOT,
SONIPAT

...Petitioner

Versus

RAJENDER SINGH AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Praveen Chander Goyal, Addl. A.G., Haryana.

Mr. Ankush Goyat, Advocate
for Mr. Ramesh Goyat, Advocate
for respondents No.1 and 2.

HARSH BUNGER, J.

1. Petitioner (General Manager, Haryana Roadways Depot, Sonipat) has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of Certiorari for quashing of impugned order dated 09.12.2016 (Annexure P-8) passed by learned Labour Court, Panipat, whereby an application under Section 33(C)(2) of the Industrial Disputes Act, 1947 (in short 'the 1947 Act') filed by respondents No.1 and 2 (Rajender Singh and Shailender Kumar, respectively) has been allowed.

2. Briefly, Rajender Singh and Shailender Kumar (respondents No.1 and 2, respectively) filed an application under Section 33(C)(2) of the 1947 Act for directing the petitioner herein (General Manager, Haryana Roadways Depot, Sonipat) to pay the wages from August, 2013 to September, 2014 amounting to Rs. 1,04,900/- to each workman. It was the pleaded case of respondents No.1 and 2 herein that they worked with petitioner herein at Kharkhoda Sub-Depot from August, 2013

to September, 2014 but their wages were not paid and the amount was claimed as under: -

1. Sh. Rajender S/o Sh. Hukami/Hukam Singh

No.	Monthly Salary	Pending Salary
1.	From August 2013 to December 2013 @ monthly salary of Rs.6400/-	6400*5 months = Rs.32000/-
2.	From Jan. 2014 to September 2014 @ monthly salary of Rs.8100/-	8100*9 months = Rs.72900/-
	Total	Rs. 1,04,900/-

2. Sh. Shailender S/o Sh. Bhale Ram

No.	Monthly Salary	Pending Salary
1.	From August 2013 to December 2013 @ monthly salary of Rs.6400/-	6400*5 months = Rs.32000/-
2.	From Jan. 2014 to September 2014 @ monthly salary of Rs.8100/-	8100*9 months = Rs.72900/-
	Total	Rs. 1,04,900/-

3. The afore-stated claim of the respondents No.1 and 2 herein was contested by the petitioner, inter-alia on the plea that the claim application was not maintainable as the workmen (respondents No.1 and 2 herein) were not engaged by it but were supplied by M/s Khatri Security and Placement Services, in view of Haryana Government Policy dated 01.09.2006 (as modified on 16.02.2009) for engaging/outsourcing of services/activities. It was pleaded by the petitioner that it had executed the following agreements with service provider:-

S.No.	Service Provider	Period
1	M/s Khatri Security & Placement Services	01.01.2009 to 15.01.2012
2	M/s Osaka Security & Housing Keeping Services Pvt. Ltd. Sonapat	16.01.2012 to 31.07.2013
3	M/s Indian Security Services, Karnal	01.08.2013 to 31.07.2014
4	M/s Royal Star Security (Regd.)	01.08.2014 onwards

It was submitted that respondents No.1 and 2 herein were not the government employees and they have never been appointed by any competent authority; rather they were engaged by the contractor/service provider agency. Accordingly, the liability to pay wages and also the claim as made by respondents No.1 and 2 herein, was denied.

4. No replication was filed and from the pleadings of the parties the following issues were framed: -

“1. Whether the applicant-workman is entitled to the amount as claimed in the application? OPA

2. Whether the present claim is liable to be rejected on the ground of mis-joinder and non-joinder of necessary parties? OPM

3. Relief.”

5. The learned Labour Court, Panipat, vide impugned order dated 09.12.2016 (Annexure P-8) allowed the application under Section 33(C)(2) of the 1947 Act filed by respondents No.1 and 2, herein by holding as under:-

“12. That from above, it is clear that respondent is denying its liability to pay wages only on sole ground that the workmen were engaged through agency of service provider but in view of specific provision in policy it was duty of department to ensure minimum wages to the workmen by way of payee cheque/bank draft/pay order by the agency to its employees. No such record is produced by the respondent in this court to endure that payment for work during the period as in claim application was duly discharged by department. This court as such least hesitation to hold that workmen were not paid wages and the claim is filed on the basis of minimum wages for relevant period.

13. *Examined from another angle, the present application has been filed by workmen and they have deposed stating that they were worked from August, 2013 to September, 2014 and wages were not paid to them. Instead of producing record of payee cheque/bank draft/pay order by the agency they were disowning their responsibility whereas as per policy circular it is for department to ensure payment of minimum wages. The department has not summoned Security agency/service provider to prove disbursement of wages to the workmen by that agency. In the absence of this proof the claim of workmen stands established. In the absence of security agency claim of workmen will not fail. This court grants permission to respondent to make the payment of earned wages to the workmen and recover the amount from Security Agency/Service Provider.*

14. *In view of the above, the claim of wages for the period from August, 2013 to September, 2014 at the rate of minimum wage is allowed. Thus, issue no.1 is decided in favour of the applicants-workmen and against the respondent.*

ISSUE NO.2

15. *This issue was not discussed, pressed or argued by learned Authorized Representatives for any of parties during the course of arguments and, accordingly, the same is decided against the respondent/management.*

RELIEF

16. *As a sequel to my finding on the issue, as discussed in the preceding paragraphs, it follows that the present application is allowed. Accordingly, application is accepted. The applicants-workmen are entitled to the amount claimed in the application with interest @ 9% and order is passed accordingly. File be consigned to the record room after due compliance.”*

6. In the aforementioned circumstances, the instant writ petition has been filed by the petitioner-Department.

7. Learned State counsel appearing for petitioner-Department submits that the learned Labour Court below has erred in law and facts in passing the impugned award without considering the provisions of Section 33(C)(2) of 1947 Act, which are in the nature of execution proceedings and there has to be a pre-existing right or right established by the Court or acknowledged by employer so as to become entitled to claim relief thereunder. It is submitted that respondents No.1 and 2, herein had no pre-existing right against the petitioner for claiming wages from August 2013 to September 2014 as respondents No.1 and 2 were not the employees of the petitioner-Department but they were employed through the service provider with whom the Department had duly executed an agreement and it was nowhere provided that the petitioner was to pay wages to respondents No.1 and 2, herein. Learned counsel for the petitioner further submitted that even the interest has been wrongly granted by the learned Labour Court below. Accordingly, it is prayed that the impugned order dated 09.12.2016 (Annexure P-8) be set aside and the application under section 33(C)(2) of the 1947 Act filed by respondents No.1 and 2 herein, be dismissed.

8. On the other hand, learned counsel for respondents No.1 and 2 herein opposed the prayer of the petitioner, *inter-alia* on the plea that in terms of Clause 9(d) of the agreement executed between the petitioner-Department and the service provider, if at any time, the department is made liable in any manner whatsoever by any order or direction or otherwise by any Court, authority or tribunal, to pay any amount in respect of any present or ex-personnel of the service provider then the department has a right of

recovery of that amount from the service provider. It is submitted that in the instant case, the right to recovery has been duly granted to the petitioner-department, therefore the instant writ petition is liable to be dismissed. Further reliance has been placed upon Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970 to contend that in the event of failure to pay wages by the contractor then the principal employer is duty bound to ensure payments and therefore the petitioner-department is liable to make payment. Learned counsel for the respondents No.1 and 2 further submitted that before the Labour Court below, the petitioner-department did not produce any material / evidence to show that it had made the payment rather it had disowned its liability. Accordingly, it is submitted that the impugned order passed by the Labour Court below is well justified and does not call for any interference by this Court and therefore; prayer for dismissal of the writ petition has been made.

9. I have heard learned counsels for the respective parties and perused the paper-book with their able assistance.

10. In the instant case, a finding of fact has been recorded by the Labour Court below that the workmen (respondents No.1 and 2) were not paid wages; whereas, the department was simply disowning its responsibility and has not summoned the security agency/service provider to prove the disbursement of wages to respondents No.1 and 2, herein by the said agency. Learned counsel appearing for the petitioner has failed to dislodge the aforesaid finding recorded by the Labour Court below.

11. A perusal of the impugned Award dated 09.12.2016 passed by the Labour Court would suggest that respondents No.1 and 2, herein had placed on record sufficient material in the form of their applications to the

General Manager, seeking salary (Ex. AW1/1 and Ex.AW1/2) and they had further produced the attendance record (Ex. AW1/3 to Ex. AW1/20). It appears that the said material was also substantiated by the statement of AW4-Kanwar Singh, Sub Inspector (retired), who had deposed that respondents No.1 and 2 were working at Sub Depot Kharkhoda from 2009 to 2014 and their attendance was marked by the Adda Incharge and the same was forwarded for payment. Furthermore, even from the perusal of the policy for engaging/outsourcing of service/activities dated 16.02.2009 (Annexure P-1), as relied upon by the petitioner, it is made out that as per Clause 9(d) of the service agreement attached to the said policy, the following provision has been made :-

“9. INDEMNIFICATION

(a) to (c) xxx xxx xxx

(d) That, if at any time, during the operation of this agreement or thereafter the Department is made liable in any manner whatsoever by any order, direction or otherwise of any Court authority or tribunal, to pay any amounts whatsoever in respect of or to any of present or ex-personnel of the Service Provider or to any third party in any event not restricted but including as mentioned in sub-clauses No. (a), (b) and (c) hereinabove, the Service Provider shall immediately pay to the department, all such amounts and costs also and in all such cases/events the decision of the Department shall be final and binding upon the Service Provider. The department shall be entitled to deduct any such amounts as aforesaid, from the security’ deposit and/or from any pending bills of the Service Provider.”

12. A perusal of the above extracted clause of the agreement would manifest that if during the operation of the agreement or thereafter, the department is made liable in any manner whatsoever by any order, direction or otherwise of any Court, authority or tribunal to pay any amount whatsoever in respect of or to any of present or ex-personnel of the Service Provider or to any third party in any event not restricted but including as mentioned in sub-clauses (a), (b) and (c), the service provider shall immediately pay to the department all such amounts and costs also. The department has been further given a right to deduct such amounts from the security deposit and/or from the pending bills of the service provider.

13. In the instant case, respondents No.1 and 2 have been held entitled to the wages for the period i.e. from August 2013 till September 2014 and the petitioner-department has been directed to make the payment of the earned wages to respondents No.1 and 2 and further permission has been granted to the petitioner to recover the amount from the security agency/service provider.

14. Before this Court, the petitioner-department has not placed on record any material to show that the department has made the payment of wages relating to the workers of the service provider/security agency (including respondents No.1 and 2 herein) to the said service provider/security agency. Further, it has also not been shown as to whether the said security agency/service provider has still been retained by the petitioner-department or not. Be that as it may, once the right of the petitioner-department to recover the amount payable to respondents No.1 and 2 has been duly protected by granting recovery rights to it against

service provider; in my considered opinion, no interference is required to be made in the order passed by the Labour Court below.

15. Therefore, no interference is required to be made in the impugned order dated 09.12.2016 (Annexure P-8) passed by the learned Labour Court below. Consequently, the instant writ petition is hereby dismissed.

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

December 22, 2023
gurpreet

(HARSH BUNGER)
JUDGE

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