

**CM-730-LPA-2024 in/and
LPA-315-2024**

2024.PHHC.150157-DB



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

**CM-730-LPA-2024 in/and
LPA-315-2024
Date of Decision: November 14, 2024**

Ishwar Singh

..... Appellant

Versus

**Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat and
others**

..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE DEEPAK GUPTA**

Present: Ms. Rakhi Sharma, Advocate (Legal Aid Counsel)
for the appellant.

LISA GILL, J.

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1. Prayer in the application is for condonation of 104 days in filing the appeal.
2. Learned counsel for applicant-appellant submits that this appeal has been filed through High Court Legal Services Committee as the appellant is poor and an illiterate person. Appellant had approached with copy of impugned judgment dated 11.09.2023 for legal aid for challenging said decision. Legal opinion had been sought with regard to challenging of appeal and in the entire process, delay of 104 days had occurred, which is not

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intentional or due to any negligence on the part of applicant, who does not have anything to gain by delay in filing the appeal.

3. For the reasons mentioned in the application as well as arguments addressed, delay of 104 days in filing the appeal is condoned.

4. Application is, accordingly, disposed of.

LPA-241-2017

1. This appeal has been filed for setting aside order dated 11.09.2023 whereby CWP-15072-2023 filed by appellant (writ petitioner) has been dismissed.

2. Appellant (writ petitioner) filed CWP-15072-2023 for setting aside order dated 05.12.2022 passed by Industrial Tribunal-cum-Labour Court, Panipat (for short – ‘the Tribunal’).

3. Brief facts necessary for adjudication of this appeal are that workman raised industrial dispute by way of demand notice dated 24.04.2017 (Annexure P1 with writ petition) under Section 2A of Industrial Disputes Act, 1947 (for short – (I.D. Act, 1947’). Claim statement was filed before learned Tribunal. Appellant pleaded that he had been appointed to the post of Peon with respondent – Panipat Central Co-operative Bank Limited in February, 2008. He continued to work upto 31.12.2016 under the control of respondent – Bank. His services were allegedly terminated illegally on 01.01.2017 without any reasonable cause, prior notice, pay etc. Respondent – Bank, it was claimed, had violated the provisions of Section 25-H of I.D. Act, 1947. He sought reinstatement with full backwages with continuity of service and other benefits. Learned Tribunal answered the reference in negative and claim statement was rejected. It was held by learned Tribunal that appellant was

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unable to prove existence of relationship of employee and employer between him and respondent – Bank. Appellant was found to have been engaged by the Bank through outsourcing agency/service provider i.e. Royal Security Agency, Panipat.

4. Learned Single Bench also affirmed this finding of absence of relationship of employer and employee. In respect to the prayer submitted on behalf of appellant that learned Tribunal should at least have granted relief to workman qua service provider, it was held that demand notice had been raised only against Bank and not the service provider. Writ petition was, accordingly, dismissed. Aggrieved therefrom, present appeal has been filed.

5. Learned counsel for appellant vehemently argues that relationship between appellant and respondent – Bank is duly proved on the basis of evidence on record. It is submitted that appellant was working under direct control of respondent – Bank. He admittedly worked for more than 240 days in a calender year and his services were terminated in clearcut violation of Section 25 of I.D. Act, 1947. Learned counsel refers to Exs.W2 and W3 i.e. certificates issued by respondent – Bank for the period from February, 2008 to 28.10.2011 and 01.01.2013 to 31.12.2014. She also referred to cross examination of RW2 Mukesh Kumar, Proprietor of service provider to submit that appellant was working with respondent – Bank as per its directions and attendance was also marked with respondent – Bank and that no notice or pay etc. was afforded by respondent – Bank at the time of termination of appellant's services. It is, thus, prayed that this appeal be allowed, impugned order dated 11.09.2023 as well as award dated 05.12.2022 passed by learned Tribunal be set aside and claim petition be allowed as prayed for.

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6. We have heard learned counsel for appellant and have perused the file with her able assistance.

7. Appellant pleaded that he was appointed as Peon by the respondent – Bank and was working under its control. It is to be noted that learned Tribunal returned specific finding of fact that appellant was engaged through service provider. This finding has been affirmed by learned Single Bench while referring to documents on record. Appellant in his cross examination has admitted that he was appointed in the year 2008 through service provider. It has been noted by learned Single Bench that despite specific query to learned counsel for appellant, he was unable to point out any document/material to indicate that appellant had been appointed by respondent – Bank itself and not through service provider. At this stage, it is to be noted that even in the application filed by appellant seeking impleading of service provider before learned Tribunal, it is mentioned in para 2 thereof that it was on account on inadvertence that service provider namely Royal Security Agency through whom appellant was appointed with respondent – Bank could not be impleaded. Perusal of certificates Exs. W2 and W3 also reveal that in the year 2008, appellant was engaged through Narwal Security Agency, Panipat and in 2013 through Royal Security Agency, Panipat. Learned counsel for appellant is unable to point out any ground which calls for interference in this matter.

8. In respect to argument then raised that relief should at least have been granted to appellant/workman from service provider, we take note of the fact that admittedly demand notice had never been raised by appellant qua Service Provider. This is duly noted by learned Single Bench which has

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correctly referred to judgment of Hon'ble the Supreme Court in **Prabhakar vs. Joint Director Sericulture Department and another 2016 AIR Supreme court 2984.**

9. Relevant paras i.e. 28 to 34 of said decision of Hon'ble the Supreme Court have been gainfully reproduced in para 17 of impugned order dated 11.09.2023 and is not being reproduced for the sake of brevity. It is, thus, correctly held that in the absence of any demand by appellant against respondent No. 3, relief cannot be granted in the present proceedings.

10. Learned counsel for appellant is unable to point out any illegality, infirmity or perversity in the impugned order dated 11.09.2023 passed by learned Single Bench.

11. No other argument has been addressed.

12. This appeal is, accordingly, dismissed with liberty to the appellant to raise his claim qua service provider, if so advised, in accordance with law. It is clarified that there is no expression of opinion in respect to the claim, if any, qua service provider.

13. Pending application(s), if any, stand(s) disposed of.

**(LISA GILL)
JUDGE**

**(DEEPAK GUPTA)
JUDGE**

November 14, 2024
Rts

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