

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2727-2014 (O/M)

Date of decision : 04.01.2024

The Executive Engineer, Public Health Division No. 2, Yamuna Nagar and
another Petitioners

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala and
others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Praveen Chander Goyal,
Additional Advocate General, Haryana
for the petitioners.

Mr. Sushil Kamboj, Advocate
for respondent No. 2.

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HARSH BUNGER, J.

1. Petitioners (The Executive Engineer, Public Health Division No. 2, Yamuna Nagar and another) have filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking writ in the nature of certiorari for quashing the Award dated 11.09.2013 (Annexure P-7), passed by respondent No. 1-The Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala (hereinafter referred to as 'Tribunal below'), whereby the reference of industrial dispute regarding termination of services of respondent No. 2-workman, namely, Aman Kumar (hereinafter referred to as 'respondent-workman') has been answered in favour of respondent-workman

and he has been ordered to be reinstated with continuity of service and 50% back wages from the date of termination till reinstatement.

2. Briefly, respondent-workman raised an industrial dispute by serving a demand notice upon petitioners (hereinafter referred to as 'petitioner-Department'). Subsequently, the dispute was referred for adjudication to the Tribunal below whereby respondent-workman filed his claim statement on the plea that he was engaged as a Tubewell Operator with effect from 01.06.2008 at Jalghar of village Kail, Tehsil Jagadhri, District Yamuna Nagar. Respondent-workman claimed that he remained in continuous service till 03.02.2011 when his services were abruptly terminated. It was claimed that on 21.10.2010, respondent-workman was transferred to the office of Sub Divisional Engineer, Public Health, Sub Division No. 2, Thapar Colony, Yamuna Nagar, where work of Peon was taken from him and the working hours of respondent-workman were fixed from 8.00 am to 5.00 pm. Respondent-workman claimed that there existed relationship of employer and employee between the petitioner-Department and respondent-workman. It was stated that respondent-workman used to do the work of release of new connection, repair of old connection, collection of monthly water charges, repair of electric motor of tubewell etc. and also used to work through the day and also worked during night hours when electricity comes during night hours. It was stated that while engaging respondent-workman, the Department made him assured that his services would be regularized and he would be paid salary as per Government rate whereupon respondent-workman joined the petitioner-Department. It was stated that

respondent-workman was not paid wages for the last five months. Respondent-workman claimed that he discharged his duties as a Tubewell Operator, which was a regular nature of work and during the tenure, his work and conduct was satisfactory and there was no complaint against him. It was further stated by respondent-workman that he was being paid Rs. 1,000/- per month, which was much less than the minimum wages fixed by Haryana Government. It was alleged that after termination of services of respondent-workman on 03.02.2011, petitioner-Department had retained another person in job in place of respondent-workman. Therefore, it was stated that the termination of respondent-workman was in violation of provisions of Sections 25-F, 25-G, 25-H and 25-N of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act'). It was further stated that since the date of termination, respondent-workman remained unemployed and has no source of livelihood. Accordingly, it was prayed that respondent-workman be reinstated in service with continuity and full back wages from the date of termination till reinstatement.

3. The aforesaid claim of respondent-workman was contested by petitioner-Department by filing its reply wherein it was inter alia stated that respondent-workman was under the control of Sarpanch of Gram Panchayat Kail and petitioner-Department had nothing to do with the job of respondent-workman. It was stated that respondent-workman himself had left the work of his own and did not come present on his part time work to operate tubewell. It was stated that the Sarpanch of Gram Panchayat Kail was controlling the affairs of tubewell of the village and even the wages were

received by respondent-workman for his part time job i.e. Rs. 1,000/- from Sarpanch of Gram Panchayat, Kail. The relationship of employer and employee between the parties was denied by submitting that respondent-workman was never engaged by petitioner-Department and if respondent-workman was employed by Gram Panchayat, Kail then it is the Gram Panchayat, Kail, which knows regarding the activities of respondent-workman. The other averments made in the claim statement was also denied and accordingly, prayer for dismissal of claim statement was made.

4. From the pleadings of the parties, following issues were framed :-

- “1. Whether the termination of the services of workman is liable to be set-aside being wrong, illegal, null and void etc. and the workman is entitled to reinstatement in service with full back wages and all the benefits including the continuity of services ? OPW*
- 2. Whether the claim statement is not maintainable in the present form ? OPM*
- 3. Whether the workman is estopped from filing the present claim statement by his own act and conduct ? OPM*
- 4. Whether the workman has concealed the true and material facts in this court ? If so, its effect OPM.*
- 5. Whether the workman has no cause of action to file the present claim statement ? OPM*
- 6. Relief. “*

5. In support of his claim, the workman stepped into witness box as

WW1 and tendered his affidavit Ex.WW1/A.

6. On the other hand, the Department examined one Sumit Garg, Sub Divisional Engineer, Public Health, Yamuna Nagar as MW1 who tendered his affidavit Ex.MW17A and document Ex.R-1.

7. The Tribunal below, vide impugned award dated 11.09.2013 (Annexure P-7), returned the following findings :-

“ As a sequel of my aforesaid discussions that since the Tubewell connection as well as electric connection is in the name of respondent i.e. Executive Engineer, Public Health Division No. 2, Dussehra Ground, Yamuna Nagar hence, respondent Executive Engineer, Public Health Division No. 2, Dussehra Ground, Yamuna Nagar is the employer of workman and there is relationship of respondent no. 1 and 2 is proved. It is also proved on the record that the workman worked for 240 days from 1.6.2008 to 3.2.2011 continuously. He has been thrown out from the job without any rhyme or reason. As such issue no. 1 is decided in favour of the claimant and against the respondent.”

8. On the basis of the aforesaid findings, the Tribunal below passed the impugned award directing reinstatement of respondent-workman with continuity of service and 50% back wages from the date of termination till reinstatement.

9. In the aforementioned circumstances, petitioner-Department has filed the instant writ petition before this Court.

10. While issuing notice of motion, the operation of impugned award was stayed on 13.02.2014.

11. Learned State counsel appearing for petitioner-Department submitted that the Jalgarh of village Kail, District Yamuna Nagar was taken over by petitioner-Department, vide Notification dated 17.03.2010 and prior to that, the said Jalgarh was being run by Gram Panchayat of village Kail and there was no concern of petitioner-Department in engaging anybody for running the same. It is submitted that respondent-workman was neither engaged by petitioner-Department nor worked as Pump Operator with petitioner-Department, and, therefore, there was no question of his termination.

Learned State counsel while referring to the submissions made in the writ petition submits that respondent-workman had been engaged by Sarpanch of Gram Panchayat, Kail at the Jalgarh on purely temporary basis for a particular work for a specified period and his services were terminated by Gram Panchayat and, therefore, respondent-workman has no right to make any claim against petitioner-Department. It is submitted that when the petitioner-Department had taken over the Jalgarh, at that time no person was working there. It is further submitted that even in the claim statement, there was no averment by respondent-workman as to who had engaged him. It is submitted that since petitioner-Department had taken over the Jalgarh, vide Notification dated 17.03.2010, therefore, there was no question of engaging respondent-workman on 01.06.2008, as claimed by him in claim statement. It is next submitted that in order to substantiate its claim, respondent-workman had not led any documentary proof except the demand notice, claim statement and affidavit (s). Accordingly, it is submitted that

respondent-workman had failed to discharge the onus placed upon him to prove his pleaded case. It is submitted that since the engagement of respondent-workman was not made by following the due procedure of law, accordingly, the claim statement filed by respondent-workman is liable to be dismissed. Reference is made to judgment of Hon'ble the Supreme Court in the case of Secretary, State of Karnataka and other Versus Uma Devi, 2006(4) SCC 1. Accordingly, it is prayed that the impugned award be set aside.

12. Per contra, learned counsel appearing for respondent-workman has opposed the prayer of learned State counsel appearing for petitioner-Department and submitted that the Tribunal below has passed a well reasoned and justified award in the peculiar facts and circumstances of the case. It is submitted that the engagement of respondent No. 2 at the Jalgarh of village Kail by Gram Panchayat is not disputed and since the said Jalgarh was under the supervision of petitioner-Department, accordingly, there existed relationship of employer and employee between the petitioner-Department and respondent-workman. Therefore, it is submitted that no interference is required to be made in the impugned award. Accordingly, prayer for dismissal of the instant writ petition has been made.

13. I have heard learned counsel for respective parties and have perused the paperbook with their able assistance.

14. After going through the impugned award, it is observed that the Tribunal below after referring to the submissions made by Authorized Representative of respondent-workman and making reference to certain

judgments, has concluded that since the tubewell connection and electric connection are in the name of petitioner-Department, therefore, there existed relationship of employer and employee between petitioner-Department and respondent-workman. Further finding has been recorded that respondent-workman had worked for 240 days from 01.06.2008 to 03.02.2011 continuously and he had been thrown out from the job without any rhyme or reason. It is observed from the impugned Award that there is no reference to any document/evidence/material, on the basis of which the aforesaid finding has been returned by the Tribunal below and it is not forthcoming as to what has weighed in the mind of the Tribunal below to return the said finding. In my considered view, the finding has to be based upon some material/evidence on record and in the instant case, no reference has been made to any such material.

The Tribunal below has returned the finding regarding relationship of employer and employee between the parties only on the basis of electric connection and tubewell connection, which are in the name of petitioner-Department. In my considered view, in the absence of any material to prima facie show at least engagement of respondent-workman by petitioner-Department, no finding could have been returned regarding existence of relationship of employer and employee between the parties.

Furthermore, the Tribunal below has returned the finding that respondent-workman worked for 240 days from 01.06.2008 to 03.02.2011 continuously. However, in my considered view, the said finding is not in consonance with the provisions of Section 25-F of 1947 Act read with

Section 25-B of 1947 Act. In case, respondent-workman is claiming benefit of Section 25-F of 1947 Act then he has to prove that he had worked for 240 days in 12 months preceding the date of his alleged termination, which is apparently missing in this case.

15. Considering the totality of circumstances, I am of the considered view that the impugned award dated 11.09.2013 (Annexure P-7) lacks reasoning and is a non-speaking award, accordingly, the same is unsustainable in the eyes of law. Consequently, the instant writ petition is partly allowed and the matter is remanded to the Tribunal below for deciding the reference afresh in accordance with law by passing a well reasoned award on the basis of material already available on record, preferably within a period of one year from today.

16. All pending application(s), if any, shall stand closed.

(HARSH BUNGER)
JUDGE

04.01.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No