

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

219 **CWP-19183-2015(O&M)**

THE EXECUTIVE ENGINEER Petitioner

Versus

GURDYAL SINGH AND ORS
....Respondents
CWP-19552-2015(O&M)

EXECUTIVE ENGINEER Petitioner

Versus

KISHAN KUMAR AND ORS
....Respondents
CWP-2053-2016(O&M)

THE EXECUTIVE ENGINEER PUBLIC HEALTH DEPARTMENT,
SOHNA, GURGAON AND ANR Petitioners

Versus

CHANDER BHAN AND ORS
....Respondents
CWP-6308-2016(O&M)

EXECUTIVE ENGINEER PUBLIC HEALTH DEPARTMENT,
SOHNA, GURGAON Petitioner

Versus

PAVITAR SINGH AND ORS
....Respondents

Date of Decision: 29.01.2024

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. P.C. Goyal, Addl. A.G., Haryana
for the petitioner(s) (in all the cases).

Mr. Neeraj Gupta, Advocate
for respondent No.3 (in CWP-19183-2015).

Mr. Sukhdev Singh, Advocate
for the respondent-workmen (in CWP-2053-2016,
CWP-19183-2015 and CWP-19552-2015).

SANJAY VASHISTH, J.(Oral)

1. By way of present common order, the aforesaid four writ petitions are being decided/disposed of.

2. In **CWP No.19183-2015(O&M)** challenge is to the impugned award dated 01.01.2015 (Annexure P-1); in **CWP-19552-2015(O&M)** challenge is to the impugned award dated 02.01.2015 (Annexure P-1); in CWP-2053-2016, challenge is to the impugned award dated 01.05.2015 (Annexure P-1); and in CWP-6308-2016 challenge is to the impugned award dated 07.08.2015 (Annexure P-1), passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon (presently Gurugram).

3. Issue involved in the present writ petitions i.e. CWP-19183-2015(O&M), CWP-19552-2015(O&M), CWP-6308-2016(O&M), and CWP-2053-2016(O&M) is similar and as per the common stand of the counsel representing both the sides, decision in CWP-19183-2015 would decide the fate of the other three writ petitions also.

4. The common fact in all four writ petitions is that the workmen appointed as Pump operators at tubewell installed by the Executive Engineer, Public Health Department, Sohna, Gurgaon (presently Gurugram) and their salaries are also being paid by the petitioner-Management but through, respective Sarpanch of the Gram Panchayat of that area.

The facts detailed in CWP-19183 of 2015 are as under:

5. Respondent No.1-Gurdial Singh (workman) was engaged as a water pump operator by the petitioner-Management on 26.04.2005, who continuously worked without break to the satisfaction of Sarpanch, Gram Panchayat, and Public Health department authorities/officer. Services of respondent No.1-workman were terminated without any basis or reason on **01.10.2006** and at that time, he was drawing a salary of Rs.1500/- per month. The grouse of the workman is that respondents have illegally appointed some other person in his place and his services have been terminated against the provisions of the Act without complying with the principle of “last come first go”. Thus, the workman prayed for reinstatement in service with continuity and full back wages and all other benefits.

6. Petitioner-management filed its written statement before learned Labour Court, wherein, it was stated that Gram Panchayat has been managing the water supply in their respective villages and a consolidated amount is paid by the Management to the Gram

Panchayat as Financial Help. Even, no appointment letter was ever issued to the workman, although, it has been supervising his work.

Broadly speaking, the stand taken by the petitioner-Management is that workman has never been employed by them and therefore, no relationship of employer and employee, exists between workman and Management.

7. After perusal of the record, the learned tribunal found that undisputedly, salary of the workman is being released by respondent No.1 (Petitioner management herein) but it is being disbursed through the agency of Sarpanch of Gram Panchayat. Nothing has been placed on record to prove that for running the tubewell in question through private persons, what is the procedure adopted by the Government. Rather from the logbook (Ex.WW1), it became clear that the work of the workman was supervised by SDE/JE of the respondent-Department. Thus, Labour Court reached to two conclusions i.e.

- i) the salary of workman is mainly given by the petitioner-Management and;
- ii) it is petitioner-Management, officers only who supervised the work,

Therefore, learned Tribunal concluded that the plea taken by the petitioner-management that there is no relation of employee and employer is baseless. Broadly speaking, it was also held that the

Gram Panchayat was brought in picture merely to camouflage the relationship of master-servant between the workman and Petitioner-Management.

Findings recorded in paragraph No. 11, 12, 13 and 14 are as under:

‘11. After having heard both sides, I am of the view that the controversy involved in the present case is very limited. It is not in dispute that the tubewell where workman is alleging to be operating Pump belongs to respondent No.1. It is also not in dispute that the salary of workman was being released by the respondent No.1, but it was being disbursed through the agency of Sarpanch, Gram Panchayat Nanu Khurd. For the clarity of facts, I would like to briefly refer to the testimony adduced on file. The only suggestion of learned ADA for respondents No.1 to the workman is that log book register has been falsely prepared. The workman has, further, stated that he was performing duty at Pump at Nanu Khurd.

12. Admittedly, the tubewell belongs to respondent No.1. Therefore, being a Government property for its running (operating) and up keeping it was the responsibility of respondent no.1 because learned ADA could not quote even a single instance where the property of Government is managed by a private person. No Rules and Regulations has been produced on file by learned ADA as to what is the procedure for running the tubewells owned by the Government through private persons. From Ex. WW-1 log book, it is revealed that the work of workman was being supervised by the SDE/JE of the respondent department. Therefore, not only the supervision of the Pump is with respondent No.1, but the salary to workman was also being released by the

*respondent No. 1 as has also come in the reply of the department, wherein they have stated that the department was also disbursing to Panchayat Rs. 1500/- per month for operating the tubewell. Thus, the salary was also being released by respondent no.1 and this shows that the pay masters of the workman was respondents No.1, but actually the salary was being disbursed through the agency of Gram Panchayat, Nanu Khurd in order to camouflage the relationship of master and servant between workman and respondent No.1. Merely that a person is not working on the sanctioned post would not deprive him of the industrial rights. Even daily wager or a seasonal worker with industrial rights as has been held in **Smt. Damyanti versus Presiding Officer, Industrial Tribunal-Cum-Labour Court, Panipat etc. 2012 2012 (134) FLR 832**. Thus, I have no hesitation in holding that there exists a relationship of master and servant between workman and respondent No.1.*

*13. It was one of the contentions of learned ADA for respondent No.1 that Gram Panchayat could appoint any person as Pump Operator. But for the sake of arguments, I must mention that respondents No.1 have not produced on file any Rule and Regulations to support these arguments rather Gram Panchayat in their written statement have supported the workman in this cause in as much as they have stated that the supervision and control over the workman was of respondent No.1 and not of theirs. It was argued by Learned ADA for respondents No.1 that Public Health Department of the State of Haryana is not an 'industry', but I find no force in his submission in view of the direct ruling of our own High court in **Baljit Singh versus The State of Haryana etc., 1995 LLR 504**, wherein, Public Health*

Department of Haryana has been held to be 'industry'.

14. The cumulative result of above said discussion is that workman has been able to prove successfully that there is relationship of employer between him and respondents No.1. There is nothing on the file to show that before dispensing with his service, compliance of section 25-F of the Act has been made. Therefore, I have no hesitation in concluding that the services of the workman were wrongly and illegally terminated by the respondent on 1.10.2006. So, the workman is entitled to reinstatement in services wherein he would be relegated to the same post which he was holding prior to termination of his service with all legal benefits as he was getting at that time of termination of his service i.e. 1.10.2006 till reinstatement. Since the workman was getting salary of Rs. 1500/- per month at that time, therefore, after reinstatement in service, he would be entitled to interest @ 12% per annum on the withheld amount of salary from the date the same became due till payment. Accordingly, issues No.1 and 2 are decided in favour of the workman and against the respondent.'

8. Moreover, as per the judgment of Hon'ble Apex Court **Syed Yakoob Vs. K.S. Radhakrishnan and others, AIR 1964 Supreme Court 477,** the jurisdiction of this Court under Article 226 to issue a writ of certiorari is a supervisory jurisdiction and this Court cannot act as a Court of appeal.

Relevant paragraph No.7 of the aforesaid judgment is reproduced herebelow:

'7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of

certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Ahmad Ishaque, 1955-1 SCR 1104; Nagendra Nath v. Commr. of Hills Division, 1958 SCR 1240 and Kaushalya Devi v. Bachittar Singh, AIR 1960 Supreme Court 1168. '.

9. After going through the reasons given in the impugned award and more on the basis of the fact that no material/evidence has been brought on record by the petitioner-Management, this Court is also unable to deviate from the viewpoint taken by learned Labour Court.

Accordingly, all the four writ petitions are hereby dismissed and the impugned awards are ordered to be sustained.

January 29, 2024

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Whether speaking/reasoned

Whether reportable?

[SANJAY VASHISTH]

JUDGE

yes/no

yes/no