



CWP-4193-2010 (O&M)

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

203

CWP-4193-2010 (O&M)

Date of Decision: 20.12.2024

Rajpal

...Petitioner

Versus

Presiding Officer, Labour Court-I, Gurgaon & another

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Sanjiv Gupta, Advocate for the petitioner

Mr. Ravinder Malik, Advocate for respondent No.2

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of award dated 13.11.2009 (Annexure P-5) whereby Labour Court has answered reference against him.

2. The petitioner claims that he joined M/s Hafed Oil Mills-respondent No.2 on 21.11.2000 as Helper. At the time of his appointment, no appointment letter was issued. While on duty, he met with an accident and his left hand was crushed. He was referred to Birendera Hospital, Rewari where he remained admitted from 12.01.2001 to 20.01.2001. He filed an application before the Commissioner under Employee's Compensation Act, 1923 (for short '**1923 Act**'). The said application came to be allowed vide order dated 11.03.2002 passed by the Commissioner. The said authority held M/s Hafed Oil Mills as principal employer and



responsible to pay compensation in terms of Section 12 of 1923 Act. In the said order, it was also noticed that principal employer in terms of Section 12 may make claim against contractor.

3. The petitioner on account of injuries could not work with respondent No.2 and he approached the Labour Authorities. The matter came to be referred to Labour Court which vide impugned award has rejected claim of the petitioner on the ground that principal employer is not liable to comply with provisions of Section 25-F of Industrial Disputes Act, 1947 (for short '**ID Act**'). No relief can be granted against the principal employer.

4. Learned counsel for the petitioner submits that as per orders of Commissioner under 1923 Act, the respondent- M/s Hafed Oil Mills was principal employer, thus, it cannot escape from its responsibility under ID Act. The respondent before Labour Court has not furnished any evidence with respect to contract executed with any contractor, thus, petitioner for all intents and purposes was workman of respondent No.2.

5. *Per contra*, learned counsel for respondent No.2 submits that petitioner before Commissioner himself pleaded that he was working through a Contractor, thus, there is no infirmity in the impugned award. The contract with the Contractor was produced before the Labour Court which was exhibited as M-4.

6. I have heard the arguments of learned counsel for both sides and perused the record with their able assistance.



7. The respondent is not denying the fact that petitioner during the period in question had worked with it. The ground of denial of claim of the petitioner is that he was engaged through a Contractor. The Labour Court has returned a finding to the effect that burden was upon the workman to prove that he was working for respondent-M/s Hafed Oil Mills. The petitioner proved that he had worked with the respondent though he could not prove that he was directly engaged and/or paid by management.

8. The Commissioner while holding respondent responsible to pay compensation has held:

“[10] In this instant case, respondents No.1 & 2 had engaged the respondent No.3 as a contractor for doing the work relating to the trade or business of the Oil Mills the contractor i.e. respondent No.3 engaged the injured the workman and other workman for the execution of the contract work stipulated in the agreement between the mill and the contractor. Therefore, injured workman who has sustained injuries arising out of and in the course of his employment would be entitled to compensation from both the respondents. Sub Section [2] of section 12 of the workmen's compensation Act imposes a liability upon the principal to pay compensation to such a workman who was employed by a person employed by the principal for the purpose of execution of contract of the principles. In view of the provisions laid down u/s 12[1] of the act, respondent No.1 & 2 shall be liable for the payment of compensation to the applicant. But any event, the respondent No.1 & 2 cannot ordinarily refuse to make the payment of compensation to the applicant on the basis of agreement of indemnify between him and contractor. There will essentially be a matter between them and their contractor. Needless to mention that the respondents No.1 & 2 shall also be entitled to enforce their rights made sub-section (2) of the section 12 against the respondent No.3, the



contractor. In this regard, I hold support from decision dated 19.12.1990 of the Hon'ble Gujarat High Court, Ahmedabad in F.A. No.939 of 1983 in case titled 'Koki Mansukh Rana v/s Patel Natha Ramji'”

9. The Labour Court while rejecting claim of the petitioner has relied upon award under 1923 Act and has held: -

“[8] In order to prove that fact, the workman examined himself as PW-1 and reiterated his earlier version. However, he could not stand the test of cross-examination. It was admitted by him that he filed a petition for recovery of compensation as Ex.R1 before Commissioner under the Workmen's Compensation Act, Rewari. In that petition, the contractor namely Ashok Kumar was added as a party, if the workman was not an employee of contractor, then why he was added as one of the respondent. Then, it was admitted by him that he was neither issued any letter of appointment nor order of termination. Though, it is his version that he used to be marked present by the respondents but no effort was made to summon that record from it. In cases of International Airport Authority of India V/s International Air Cargo Workers' Union and another, 2009, LLR-923, and M/s Polymer papers Ltd., Faridabad V/s Presiding Officer, Industrial Tribunal-cum-Labour Court, Faridabad, 2009, LLR-992, a similar situation arose as in the present case and wherein it was held that the principal employer will not be liable to reinstate the workman on alleged termination when there was no relationship of employer and was contractor's employee and also his name did not appear in their registers as maintained by the principal employer. Besides that the contractor was having full control and supervision over him. It is not disputed that on a petition filed by the workman, order Ex.M-5 was passed under the Workmen's Compensation Act, 1923 and wherein it was held that the workman was an employee of the contractor. Even, there is a copy of contract agreement Ex.M-4. Though, the learned AR for the workman relied upon the ratio of law laid down in cases of People's union for



Democratic Rights and others V/s Union of India and others, 1982 (III), SCC-235 and Food Corporation of India, Haryana Region, Sector-17, Chandigarh V/s The Presiding Officer, Central Government, Industrial Tribunal, District Courts, Sector- 17, Chandigarh and another, 1987 (II), PLR-22 but the ratio of none of these cases are applicable to the facts of the present case. The latest law of the Land is contained in case of G.M. Tanda Terminal Power Project V/s Jai Parkash Srivastava and another, 2008 (1), LLJ (SC)-887 and wherein it was held by the Apex Court of the Land a person who alleges relationship of employee and employer, the burden would be upon him. Since, the workman failed to prove that fact, so, it is not proved that either he was an employee of respondent nor there was any relationship in this regard. So, findings on this issue are hereby ordered to be returning against the workman.”

10. From the perusal of afore-cited orders of Commissioner and Labour Court, it is evident that it was petitioner who before Commissioner disclosed name of Contractor though claimed compensation against principal employer. This shows that there was no doubt about the existence of Contractor. The respondent before Labour Court placed on record contract executed with the contractor. The petitioner worked with the respondent for two months. He has neither appointed letter nor order of termination. These facts collectively prove that petitioner was engaged by a Contractor and was posted at the premises of the respondent.

11. The Labour Court has rightly relied upon contract executed between the respondent and Contractor as well as order passed by Commissioner under 1923 Act. There is no jurisdictional error or factual infirmity warranting interference of this Court.

12. In the wake of above discussion and findings, this Court is of the considered opinion that present petition being bereft of merit deserves to be dismissed and accordingly dismissed.

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

(JAGMOHAN BANSAL)
JUDGE

20.12.2024
Mohit Kumar

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