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

**CWP-25904-2015 (O&M)
Date of Decision: 08.12.2023**

M/s HIL Ltd.

..... Petitioner

Versus

Presiding Officer, Labour Court-III, Faridabad and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Ms. Amrita Mishra, Advocate
for the petitioner.

Ms. Abha Rathore, Advocate
for respondent No.2.

HARSH BUNGER J.

1. Present petition has been filed under Articles 226 and 227 of the Constitution of India seeking setting aside of award dated 16.09.2015 (Annexure P-16) passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-III, Faridabad (hereinafter to be referred as 'the Tribunal'), whereby the petitioner was directed to pay a sum of Rs.6,00,000/- along with interest @ 12% per annum to respondent No.2-workman (Charan Singh).

2. Briefly, respondent No.2-workman raised an industrial dispute, which was referred by the appropriate Government, while exercising its powers under Section 10(1)(c) of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the 1947 Act'), to the Tribunal, for

adjudication, by making the following reference:-

“Whether the appellant/employee is the employee of Hyderabad Industries Limited, Tehsil Ballabgarh, Faridabad or of the contractor?”

In case it is held that he is the employee of Hyderabad Industries Limited, Tehsil Ballabgarh, Faridabad, whether the termination of his services was illegal? If the answer is in affirmative then to what consequential reliefs the employee is entitled to?”

3. In the demand notice/claim statement, respondent No.2-workman claimed that he was appointed by the petitioner-Company as Helper on 09.05.1988 and he worked in the Sorting Department of Cemented Asbestos Sheets, wherein his supervisor was Mr. Yaad Ram. He claimed that he worked continuously till 31.10.2003 and thereafter his services were terminated in an illegal and arbitrary manner without following the provisions of the 1947 Act.

4. The aforesaid claim of respondent No.2-workman was contested by petitioner-Company on the plea that there was no relationship of employee and employer between them, and accordingly, no question arises with regard to termination of services of respondent No.2. It was the pleaded case of petitioner-Company that respondent No.2 was employed by the Contracting Company, namely Leladhar and Bros, Contractor, and he was working under its supervision and being paid wages by the said contractor.

5. From the pleadings of the parties, following issues were framed by the Tribunal:-

“(i) As per reference.

(ii) Relief”

6. Thereafter, both the parties led evidence in support of their case.

Respondent No.2 examined himself as WW-1. On the other hand, the petitioner examined Sh. M.K. Tyagi as MW-1 and Leladhar, Contractor as MW-2.

7. The Tribunal below, vide its impugned award dated 16.09.2015 (Annexure P-16), granted the following relief to respondent No.2-workman:-

“ISSUE NO. 1

8. *It has been argued by Shri S.K. Bakshi, AR for the workman that the claimant Charan Singh has worked with the respondent from 9.5.1988 till 31.10.2003 and his last drawn wages were Rs.3000/- P.M. Thereafter his services were terminated illegally without following the mandatory provisions of Industrial Disputes Act, 1947. AR for the claimant has sought reinstatement of claimant with full back wages with continuity of service.*

9. *On the other hand, Shri Satish Ahuja, AR for respondent No. 1 & 2 has argued that the claimant has worked with the contractor namely M/s Leladhar and Bros., H.No. 202, Bhagat Singh Colony, Ballabgarh, i.e. respondent No. 2 he was not under the direct employment of respondent and is not entitled to any relief against the respondent No. 1.*

10. *Rebutting his arguments Shri S.K. Bakshi has stated that muster roll and attendance record was under the respondent which the respondent has not produced in the court hence adverse inference is drawn against the respondent. Reliance in this regard is placed upon authority titled as In this regard reliance is placed upon case law titled as **M.C.D. versus Ram Kumar and another 2002 LLR 1171** in which it has been held that in a case wherein workman averred that he worked for more than 240 days, respondent denied this fact. In this case no muster rolls were produced before the Labour Court, Hon'ble Delhi High Court awarded reinstatement with full back wages. Hence in the present case since the muster rolls have been withheld by the respondent.*

10. *Shri S.K. Bakshi, AR for workman further argued in a*

*similar case co-workmen approached the Hon'ble High Court of Punjab and Haryana and the Hon'ble High Court of Punjab and Haryana in **LPA No. 343 of 2014 (O&M) decided on 18.9.2014** speaking through Hon'ble Judge Shri Satish Kumar Mittal and Shri Arun Pali have given Rs. 6.00 lacs to the workmen who have rendered more than 10 years service and Rs. 4.00 Lacs to those workman who have rendered services of more than 3 years and Rs. 3.00 lac to those workman who have rendered services of more than 1 ½ years along with 12% interest from the date of termination till its realization.*

11. Keeping in view the aforesaid decision of Hon'ble High Court of Punjab and Haryana, the present petition is accepted to the effect that the claimant Charan Singh is entitled for Rs. 6.00 with 12% interest from the date of dismissal. Accordingly issue No. 1 is decided in favour of workman and against the respondent.

Relief

12. As a sequel to my aforesaid discussion while deciding issue No.1 the petition succeeds and the reference is answered in favour of workman holding that the workman Charan Singh is entitled for Rs. 6.00 lacs along with 12% interest from the date of his termination. The respondent is directed to pay the aforesaid amount within two months of publication of the award. Award is passed accordingly. Copies of award be sent to the authorities concerned and the file be consigned to records after due compliance.”

8. Being aggrieved against the aforesaid award dated 16.09.2015 (Annexure P-16), petitioner has filed the instant writ petition before this Court.

9. Learned counsel for the petitioner, while referring to paragraphs No.8 to 12 of impugned award dated 16.09.2015 (Annexure P-16), submits that the reference has been decided in a perfunctory manner as the Tribunal has not discussed any material on record and also has not given any finding

as to whether respondent No.2 was the employee of petitioner-Company or not. Learned counsel further submits that the onus to prove the relationship of employee and employer between respondent No.2-workman and petitioner-Company was upon respondent No.2, which was never discharged by him, and even the Tribunal did not return any finding to that effect. Learned counsel for the petitioner contends that the Tribunal has passed a totally non-speaking Award, which is unsustainable in the eyes of law.

With the aforesaid submissions, prayer has been made for setting aside impugned award dated 16.09.2015 (Annexure P-16) and remanding the matter to Tribunal below for deciding the reference afresh, by passing a reasoned Award, in accordance with law.

10. On the other hand, learned counsel for respondent No.2 was unable to controvert the submissions made by learned counsel for the petitioner, especially the submission that Tribunal has passed a non-speaking Award.

11. I have heard learned counsel for the parties and perused the paper book with their able assistance.

12. Upon perusal of impugned award dated 16.09.2015 (Annexure P-16), especially paragraphs No.8 to 12 therein, it is manifest that the Tribunal has not returned any finding on the issue as to whether respondent No.2-workman was an employee of the petitioner-Company or of the contractor. There is also no finding on the issue that if respondent No.2-workman was the employee of petitioner-Company then whether termination of his services was illegal, and if so, to what consequential relief he was entitled to?

13. In view of the fact that Tribunal has not rendered any reasoning in support of the observations made in impugned award dated 16.09.2015

(Annexure P-16), accordingly in my considered view, the same is unsustainable in the eyes of law; consequently, the impugned award dated 16.09.2015 (Annexure P-16) is set aside and the matter is remanded to the Tribunal below for deciding the reference afresh by passing a well reasoned Award, in accordance with law, preferably within a period of one year from the date when the parties appear before it.

14. The parties are directed to appear before the Tribunal below on or before 12.02.2024.

15. The present writ petition is partly allowed and disposed of in the aforesaid terms.

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

08.12.2023*Apurva***(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No