

CWP-17317-2016

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

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**CWP-17317-2016
Decided on: January 18, 2024**

Uttar Haryana Bijli Vitran Nigam, Bahadurgarh

...Petitioner

Versus

**Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak, and
another**

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Anil Chawla, Advocate,
for the petitioner.

Mr. V.D. Sharma, Advocate,
for respondent No. 2.

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SANJAY VASHISTH, J.

1. Petitioner – Uttar Haryana Bijli Vitran Nigam, Bahadurgarh, has filed present writ petition, under Articles 226/227 of the Constitution of India, by challenging award dated 07.12.2015 (Annexure P-6), whereby learned Industrial Tribunal-cum-Labour Court, Rohtak (hereafter referred to as, ‘the Tribunal’), answered Reference No. 54 of 2010, under Section 10(1) (c) of the Industrial Disputes Act, 1947 (hereafter referred to as, ‘the Act’), in favour of respondent No. 2 – Sombir Singh (workman), by holding that workman is entitled for reinstatement on his previous post with continuity of service and 50% back wages, from the date of demand notice i.e. 25.06.2009.

2. Plea set up in the demand notice dated 25.06.2009, as also in the claim statement filed by the workman, is that he joined the petitioner-

management as an Assistant Lineman (ALM) on 20.04.2008, and worked regularly upto 25.03.2009. On 25.03.2009, while repairing electrical wires at village Jagratpur, some official switched on the electricity line, due to which the workman suffered an electric shock and sustained multiple injuries on his person. He remained hospitalized for about three months i.e. till 23.06.2009. On account of said accident, the workman suffered 70% permanent disability. When workman went to join the service, without assigning any reason and notice or payment of retrenchment compensation, his services were terminated. Workman also claimed that he had worked for 240 days in a calendar year and persons junior to him were still working with the petitioner-management.

3. In the reply filed by the petitioner-management, it has been pleaded that workman was appointed on D.C. rate basis for six months and no further extension was given to him. Even, suffering of grievous injuries resulting into disability, on account of the fault of the employees of the management, was disputed.

4. After completion of pleadings, a question arose before the Tribunal - "*whether termination of services of the workman is justified and if not, to what relief he is entitled to? OPW*"

5. To prove his case, workman himself appeared as WW-2, and one co-worker Arvind Kumar, appeared as WW-1. Both of them deposed that initially they were employed on D.C. rate basis. To prove the accident and suffering of permanent disability, one order dated 29.11.2011 (Ex. W-1/B), passed by the competent authority under the Employees

Compensation Act, 1923, was also brought on record by the workman. One official witness, namely, Manoj Kumar, Lower Division Clerk, U.H.B.V.N., Bahadurgarh, was produced in the witness box as WW-3, who placed on record salary register of the workman as Exs. W-3/A & W-3/B. In the cross-examination done by the management, said witness stated that workman never worked continuously for 90 days, 180 days and 240 days, and that there is no attendance register of the workers, working on D.C. rate basis.

6. In defence, management produced one Anil Kumar, S.D.O., Sub Urban, Sub Division, UHBVNL, Bahadurgarh, as MW-1, who admitted engagement of the workman on contract basis, i.e. on 21.05.2008 to 20.11.2008 (184 days), from 28.11.2008 to 08.03.2009 (90 days) and from 12.03.2009 to 25.03.2009 (14 days). Further stated that workman remained absent from duty w.e.f. 26.03.2009. Management has primarily relied upon the document of service agreements dated 15.05.2008 (Mark-A) and 18.11.2008 (Ex. MA/2), to show that as per the said agreements, engagement of the workman was contractual appointment and, therefore, he is not entitled for reinstatement in service. Thus, there is no violation of the provisions of Section 25-F of the Act also. On account of absence from duty w.e.f. 26.03.2009, services of the workman were terminated.

7. This Court has gone through the submissions addressed and also perused the material available on record.

8. It is found that even as per the statement of Anil Kumar, S.D.O. (MW-1), workman has worked for 288 days from 21.05.2008 to 25.03.2009.

Therefore, it has to be recorded undisputedly that the workman had

completed work period of 240 days in one preceding year prior to his termination.

9. Even in the order dated 29.11.2011 (Ex. W-1/B), passed by the competent authority under the Employees Compensation Act, 1923, it has been categorically recorded that the relationship of employer and employee is established, and workman has suffered 70% of permanent disability due to the accident, during course of employment. Such finding also shows that it was not the workman who absented from his duty or who violated the terms of the service agreement. Thus, the stand taken by the management that the workman was absent from job w.e.f. 26.03.2009, appears to be false on the face of it. Furthermore, the management has not disputed passing of the order dated 29.11.2011 (Ex. W-1/B).

10. Even, during course of arguments before this Court, there is no denial by the petitioner-management that till date, any regular appointment has been made for the post of ALM, where the workman was posted. Even there is no denial that the work for which workman was employed, has been accomplished, or no more services are being required.

Reliance placed upon the policy decision of the management to recruit employees/workmen through outsourcing of services/activities, is of no consequence because it does not relate to the working conditions of the workman in the present case. Thus, the submission addressed to seek protection of Section 2(OO)(bb) of the Act, is of no help to the petitioner-management.

11. Needless to observe that once the pending work/project does

exist for years together and the workman has not been appointed for any specific project till its completion, merely with twisting of words in the appointment letter/service agreement, plea of ‘granting of contractual employment’, should not be made available to the employer. Otherwise, the very purpose, aim and object of framing of beneficial legislation for the welfare of workers, who fight to earn their day-to-day bread, would get defeated.

12. Moreover, in the present case workman has suffered 70% disability on account of happening of accident, during the working hours, whose services have been denied/dis-owned outrightly, by the petitioner-management. Thus, even on the principle of equity, this Court does not deem it appropriate to disturb the impugned award, by exercising its Constitutional power under Article 226.

13. On the basis of reasons recorded hereabove, I do not find any infirmity and illegality in the impugned award dated 07.12.2015 (Annexure P-6), passed by the Tribunal. Thus, by upholding the same, present writ petition is hereby dismissed.

(SANJAY VASHISTH)
JUDGE

January 18, 2024
Pkapoor

Whether speaking/reasoned?	✓Yes/ No
Whether reportable?	✓Yes/ No