

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-3291-2015 (O&M)

Decided on: February 08, 2024

(arising out of the award passed by the Labour Court, Ambala, in Reference No. 05 of 2013)

Hartron Works Station and another

...Petitioner(s)

Versus

Pawan Sharma and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Presence: Mr. Namit Khurana, Advocate,
for Hartron Works Station, Yamunanagar.

Mr. H.P.S. Bhinder, Advocate,
for the Workman.

Mr. D.S. Nalwa, Advocate,
for Haryana Power General Corporation Limited, and
Deen Bandhu Chhotu Ram Thermal Power Project.

:-

SANJAY VASHISTH, J.

This petition and pending miscellaneous application(s), if any, stands disposed of, in terms of detailed observations made in the common judgment of even date, passed separately in CWP-3266-2015 (O&M), titled as “Hartron Works Station and another v. Ashwani Sharma (deceased) through LRs and others”, and 11 connected cases, including present petition.

(SANJAY VASHISTH)
JUDGE

February 08, 2024
Pkapoor

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

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Decided on: February 08, 2024

Sr. No.	Case No.	Case Title		Reference No. before Labour Court
		Petitioner(s)	Respondent(s)	
01	CWP-3266-2015 (O&M)	Hartron Works Station & another	Ashwani Sharma (deceased) through LRs & others	77 of 2013
02	CWP-3291-2015 (O&M)	Hartron Works Station & another	Pawan Sharma & others	05 of 2013
03	CWP-3293-2015	Hartron Works Station & another	Randeep Singh & others	36 of 2012
04	CWP-3886-2015 (O&M)	Hartron Works Station & another	Sunil Kumar & others	54 of 2012
05	CWP-3893-2015 (O&M)	Hartron Works Station & another	Shiv Charan & others	38 of 2012
06	CWP-3904-2015 (O&M)	Hartron Works Station & another	Amar Bahadur & others	35 of 2012
07	CWP-3965-2015 (O&M)	Hartron Works Station & another	Workman Ravinder Kumar & others	37 of 2012
08	CWP-3966-2015 (O&M)	Hartron Works Station & another	Workman Baldev Raj & others	57 of 2012
09	CWP-20872-2015	Randeep Singh	State of Haryana and others	36 of 2012
10	CWP-21400-2015 (O&M)	Amar Bahadur	State of Haryana & others	35 of 2012

11	CWP-21448-2015	Ravinder Kumar	State of Haryana & others	37 of 2012
12	CWP-26384-2016	Shiv Charan	State of Haryana & others	38 of 2012

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

ARGUED BY:

For Hartron Works Station, Yamunanagar	: Mr. Namit Khurana, Advocate	in all 12 Writ Petitions
For the Workmen and/or LR's of the Workmen	: Mr. G.C. Shahpuri, Advocate	in CWP No. 3893 of 2015 & CWP No. 26384 of 2016
	Mr. H.P.S. Bhinder, Advocate	in CWP Nos. 3266, 3291 & 3966 of 2015
	Mr. Som Nath Saini, Advocate	in CWP Nos. 3293, 3886, 3904, 3965, 20872, 21400, & 21448 of 2015
For Haryana Power General Corporation Limited, Panchkula AND Deen Bandhu Chhotu Ram Thermal Power Project, Yamunanagar	: Mr. D.S. Nalwa, Advocate	in CWP Nos. 3266, 3291, 3293, 3886, 3893, 3904, 3965 & 3966 of 2015
	Mr. Mayank Vashishth, Advocate, for Mr. Prateek Mahajan, Advocate	in CWP Nos. 21400 & 21448 of 2015 and CWP No. 26384 of 2016
	Mr. R.S. Longia, Advocate	in CWP No. 20872 of 2015

SANJAY VASHISTH, J.

1. This common judgement shall dispose of aforementioned 12 writ petitions because common questions of law and similar facts are

involved, in this bunch of petitions. Out of total 12 petitions detailed above, petitions mentioned at Sr. Nos. 01 to 08 have been filed by the Hartron Works Station, Yamunanagar, and petitions mentioned at Sr. Nos. 09 to 12 have been filed by the workmen.

2. These petitions have been instituted challenging the award(s) dated 28.04.2014, passed by the Presiding Officer, Labour Court, Ambala (here-after referred to as the 'Labour Court'), in respective references (as depicted in the above table), under Section 10(1)(c) of the Industrial Disputes Act, 1947 (for short, 'the Act'), whereby references have been answered in favour of the workmen, holding them to be entitled for reinstatement with Hartron Works Station, Yamunanagar, with continuity of service and 50% back wages, which shall be paid by Hartron Works Station, Yamunanagar.

3. Other than this, in 08 writ petitions, which have been preferred by the Hartron Works Station, Yamunanagar, order(s) dated 15.01.2015, passed by the Labour Court in respective cases, have also been subject matter of challenge, whereby application(s) under Order IX Rule 13 of the Civil Procedure Code, filed by the Hartron Works Station, Yamunanagar, with the prayer for setting aside *ex parte* proceedings and *ex parte* award(s) dated 28.04.2014, have been dismissed.

4. At the outset, it is apt to notice that in all the references, award(s) dated 28.04.2014, have been passed after proceeding against *ex parte* the Hartron Works Station, Yamunanagar. The findings recorded by the Labour Court are based upon one-sided evidence. In other words,

being proceeded against *ex parte*, no evidence could be brought on record by the petitioner (Hartron Works Station, Yamunanagar).

5. For the reason that the facts of these petitions are identical, to avoid repetition and for the sake of brevity, the facts as pleaded in CWP No. 3266 of 2015, are being referred in subsequent paras of this judgement, by treating the same as lead case. Further, for the purpose of convenience the contesting parties would be referred as under (as per Memo of Parties in CWP No. 3266 of 2015):-

Hartron Works Station, Yamunanagar	Petitioner
Ashwani Sharma (deceased) through LRs	Respondent No. 1 - workman
Chairman, Haryana Power General Corporation Limited, Panchkula	Respondent No. 2
Chief Engineer, Deen Bandhu Chhotu Ram Thermal Power Project, Yamunanagar	Respondent No. 3
Superintending Engineer (M&T), Deen Bandhu Chhotu Ram Thermal Power Project, Yamunanagar	Respondent No. 4

6. As per pleaded case of respondent No. 1 – workman, he was appointed by respondent Nos. 2 to 4 on 23.09.2008. It is further pleaded that his services were procured through the petitioner, and he was paid salary as per D.C. rates. After continuously working for more than three years, his services were terminated orally on 01.08.2011. No notice of termination or retrenchment compensation was ever given. Thus, pleading it violation of the provisions of Section 25-F, respondent No. 1 – workman prayed for reinstatement in service with continuity with full

back wages.

7. Respondent Nos. 2 to 4 pleaded that as per the terms and conditions of the work-order entered into between them and the petitioner, respondent No. 1 – workman was appointed purely on contract basis. Further pleaded that all the liabilities of any kind concerning the engagement of respondent No. 1 – workman, shall be responsibility of the petitioner. Wages of respondent No. 1 – workman were also paid by the petitioner. Hence, respondent Nos. 2 to 4 prayed for dismissal of the reference under Section 10(1)(c) of the Act.

8. From perusal of application dated 20.08.2014 (Annexure P-19) and order dated 15.01.2015 (Annexure P-22), passed by the Labour Court, would reveal that the petitioner – Hartron Works Station was proceeded against *ex parte* by the Labour Court on 10.07.2013. Thus, neither any written statement was filed nor any evidence was led on behalf of the petitioner.

9. After filing of replication by respondent No. 1 – workman, following issues were framed by the Labour Court, vide order dated 20.11.2013:

- “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 service? OPW
2. Whether there is no relationship of workman and management between the workman and respondents no. 1 to 3? OPM
3. Whether the workman has no locus-standi to file the

present claim statement? OPM

4. *Whether the workman has not come clean hands and concealed the material facts from the court? OPM*
5. *Whether the claim statement is not maintainable in the present form?*
6. *Relief.”*

10. For proving Issue No. 1, respondent No. 1 – workman relied upon the fact that he worked as a Peon w.e.f. 23.09.2008 to August, 2011 and was selected by respondent Nos. 2 to 4 through the petitioner. By pleading that he has worked for more than 240 days, he prayed for reinstatement in service.

11. On the other hand, it was submitted on behalf of respondent Nos. 2 to 4 that respondent No. 1 – workman though worked for three years, but he used to get salary from the petitioner, which was an outsourcing agency. In fact, impliedly respondent No. 1 – workman was working under the contractor and said fact has been substantiated in the statement of MW-1 Naresh Kamboj, Executive Engineer, working with respondent Nos. 2 to 4. Said witness also relied upon the terms and conditions of the work-order issued by respondent No. 2 to the petitioner.

12. Only on the basis of the said piece of averments, and without discussing much, a short award dated 28.04.2014 (Annexure P-18) has been passed by the Labour Court, by holding termination of the service of respondent No. 1 – workman to be bad. Respondent No. 1 – workman has been ordered to be reinstated with the petitioner, with continuity of service and 50% back wages, to be paid by the petitioner.

13. Consequent upon passing of *ex parte* award dated 28.04.2014, the petitioner filed an application dated 20.08.2014 (Annexure P-19), under Order IX Rule 13 of the Civil Procedure Code, before the Labour Court, for setting of *ex parte* proceedings dated 10.07.2013, as also *ex parte* award dated 28.04.2014.

14. After filing of respective replies by respondent No. 1 – workman, as also by respondent Nos. 2 to 4, said application (Annexure P-19) was dismissed by the Labour Court, vide order dated 15.01.2015 (Annexure P-22), by observing in paragraph Nos. 9, 10 and 11, as under:-

“9. Perusal of the file shows that after filing of the demand notice before the Labour-cum-Conciliation Officer, reference was sent to the Labour Court vide endorsement dated 2.4.2013. The management and the workman were directed to appear before the Labour Court on 20.5.2013. The order dated 20.5.2013 shows that the workman had appeared but none had appeared for the management. Notice was ordered to be issued to the management through registered AD for 10.7.2013. On 10.7.2013 registered AD sent to respondent no. 4 Director Hartron Works Station, Yamuna Nagar was received back duly served but none had appeared on behalf of the respondent no. 4 He was ordered to be proceeded against exparte and the case was adjourned for filing of the claim statement. After claim statement, written statement on behalf of respondents no. 1 to 3, filing of replication, framing of issues, case was adjourned for evidence of the workman. It was closed on 4.3.2014. The evidence of the management i.e. respondents no. 1 to 3 was closed on 22.4.2014. After hearing arguments the Reference was ordered to be disposed off on 28.4.2014. Award was published on 3.6.2014. It is only on 20.8.2014 that the application has been moved by the applicant respondent no. 4 for setting-aside the exparte proceedings dated 10.7.2013 and exparte Award dated 28.4.2014. The plea taken by the applicant respondent no. 4 is that no process server or postman approached the applicant for the service of the summons at his official or residential address. Till 21.7.2014 the applicant respondent no. 4 was never aware about pendency of the present case. He came to know about the

impugned Award when during the execution proceedings before the Labour Officer, Yamuna Nagar, copy of Award was supplied to him.

10. *Perusal of record shows that the registered AD was received by the Director Hartron Works Station, Yamuna Nagar. At the place of addressee, the stamp of Hartron Works Station, Yamuna Nagar has been affixed bearing signatures of some officer/official. The date has been mentioned as 31.5.2013. When the registered AD was received by the applicant respondent no. 4, it does not lie in his mouth to say that he was not aware about the pendency of the case till 21.7.2014 when execution proceedings were being carried on in Labour cum-Conciliation Office, Yamuna Nagar. Applicant respondent no. 4 casually allowed the proceedings to be completed. Even Award was published on 3.6.2014. When it was realised that the Award has been passed against the respondent no. 4, only in these circumstances application for setting-aside ex parte Award has been made by the applicant respondent no. 4 and that too after four months of the passing of the Award and more than two months after publication of the Award. There is no justification to set aside the ex parte 10.7.2013 and ex parte Award dated 28.4.2014.*

11. *Finding no merit in the application, application dated 20.8.2014 for setting-aside proceedings dated 10.7.2013 and ex parte Award dated 28.4.2014 is ordered to be dismissed.”*

Similar orders dated 15.01.2015, have been passed by the Labour Court in all the writ petitions.

15. Mr. Namit Khurana, learned counsel for the petitioner submits that in the demand notice (Annexure P-1), nothing has been claimed by respondent No. 1 – workman against the petitioner, wherein it is clearly stated by the workman that he was appointed by respondent Nos. 2 to 4. Still vide the impugned *ex parte* award, finding has been recorded by the Labour Court against the petitioner, holding respondent No. 1 – workman to be its employee, which amounts to miscarriage of

justice because correct facts have not be brought before the Labour Court. Thus, he prays for setting aside of the impugned award dated 28.04.2014.

16. Mr. Namit Khurana also submits that as a matter of fact, notices of service were never communicated directly to the concerned authorities of the petitioner, and the same were allegedly served at Jagadhari, but not at Yamunanagar. Thus, submits that the impugned order dated 15.01.2015 (Annexure P-22), whereby prayer for setting aside *ex parte* proceedings and *ex parte* award, has been dismissed, also deserved to be set aside because it results into miscarriage of justice, as also not sustainable in the eyes of law.

17. In the last, Mr. Namit Khurana, learned counsel for the petitioner argued that by setting aside the *ex parte* proceedings & the impugned *ex parte* award, matter is required to be remanded back to the Labour Court for decision afresh, by affording sufficient opportunity to the petitioner, because, thereafter, correct facts and evidence, which goes to the root of the controversy involved in these cases, will be brought on record by the petitioner, for just decision on the issues framed by the Labour Court. And, for the said purpose, the petitioner is ready to pay reasonable costs to the LR of respondent No. 1 – workman in CWP-3266-2015, as also to other workman in respective cases.

18. On the other hand, learned counsel representing respondent Nos. 2 to 4, submits that in paragraph No. 2 of the demand notice (Annexure P-1), it has been specifically mentioned that services of

respondent No. 1 – workman were procured through the petitioner. Reference has also been made to the work-order dated 25.07.2011 (Annexure P-13), which was also adduced in evidence as Ex. M-1 before the Labour Court. Perusal of said document shows that Executive Engineer/LRE-II, DCRTTP, HPGCL, Yamuna Nagar, placed a work order with the petitioner, for supply of 07 peons on outsourcing basis, at Unit-II, DCRTTP, Yamuna Nagar, for a period of 03 months, i.e. from 18.07.2011 to 17.10.2011, on monthly wages of Rs.6425/-. For the said work-order, the petitioner was to get Service Charges @ 8% on basic.

19. Learned counsel also refers to the terms and conditions, mentioned at Sr. Nos. 3, 4, 5, 16 and 18 of the work order dated 25.-7.2011, which are reproduced as under:-

- “3.

The Firm shall ensure that all Safety & Labour Laws, norms, factory act are followed and ensured to submit compliance of the Labour Laws along with the bill.
4.

The supplied persons are purely on contract basis and shall not claim any right for the job in HPGCL and any liabilities of any kind shall be your responsibility.
5.

The contractor will obtain an Affidavit/Undertaking from the individual Labour that they will not claim service in HPGCL.
- 6 to 15

xxx

xxx

xxx

xxx
16.

Payment to all the labour deployed for the work is to be made by Cheque/Bank Demand Draft/Pay Order.
- 17

xxx

xxx

xxx

xxx
18.

M/s Hartron Workstation Yamuna Nagar will deduct EPF, ESI and labour fund as employee share from the monthly bill of peon provided at DCRTTP and the same will be deposited to the concerned authorities

along with employee share. M/s Hartron Workstation Yamuna Nagar submit a copy of challan of deposited EPF, ESI and labour fund to the concerned deptt.”

20. Learned counsel representing respondent Nos. 2 to 4, also relied upon the stand taken in the reply filed before the Labour Court, wherein a specific stand has been taken that wages of the workmen were paid by the petitioner.

In support of submissions addressed by learned counsel for respondents No. 2 to 4, reliance has been placed on a judgment of Hon’ble Apex Court in the case of **Kirloskar Brothers Limited v. Ramcharan and others, (2023) 1 SCC 463 : Law Finder Doc Id # 2080168.**

21. Learned counsel representing the workmen in these writ petitions, vehemently opposed the contentions raised by learned counsel for the petitioner by submitting that despite adequate opportunity, the petitioner intentionally opted not to appear before the Labour Court during the pendency of the references. Only during the pendency of the execution proceedings and to evade its liability to pay back wages, the petitioner very cleverly made up the story of non-service of notices, and at this belated stage making an attempt for re-trial of the matter afresh.

22. So far as challenge to the award(s) passed by the Labour Court is concerned, learned counsel submits that once the Labour Court has come to a positive conclusion that termination of the services of the workmen is bad, they ought to have been awarded full back wages, instead of restricting the same to 50% only.

23. In rebuttal, Mr. Namit Khurana, learned counsel for the petitioner, submits that if paragraph Nos. 1, 2 and 3 of the demand notice (Annexure P-1) are read in conjunction, it would be clear that respondent No. 1 – workman specifically pleaded that he was selected after conducting of complete selection process and was duly interviewed by respondent Nos. 2 to 4. Therefore, the complete control of the services of the workmen was only of respondent Nos. 2 to 4. The said fact has further been reiterated by the workmen in paragraph Nos. 5 and 6 of the demand notice, which are reproduced hereunder:-

- “5. That you addressees have deducted the provident fund and ESI etc. from my salary, which clearly established that I was duly appointed by you addressees.
6. That you addressees procured my services through the Hartron Work Station to get the employee as peon and for those services you addressees used to pay 8% Commission to the Hartron, which comes under the unfair labour practice.”

24. In support of the submissions, Mr. Namit Khurana further submits that after examining the status of relation, it is necessary to look into; that actually under whose control the workmen were working. While submitting so, learned counsel has placed reliance on the judgment of Hon’ble Apex Court in the case of **Hussainbhai v. The Alath Factory Tezhilali Union and others**, AIR 1978 (SC) 1410 : Law Finder Doc Id # 105297, where in paragraph No. 5, their Lordships’ of Hon’ble Apex Court have observed as under:-

- “5. The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are

for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like, may be resorted to when labour legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43-A of the Constitution. The court must be astute to avoid mischief and achieve the purpose of the law and not be misled by the maya of legal appearances.”

25. I have heard learned counsel for the parties at length and with their able assistance also gone through complete pleadings raised in this bunch of writ petitions, including the demand notice(s) filed by the workmen; impugned award(s) dated 28.04.2014, and impugned order(s) dated 15.01.2015, passed by the Labour Court; as also the judgements cited by learned counsel for the parties.

26. Judgement of Hon'ble Apex Court in the case of **Kirloskar Brothers Limited (supra)**, relied by respondent Nos. 2 to 4 is entirely on different facts and would not be of much help for the purpose of deciding the controversy involved in these writ petitions, for one simple reason that probably in further course nothing would be decided on merits of the cases in hand because complete facts and the documents pertaining to the services of the workmen, hired by respondent Nos. 2 to 4 through the petitioner, have not seen light of the day, on record of all the cases. Until

the said gap is filled up, nothing can be adjudicated upon, as to who is real employer of the workmen. Primarily, merely on the technical aspect that the petitioner was proceeded against *ex parte*, is not going to help out the needy workmen, for redressal of their grievance, expressed by them through their demand notices.

27. In the said backdrop of the circumstances, I do agree with the observations made by their Lordships' of Hon'ble Apex Court in the case of **Hussainbhai (supra)**, which goes to the root of the present controversy at hands. If the ratio of the reasons explained and the findings recorded in the judgment of **Hussainbhai (supra)**, are made applicable to the facts and circumstances of this bunch of 12 cases, may be situation is found otherwise, and such a possibility cannot be ruled out.

28. In totality of the circumstances, I deem it appropriate to get the issues examined afresh by directing the Labour Court to retry the issues by giving adequate and effective opportunities again to the parties, for the purpose of leading of evidence of their choice.

29. Resultantly, the impugned award(s) dated 28.04.2014 and the impugned order dated 15.01.2015, passed by the Labour Court in respective references under Section 10(1)(c) of the Act, are hereby set aside. All the cases are remanded back to the Labour Court for re-trial/decision afresh. Respective parties through their counsel or authorized representative(s) are directed to appear before the Labour Court, Ambala, on 26.02.2024 or any other date prior to that, as may be convenient for the parties/Labour Court. Thereupon, the Labour Court

would proceed for trial again by affording two adequate and effective opportunities to each of the parties, to lead its respective evidence.

However, it would be subject to the payment of cost amount of Rs.20,000/- in each reference, to be paid by the Hartron Works Station, Yamunanagar, in the shape of Bank Demand Draft, to the workmen in their name, immediately at the time of re-start of the proceedings before the Labour Court.

Another amount of Rs.50,000/- would also be deposited with the Member Secretary, District Legal Services Authority, Yamunanagar at Jagadhri, by the Hartron Works Station, Yamunanagar, and receipt thereof would be submitted before the restart of proceedings before the Labour Court, Ambala.

30. The Labour Court would decide all the references finally, within a period of six months from the date of starting of proceedings.

31. All the 12 writ petitions and pending miscellaneous applications therein, are **disposed of** accordingly.

For compliance, Registry is directed to send a copy of this judgement to the Presiding Officer, Labour Court, Ambala, forthwith.

(SANJAY VASHISTH)
JUDGE

February 08, 2024
Pkapoor

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