

CWP-1043-2011 &
CWP-1044-2011

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2024:PHHC 1*3069



203+204

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1) CWP-1043-2011
Date of Decision:31.08.2024

RAGHBIR ALIAS SUNDAL Petitioner

Versus

THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT AND ANR

..... Respondents

2) CWP-1044-2011

RATTI RAM ALIAS RATIAPetitioner

Versus

THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT AND ANR

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Raman B. Garg, Advocate
for the petitioner in CWP-1043-2011.

Mr. Hari Om Sharma, Advocate
for the petitioner in CWP-1044-2011.

Ms. Harsh Rekha Kapoor, AAG, Haryana.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order CWP-1043-2011 and CWP-1044-2011 are disposed of since issues involved in the captioned petitions and prayer sought are common. With the consent of parties and for the sake of brevity, facts are borrowed from CWP-1043-2011.

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of Award



dated 09.09.2008 (Annexure P-6) whereby Labour Court has answered the reference against the workman.

3. The workman during the pendency of petition has passed away and his LRs are on record who are pursuing the matter. The workman claims that he joined respondent in 1986 and continued to work till 31.12.2003. He was indubitably a daily wage worker, however, he had completed 240 days during the preceding 12 months, thus, he was protected by Section 25B and 25F of Industrial Disputes Act, 1947 (for short '1947 Act'). The Management has abruptly and without complying with provisions of 1947 Act terminated his services.

4. On the application of workman, matter came to be referred to Labour Court which answered the reference against the workman. The Labour Court has dismissed claim of the petitioner on the sole ground that he was a daily wage worker, thus, covered within the clutches of Section 2(o)(bb) of 1947 Act. The Management was free to terminate him at any point of time.

5. Mr. Raman B. Garg, Advocate for the petitioner submits that as per Judgment of Supreme Court in '**Devinder Singh Vs. Municipal Council, Sanaur**' (2011) 6 SCC 584 protection granted by 1947 Act is available to casual, daily wage and part-time workers like regular workmen. Section 2(s) of 1947 Act encompasses all kinds of workers except where specifically excluded. The case of petitioner does not fall in exclusion and his case is squarely covered by aforesaid judgment of Supreme Court. The Management has regularized his juniors and Labour Court was supposed to consider his case for regularization. The denial of regularization amounts to violation of Article 14 of the Constitution of



India when petitioner's junior have been regularized.

6. The Labour Court has adverted with question of applicability of Section 25B to petitioner in the light of Section 2 (oo) (bb) of 1947 Act. The Supreme Court in **Devinder Singh** (supra) has clearly held that Section 2(s) contains an exhaustive definition of workman. The source of employment, terms and conditions of employment, quantum of wages and mode of payment are not at all relevant for deciding whether or not a person is workman within the meaning of Section 2(s) of 1947 Act. There is no distinction between full time and part-time employee. The relevant extracts of the judgment are reproduced as below:

“12. Section 2(s) contains an exhaustive definition of the term “workman”. The definition takes within its ambit any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and it is immaterial that the terms of employment are not reduced into writing. The definition also includes a person, who has been dismissed, discharged or retrenched in connection with an industrial dispute or as a consequence of such dispute or whose dismissal, discharge or retrenchment has led to that dispute. The last segment of the definition specifies certain exclusions. A person to whom the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, is applicable or who is employed in the police service as an officer or other employee of a prison or who is employed mainly in managerial or administrative capacity or who is employed in a supervisory capacity and is drawing specified wages per mensem or exercises mainly managerial functions does not fall within the definition of the term “workman”.

13. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service,



the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act.

14. *It is apposite to observe that the definition of workman also does not make any distinction between full-time and part-time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on a regular basis or a person employed for doing whole-time job is a workman and the one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*

15. *Whenever an employer challenges the maintainability of industrial dispute on the ground that the employee is not a workman within the meaning of Section 2(s) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of “workman”.*”

7. Faced with the findings of Labour Court and judgment of Supreme Court in **Devinder Singh** (supra), State counsel concedes that question as to whether workman had worked for 240 days during the preceding 12 months should be examined by Labour Court. She further submits that question of regularization also needs to be examined in the light of prevalent policies and available judicial precedents.

8. As the Labour Court has not decided as to whether workman had worked for 240 days during preceding 12 months and whether he is entitled to regularization or not, the matter needs to be remanded back to

Labour Court. Accordingly, impugned award is set aside and matter is remitted back to Labour Court to pass a fresh order. The parties are at liberty to raise all available pleas before the Labour Court. At the first instance, the parties would appear before the Labour Court on 23.09.2024 and thereafter as directed by the Labour Court.

9. Both the petition stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

31.08.2024
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>