

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

***CWP-24379-2023 (O&M)***  
**Date of Decision: 30.10.2023**

MALKIT SINGH

...Petitioner

Versus

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, BATHINDA  
AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. Lupil Gupta, Advocate  
for the petitioner.

**HARSH BUNGER, J. (ORAL)**

1. Petitioner (Malkit Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari*, for quashing the impugned Award dated 10.08.2023 (Annexure P-3) passed by respondent No.1; whereby, the reference has been decided against him.

2. Briefly, petitioner (Malkit Singh) has raised an industrial dispute, which was referred for adjudication to the learned Industrial Tribunal, Bathinda (here-in-after referred to as 'the Tribunal below') under Section 10(1)(c) of the Industrial Disputes Act, 1947 (in short 'the 1947 Act').

3. In the claim petition, petitioner claimed that he served as *Beldar* with the respondents for one year on permanent basis w.e.f 13.02.1995 on wages of Rs.750/- - Rs.1350/-. Petitioner claimed that his services were terminated on 15.02.1996 without any notice, charge-sheet, enquiry or compensation. Petitioner further claimed that juniors to

him were retained in service and even fresh hands had been appointed, therefore, the termination of services of the petitioner-workman was illegal, unjustified and against the provisions of the 1947 Act.

4. The afore-stated claim of the petitioner-workman was opposed by the respondent-management by submitting its reply wherein it was *inter-alia* stated that no such worker worked as *Beldar* as claimed.

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

“1. *Whether there exists relationship of workman and employer between the parties? (OPW)*

2. *If issue No.1 is proved, then as to whether workman has completed his 240 days in service in the last preceding calendar year? (OPW)*

3. *Whether the claim of workman was false and baseless and as such was not maintainable? (OPM)*

4. *Relief.”*

6. Petitioner, in support of his claim, examined himself as WW-1 and exhibited one document as Ex. W-1 and closed his evidence. On the other hand, no evidence was led by respondent-management.

7. Upon appreciating the material/evidence available on record, the Tribunal below rejected the claim of the petitioner-workman and answered the reference against the petitioner-workman vide impugned Award dated 10.08.2023 (Annexure P-3).

8. In the aforementioned circumstances, the petitioner has filed the instant writ petition before this Court.

9. I have heard learned counsel for the petitioner and perused the impugned Award dated 10.08.2023 (Annexure P-3).

10. A perusal of the paperbook would manifest that the respondent-management had disputed the employee-employer relationship between the petitioner-workman and respondent-management.

11. In *Workmen of Nilgiri Coop. Marketing Society Limited vs State of Tamil Nadu and others 2004(3) SCC 514*, the Hon'ble Apex Court has held that it is for the workman to have proved the existence of employer-employee relationship between the parties.

12. In the instant case, the Tribunal below returned the following findings:-

**“Issue No.1**

8. *Onus to prove this issue was upon the workman. Since the relationship of employee and employer is denied by the respondents, therefore the workman was to lead evidence in affirmative. In order to discharge the onus, the workman examined himself as WW-1 and deposed the facts vide his affidavit Exh. WW-1/A and thereafter one document was produced on record as Exh. WW-1, besides document Exh. W-1, the workman has not produced on record any other document to prove the relationship of employee and employer between the parties. No appointment letter is claimed to be issued nor it is produced on file. The workman has also not produced on record any document showing that he was being paid wages by the respondents. No attendance register of the relevant period, for which he claimed to have had worked with the respondents is produced on file. The statement of the workman that he worked with the respondents for about one year is not enough. Though the respondents/management have failed to adduce any evidence, but at the same time the affirmative evidence led by the workman is insufficient and failed to prove the relationship of employee and employer between the parties. Moreover the workman filed this claim after about 21 years*

*from the date of alleged termination. Therefore this issue is decided against the workman.*

**Issue No.2**

9. *Onus to prove this issue was upon the workman. Since the workman has failed to prove relationship of employee and employer between the parties as concluded while decided issue No.1, therefore the question of 240 days continuous service, does not arise. Therefore this issue is also decided against the workman.*

**Issue No.3**

10. *Onus to prove this issue was upon the respondents/management. Nothing has been said on this issue, therefore the same is decided against the respondents/management.*

**Relief**

*In view of my aforesaid findings, the reference is answered against the workman, but with no order as to costs.*

*File be consigned to the Record Room.”*

13. A perusal of the above extracted findings returned by the Tribunal below would show that the petitioner-workman failed to discharge the onus to prove employer-employee relationship. It is well settled that a mere self serving statement made by the petitioner-workman in this regard was not sufficient to prove the employer-employee relationship between the parties. Something more was required in the shape of documents i.e. appointment letter, payment vouchers, etc. to indicate that petitioner-workman has in fact been in the employment of respondent-management and had worked with it continuously for a period of 240 days in a year preceding the date of termination.

14. Nothing has been brought on record either before the Tribunal below or before this Court to show that there was any employee-employer relationship between the parties or that the petitioner-workman was

appointed as *Beldar*, as claimed by him. It is apposite to state here that the respondent-Irrigation Department, being a Government Department, would have issued a letter of appointment which is absent in the present case. A factual finding of fact has been recorded by the Tribunal below that there is no material on record to show the relationship of employer and employee *inter-se* between the parties. It has also been observed that the claim had been filed by the petitioner-workman after about twenty one years.

15. Resultantly, it is not possible on the basis of the evidence produced before the Tribunal below to reach a conclusion or record a finding other than what has been returned the Tribunal below as a result of appreciation of evidence which "cannot be reopened or questioned in writ proceedings" as explained in *Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 Supreme Court 477*.

16. Accordingly, there is no scope for interference in the award passed by learned tribunal below and the writ petition is accordingly dismissed in *limine*.

**October 30, 2023**  
gurpreet

**(HARSH BUNGER)**  
**JUDGE**

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