

Neutral Citation No:2024:PHHC: 062639
CWP-16709 of 2015 and
CWP-24163-2015 1
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

218 **CWP-16709 of 2015**

Sanjay Kumar **.... Petitioner**

Versus

M/s Shree Cement Ltd. and ors **....Respondents**

218-2 **CWP-24163-2015**
M/s Shree Cements Ltd. **.... Petitioner**

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-I,
Gurgaon and another **....Respondents**

Date of Decision: 02.05.2024

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Vinit Yadav, Advocate for
Mr. Narender Yadav, Advocate
for the petitioner(s) (in CWP-16709-2015) and
for respondent No.2 (in CWP-24163-2015).

Mr. J.S. Hooda, Advocate
for the petitioner(s) (in CWP-24163-2015) and
for respondent No.1 (in CWP-16709-2015).

SANJAY VASHISTH, J.(Oral)

1. By way of this common order, the fate of the aforesaid writ petitions shall be decided as both the petitions are arising out of same award dated 04.02.2015(Annexure P-1).

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CWP-16709 of 2015 has filed by Workman-Sanjay Kumar against the award dated 04.02.2015, where by reference No. 412 of 2010 has been answered against him in entirety.

Another CWP-24163 of 2015 has been filed by the Management only to challenge the findings, whereby Labour Court has held that the workman is an employee of petitioner-Management and the relationship of employee and employer is established.

2. For the sake of brevity, facts are being extracted from CWP-16709 of 2015.

Petitioner-Sanjay Kumar, has filed the present writ petition, challenging the award dated 04.02.2015 (Annexure P-1), whereby, Industrial Tribunal-cum-Labour Court-I, Gurugram, has answered the reference No. 412 of 2010, under Section 10 (1) (c) of The Industrial Disputes Act, 1947 (for short, 'the Act of 1947'), against him.

3. Workman-Sanjay Kumar pleaded that he was engaged in October,1995 by the respondents-M/s Shree Cement Ltd. (Management) on the post of "peon" and after registration of a false criminal case, he remained in police custody from 06.05.2008 to 18.10.2008 and after earning of the acquittal, when he went to rejoin the duties, he was not allowed to join it. Since, he could not join the

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service on 06.05.2008, respondents terminated his services, which is in utter violation of Section 25-F of the Act of 1947.

4. In the written statement filed by the respondents-Management, a categorical stand was taken that in response to the demand notice, in reply, Management had denied the relationship of employee and employer between the parties. Further pleaded that once workman has himself admitted of remaining inside jail from 06.05.2008 to 18.10.2008, such absence cannot be attributed to the employer. For the purpose of proving the employment with the Management, one Kapurchand Yadav, appeared as PW-2, who proved his own appointment letter dated 01.05.2001 by which Shree Cement Ltd, had appointed him as an Assistant on salary of Rs.4,500/- per month. There is another document i.e. PW2/2, which is there to establish the fact that the services of Kapurchand Yadav, Assistant, were confirmed with effect from 01.01.2002. Some of the invoice vouchers such as Ex.PW2/3, Ex.PW2/4 for the period July, 1997 and May, 1998 respectively have also been proved on record. Even, Shri Kapurchand Yadav had appeared as witness and proved the fact that he served with the Management and also issued a certificate that workman-Sanjay Kumar Sharma is working with the Management since the year 1997 as a 'Peon' and his working is satisfactory. The said document has already been placed on the record as Annexure R2/1

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alongwith the reply filed by the workman in the writ petition filed by the Management i.e. CWP-24163-2015.

5. From the said writ petition, workman also referred to another typed document dated 23.07.1999 issued by one S.N. Nyati and proved on record as Ex.PW1/2. From the said document, learned counsel for the workman argues that being satisfied with the working of the workman, he was granted increment by noticing the fact the no increment has been given to the workman for last two years. For reference, the said recommendation letter is reproduced herebelow:

*“July 23, 1999
Sr. V.P. (Mktg), Th. Sr. Manager,
New Delhi.
Mr. Sanjay Kumar Sharma (Peon) working
at Narnaul from last 4 years. He has not
been given any increment from last two
years. His overall working is satisfactory.
Presently, he is getting Rs.13,00/- P.M. on
voucher payment.
You are requested to pl. give him increment.
Regards,
(S.N. Nyati).”*

6. Learned counsel for the workman also refers to the evidence brought by him to the effect that the Management cannot run away from its liability by taking a defence that there is no relationship of employer and employee between the two.

7. After examining the record of both the writ petitions and the pleadings raised in the writ petitions and the documents appended therewith, this Court finds that the workman has established a fact

that he was an employee of the Management. However, he failed to prove the same by moving an appropriate application for issuance of directions to the Management to produce its record of the employees or other relevant record during the period, when the workman had been serving in the office of the Management. On production of the record, learned Labour Court could have reached to the correct conclusion, whether the pleadings raised by the workman are reliable or not. While observing so, this Court is impressed with the findings recorded in paragraph No.10 of the award. For the sake of convenience, same is reproduced herebelow:

“10. At the outset, it is important to refer to the original certificate Ex.PW-1/1 issued by the respondents in favour of the workman . The above-said document clearly shows that the present workman was employed under the respondents as a “Peon”.Further the statement of witness Kapoor Chand (PW-2) also proves that the present workman was an employee of respondent. Thus, the evidence on record clearly proves that the present workman had remained employed under the respondents as claimed by him.”

8. This Court is of the view that for seeking protection under the Act, 1947, apart from the relationship of employer and employee, petitioner-workman was also required to prove working of 240 days in the preceding one year of his termination. However, neither there is any evidence to that effect; nor any application has been moved by him. It appears that the workman was employed as peon by the Management and therefore, may be because of illiteracy

or certain other situations, he failed in moving the application. But at this stage, the Court has no reason to disbelieve the stand taken by the workman that he worked in the office of Management from the year 1995 to 06.05.2008 i.e. for a long period of about 13 years. Thus, this Court finds that for reaching to the correct conclusion, one more opportunity should be afforded to the workman and Management also to plead its entire evidence before the Labour Court.

9. As far as the custody period of the workman is concerned, learned counsel for the petitioner argues that such confinement is beyond his control. Therefore, considering compelling circumstances, it was obligatory over the Management to take him back in service on reporting back after acquittal from the criminal case.

For the said purpose, learned counsel for the petitioner-workman relies upon the judgment of Hon'ble Supreme Court, titled as, **'Krushnakant B. Parmar VS. Union of India and another, 2012 (3) SCC 178, Law Finder Doc Id # 344047** and refers to paragraph No. 18, which reads as under:

“18. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always means willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization etc, but in such case the employee cannot be held guilty of failure

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of devotion to duty or behavior unbecoming of a government servant.”

10. Thus, in the totality of the circumstances discussed hereabove, this Court finds it appropriate to set aside the impugned award dated 04.02.2015 (Annexure P-1) and remand the case back to the Labour Court to re-decide the reference No.412 of 2010 in accordance with law. For re-decision of the issue, both the parties would be afforded **three effective opportunities each** without adjourning the proceedings for unreasonable reason, and it would be appreciated, if the proceedings would be finally decided in the year 2024 itself.

Let the parties appear before the Labour Court concerned alongwith the copy of this order on 16.05.2024.

11. With the aforementioned observations, the present writ petitions stand disposed of.

12. A photocopy of this order be placed on the file of another connected case.

May 02, 2024
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[SANJAY VASHISTH]
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no