



CWP-14449-2024 (O&M) -1-
and other connected cases

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

292

CWP-14449-2024 (O&M)
Date of decision: 24.10.2024

SWARUP PARKASH

....PETITIONER

Vs.

PRESIDING OFFICER, LABOUR INDUSTRIAL TRIBUNAL,
CHANDIGARH AND OTHERS

...RESPONDENTS

CWP-15699-2024 (O&M)

SOHAN SINGH

....PETITIONER

Vs.

PRESIDING OFFICER, LABOUR INDUSTRIAL TRIBUNAL,
CHANDIGARH AND OTHERS

...RESPONDENTS

CWP-16939-2024 (O&M)

RANJIT SINGH

....PETITIONER

V/S

PRESIDING OFFICER, LABOUR INDUSTRIAL TRIBUNAL,
CHANDIGARH AND OTHERS

...RESPONDENTS

CWP-16970-2024 (O&M)

BIKRAM SINGH

....PETITIONER

V/S

PRESIDING OFFICER, LABOUR INDUSTRIAL TRIBUNAL,
CHANDIGARH AND OTHERS

...RESPONDENTS

CWP-16982-2024 (O&M)

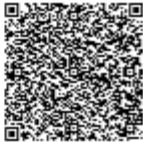
KUNDAN LAL

....PETITIONER

V/S

PRESIDING OFFICER, LABOUR INDUSTRIAL TRIBUNAL,
CHANDIGARH AND OTHERS

...RESPONDENTS



CWP-14449-2024 (O&M) -2-
and other connected cases

ROHTASH KUMAR

CWP-16984-2024 (O&M)
....PETITIONER

V/S

**PRESIDING OFFICER, LABOUR INDUSTRIAL TRIBUNAL,
CHANDIGARH AND OTHERS**

...RESPONDENTS

AJAY KUMAR

CWP-16987-2024 (O&M)
....PETITIONER

V/S

**PRESIDING OFFICER, LABOUR INDUSTRIAL TRIBUNAL,
CHANDIGARH AND OTHERS**

...RESPONDENTS

RAMESH KUMAR

CWP-16993-2024 (O&M)
....PETITIONER

V/S

**PRESIDING OFFICER, LABOUR INDUSTRIAL TRIBUNAL,
CHANDIGARH AND OTHERS**

...RESPONDENTS

JAGAT RAM

CWP-16999-2024 (O&M)
....PETITIONER

V/S

**PRESIDING OFFICER, LABOUR INDUSTRIAL TRIBUNAL,
CHANDIGARH AND OTHERS**

...RESPONDENTS

DILBAGH SINGH

CWP-17003-2024 (O&M)
....PETITIONER

V/S

**PRESIDING OFFICER, LABOUR INDUSTRIAL TRIBUNAL,
CHANDIGARH AND OTHERS**

...RESPONDENTS



CWP-14449-2024 (O&M) -3-
and other connected cases

VINOD RAWAT

V/S

**PRESIDING OFFICER, LABOUR INDUSTRIAL TRIBUNAL,
CHANDIGARH AND OTHERS**

CWP-17005-2024 (O&M)

....PETITIONER

...RESPONDENTS

KULDEEP SINGH

V/S

**PRESIDING OFFICER, LABOUR INDUSTRIAL TRIBUNAL,
CHANDIGARH AND OTHERS**

CWP-17013-2024 (O&M)

....PETITIONER

...RESPONDENTS

HARMEET SINGH

V/S

**PRESIDING OFFICER, LABOUR INDUSTRIAL TRIBUNAL,
CHANDIGARH AND OTHERS**

CWP-17029-2024 (O&M)

....PETITIONER

...RESPONDENTS

MALKEET SINGH

V/S

**PRESIDING OFFICER, LABOUR INDUSTRIAL TRIBUNAL,
CHANDIGARH AND OTHERS**

CWP-17040-2024 (O&M)

....PETITIONER

...RESPONDENTS

PUSHKAR SINGH

V/S

**PRESIDING OFFICER, LABOUR INDUSTRIAL TRIBUNAL
CHANDIGARH AND OTHERS**

CWP-17066-2024 (O&M)

....PETITIONER

...RESPONDENTS



CWP-14449-2024 (O&M) -5-

and other connected cases

2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of Award dated 03.07.2023 (Annexure P-1) whereby Labour Court has answered the reference against him.

3. The petitioner joined respondent-Government Medical College and Hospital, Sector-32, Chandigarh (for short 'GMCH') on 08.05.1995. He worked till 30.12.1997. He came to be terminated on 31.12.1997. He served demand notice and matter came to be referred to Labour Court vide reference dated 21.03.2000. It is apt to notice that demand notice was served on 15.11.1999, though, he was terminated on 31.12.1997. Before the Labour Court, the workman pleaded that interview was conducted by Medical Superintendent and other officers of the contractor. M/s National Security and Alliance Services, Jalandhar was contractor and he remained contractor till October' 1997 and thereafter M/s Enter Climax Security, Chandigarh worked as Contractor from 01.11.1997 to 27.04.1999. Matter came up for consideration before Labour Court on 05.03.2007 which answered the reference against the workman. The Court held that Management has produced documents to show that workman was engaged by Contractor whereas workman has failed to prove either appointment or termination by Management i.e. Medical College. The relevant extracts of the findings recorded by Labour Court are reproduced as below:

*"20. Much stress has been put on the point that the adverse inference should be drawn against the management for not producing the attendance record of the worker. In support of this arguments, the learned representative for the workman has relied upon **The State of Haryana versus Maman Ram and another** reported as 2003(1) SCT page 400. In this case the workman has not called any record from the management. There is no such document which the management was called upon to produce, but the same has been withheld. The onus was on the workman to prove his case. In order to prove his employment with the respondent/management the workman could produce on file*



CWP-14449-2024 (O&M)

-6-

and other connected cases

the letter calling him for interview issued by the management, his appointment letter, his attendance record, the document concerning the payment of the wages or, any document showing the control over his employment and conditions of his service with the management. The workman has neither produced any such record nor called the same from the management. On the other hand management has produced the documents to show that the workman was engaged by the contractor and his attendance was being marked with him. The respondent/management is the Govt. hospital. All the record concerning the working of the hospital and employment of the workers is maintained in due course. The workman could call the same to prove his case, but has utterly failed to do so. The citations referred by the learned representative for the workman, as such is not helpful to advance the plea of the workman in any manner.

21. *From the above said discussion, it is clear that the workman has failed to prove that he was either appointed or terminated by the respondent/management and as such his services could not be said to have been terminated illegally by the respondent. The findings on the issue No. 1 and 3 are recorded against the workman and in favour of the respondent/management.”*

4. Apart from dispute of termination, a dispute erupted between Management and workers with respect to minimum wages payable as per Minimum Wages Act, 1948 (for short ‘1948 Act’). The matter travelled to this Court. A Division Bench of this Court vide order dated 19.03.2015 directed the Management to make payment due to those who had filed execution on furnishing necessary surety for restitution of amount or excess amount. The relevant extracts of order dated 19.03.2015 passed by Division Bench in LPA-426-2015 are reproduced as below:-

"The Chandigarh Administration is impleaded as a party. It shall bring all the necessary notifications relating to the applicability of the Minimum Wages Act to the Government Medical College & Hospital, Sector-32, Chandigarh-appellant.



CWP-14449-2024 (O&M) -7-
and other connected cases

In the meantime, the appellant shall make the payment due to those who had filed execution on furnishing necessary surety for restitution of the amount or excess amount, if any, to the satisfaction of the executing authority.

List for hearing on 14.07.2015”

5. The respondent pursuant to aforesaid order paid Rs.17,982/- to each workman who had worked through Contractor. The said payment was on account of minimum wages payable under the 1948 Act.

6. Prompted by payment of differential wages by hospital, as per directions of this Court, the petitioner made another reference before the Labour Authorities and matter again came to be referred to Labour Court. It is apt to notice here that first as well as second reference was made against Government Medical College, Sector 32, Chandigarh. The Labour Court re-considered the matter and vide order dated 03.07.2023 dismissed the claim of the petitioner on the ground that payment of differential wages under 1948 Act does not make any workman a worker of the Principle Employer. The Court further held that second reference in view of principal of *res judicata* is not maintainable.

7. Mr. S.K. Guleria, Advocate submits that principle of *res judicata* was inapplicable because fresh cause of action arose on account of payment of wages by Management. The payment of differential amount by Management confirmed that workman was actually appointed by Management. The first reference was wrongly answered, thus, second reference was maintainable. The payment of differential amount by Management vindicated stand of the workman.

8. Per contra, Mr. Aman Bahri, Addl. Standing Counsel submits that first reference as well as second was made against same Management i.e. GMCH. Rightly or wrongly first reference was rejected, thus, there was no question of filing



CWP-14449-2024 (O&M) -8-

and other connected cases

second reference. The workman did not challenge first Award. Principle of *res judicata* was applicable and Labour Court has rightly dismissed second reference.

9. I have heard the arguments of both sides and with the able assistance of learned counsels perused the record.

10. From the perusal of impugned Award, it comes out that Labour Court has dismissed claim of the petitioner on the ground that payment of wages under 1948 Act does not change status of the workman. Mere payment under the said Act by Management does not make the workman a worker of the Management.

11. The Court has further held that in view of principle of *res judicata* contemplated by Section 11 of C.P.C., the second reference is not maintainable. The relevant extracts of the findings recorded by Labour Court are reproduced as below:-

“22. It is undeniable fact that all the applicants / DHs of execution proceedings furnished requisite surety and the amount of ₹17,982/- each were released to them in the form of demand draft. Moreover, it is own case of the workman that in compliance with the interim order of Hon'ble High Court passed in LPA No.426/2015 the GMCH, Sector 32 made payment which was received by the workman through the executing Court of CJM/ACJ(SD), Chandigarh.

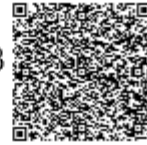
23. Now the question before this Court is if the interim order dated 19.03.2015 / Exhibit 'W3' in any manner relate to the termination or regularisation of service of the workman. Answer is 'No' because payment of difference of wages to the GMCH, Sector 32 to the workman in compliance with the order of Hon'ble High Court in the matter relating to payment of wages under Minimum Wages Act, cannot be interpreted to mean that by making payment by GMCH/or receiving payment by the workman of difference of wages, the termination order will become invalid of its own or the previous Award dated 05.03.2007 passed by Labour Court,

**CWP-14449-2024 (O&M)**

-9-

and other connected cases

Chandigarh dismissing the IDR/claim statement of the workman seeking to set aside termination order, will become redundant. The termination of service, reinstatement, regularisation does not fall within the purview of Minimum Wages Act, hence order Exhibit 'W3' in no manner has any impact on the termination of the workman. The GMCH, Sector 32, Chandigarh/management No.1 & 2 neither issued any appointment letter nor termination order to the workman. Learned Representative for the workman raised objection to the termination order dated 31.12.1997/Exhibit 'MW2/1' brought into evidence by MW2. Exhibit MW2/1' is the letter of termination the services of the workman by the employer / contractor Enterclimex w.ef. 31.12.1997. The workman has not impleaded the employer Enterclimex as party to the claim statement, thus claim statement is bad for non-joinder of necessary party. Above all during course of arguments Learned Representative of the workman failed to controvert the fact that in previous IDR the termination order vide letter dated 31.12.1997 / Exhibit 'M2/1' was under challenge. If the termination Exhibit 'MW2/1' is ignored, then also workman has failed to prove that his services were terminated by management No.1 & 2 / GMCH Sector 32, Chandigarh. AWI in his cross-examination stated that he worked as outsource employee in GMCH-32, Chandigarh up to March, 1998, He refused to work under the new agency, therefore he was terminated from the job. He was not issued any termination letter by GMCH, Sector 32, Chandigarh. The aforesaid version of AWI would prove that from the date of appointment till termination of service he was working with GMCH, Sector 32, Chandigarh being outsource employee under the contractor. In this manner the workman was employee of the contractor not GMCH, Sector 32, Chandigarh. So the question of termination of services of the contractual employee by the GMCH, Sector 32, Chandigarh does not arise. The contractual employee to seek regularisation of services must come through the selection process. Here it is not the case of the workman that they have qualified any selection process. Hon'ble High Court of Delhi



CWP-14449-2024 (O&M) -10-
and other connected cases

*in case of **Desh Deepak Srivastava Versus Delhi High Court & Another**, CWP (C) No.9570/2015 held that a contractual employee cannot claim any right to regularisation or absorption of services, if continued on an ad-hoc for decades.*

24. *Moreover, the issue of termination of the services of the workman have already been adjudicated upon by this Labour Court & Industrial Tribunal, U.T. Chandigarh vide Award dated 05.03.2007 vide which the claim of the workman seeking to set aside termination order, was discussed. The workman did not challenge the Award dated 05.03.2007 before the competent Court of law. Therefore, the Award dated 05.03.2007 has attained finality. The workman is not entitled to re-agitate the same issue which is already decided by the competent court and which has become final. Consequently, the present claim is barred by principle of res-judicata under Section 11 of CPC.*

25. *Accordingly, issue No.1 is decided against the workman and in favour of the management. Issue No.2 is decided in favour of the management and against the workman."*

12. From the pleadings and arguments of both sides, it is evident that petitioner was engaged by Management through a Contractor. The petitioner in its first reference has also accepted that he was appointed through a contractor. The Labour Court while adjudicating first reference clearly held that workman has failed to prove his employment and termination by Management-GMCH. He accepted said award and did not challenge the same before any Authority/Court. Subsequent payment of differential amount of wages under 1948 Act, did not create fresh cause of action or wipe out principle of *res judicata*. The said principle is a universal principle and it is meant to end the litigation. If that principle is not applied, there would be no end to litigation and losing party would file repeated claims. The said principle is equally applicable to proceedings before Labour Court. The workman had filed first as well as second claim against the same



CWP-14449-2024 (O&M) -11-

and other connected cases
Management i.e. GMCH. In view of dismissal of first claim wherein it was categorically held that worker has failed to prove his appointment and termination by GMCH, the second reference merely on account of payment of differential amount of wages under 1948 Act was not maintainable. There was no fresh cause of action. Thus, the second reference was not maintainable and Labour Court has rightly dismissed the same.

13. In the wake of above discussion, this Court is of the considered opinion that the present petitions being bereft of merit deserve to be dismissed and accordingly dismissed.

14. Pending miscellaneous application(s), if any, shall also stand disposed of.

24.10.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

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