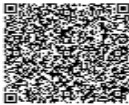


CWP-23012-2018 and
connected cases.

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2024:PHHC:137389



252 (18 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

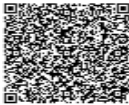
CWP-23012-2018
Date of Decision: 21.10.2024

HARENDER SINGH PETITIONER

V/S

THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT-III, FARIDABAD AND ORS
.... RESPONDENTS

Sr. No.	Case No.	Parties Name
2.	CWP-22319-2018	KHEM CHAND V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-III, FARIDABAD AND ORS
3.	CWP-22356-2018	HARENDER BHATI V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT-III, FARIDABAD AND ORS
4.	CWP-22357-2018	KARAM CHAND V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-III, FARIDABAD AND ORS
5.	CWP-22359-2018	VIJAY KUMAR V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-III, FARIDABAD AND ORS
6.	CWP-22361-2018	ANUJ KUMAR SHUKLA V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT-III, FARIDABAD AND ORS
7.	CWP-22362-2018	BHAGAT SINGH V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-III, FARIDABAD AND ORS
8.	CWP-22363-2018	HUKAM SINGH V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-III, FARIDABAD AND ORS
9.	CWP-22365-2018	KARAMBIR V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-III, FARIDABAD AND ORS



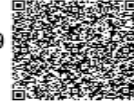
10.	CWP-22366-2018	SURESH KUMAR V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-III, FARIDABAD AND ORS
11.	CWP-22367-2018	DHARMENDER SINGH V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT-III, FARIDABAD AND ORS
12.	CWP-22368-2018	RAJ KUMAR V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-III, FARIDABAD AND ORS
13.	CWP-22369-2018	ROSHAN DAS V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-III, FARIDABAD AND ORS
14.	CWP-22370-2018	MANOJ SINGH V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-III, FARIDABAD AND ORS
15.	CWP-22371-2018	DIGAMBER SHARMA V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT-III, FARIDABAD AND ORS
16.	CWP-22372-2018	SUDESH KUMAR V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-III, FARIDABAD AND ORS
17.	CWP-22373-2018	DAYA RAM V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-III, FARIDABAD AND ORS
18.	CWP-23010-2018	RAM NARAYAN V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-III, FARIDABAD AND ORS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Ms. Abha Rathore, Advocate
for the petitioner.

Mr. Mohak Bhandana, Advocate
for respondent No.2.

Mr. Satyaveer Singh, Advocate
for respondent No.3.



JAGMOHAN BANSAL, J. (Oral)

1. By this common order, a bunch of 18 petitions is hereby disposed of since issues involved and prayer sought in the captioned petitions are common. With the consent of parties and for the sake of brevity, facts are borrowed from CWP-23012 of 2018.

2. The petitioner through instant petition under Articles 226/227 of the Constitution is seeking setting aside of Award dated 01.06.2018 (Annexure P-6) whereby Labour Court has answered the reference against him.

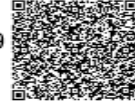
3. The petitioner from March' 2008 to February' 2013 worked in the factory premises of respondent No.2-M/s Showa India Pvt. Ltd., Faridabad. The workman claims that he was terminated whereas contractor-respondent No.3 claims that he had abandoned his job. The workman approached Labour Authorities and matter came to be referred to Labour Court. The Government made reference to Labour Court to answer the following question:

“Whether services of workman Harender Singh were terminated illegally? If so, what relief he is entitled to?”

4. The parties appeared before Labour Court and made their submissions. The Labour Court vide order dated 31.01.2017 framed following issues:

“1. Whether the workman is the employee of M/s Showa India Pvt. Limited, Faridabad or of the contractor? OPW

2. If he is employee of M/s Showa India Pvt.



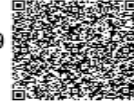
Limited, Faridabad, whether the termination of his services is illegal? If so, to what relief he is entitled to ? OPW

3. *Whether the reference is not maintainable? OPM*

4. *Relief.”*

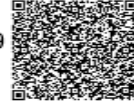
5. The Labour Court by Award dated 01.06.2018 concluded that workman was not employee of M/s Showa India Pvt. Ltd., Faridabad whereas he was employee of contractor namely M/s Leo Enterprises. Thus, petitioner cannot claim protection granted by Industrial Disputes Act, 1947 (for short ‘ID Act’) against M/s Showa India Pvt. Ltd., Faridabad. The relevant extracts of findings recorded by Labour Court are reproduced as below:

“22. Now coming to the facts of the present case, it may be noticed that no appointment letter has been produced by the workman in order to show that he was in the direct employment of respondent No. 1 company. On the other hand, the respondents have led overwhelming evidence to prove that salary was being paid to the claimant by the contractor and the contribution which is made from the salary of the workman to the ESI and PF department was regularly being deposited by the contractor only. At this stage, the learned AR appearing on behalf of the respondents Sh. J.S. Bhadana has also drawn attention of this Court to the copies of the ESI returns Ex. MW4/2 to stress the point that ESI contributions of the claimant during his employment with respondent No. 2- contractor for the period from 1.4.2009 to 30.4.2009 and again from 1.4.2010 to 5.2.2013 was regularly deposited by the contractor only. MWI Rajeev Verma had also brought attendance as well as payment of



wages register of respondent No. 1-company for the period from 2007 to December 2013 wherein the name of the workman did not exist. Similarly, he has also placed on record ESI returns for the said period as Ex. MW1/3 in order to show that the claimant had never been in the employment of respondent No. 1- company and as such the question of relationship of employee and employer between respondent No. 1-company and the claimant does not arise. Moreover, Sonveer Singh MW4, Supervisor of respondent No. 2-establishment-M/s. Leo Enterprises, has also stated categorically in his affidavit Ex. MW4/A that the claimant was working with them as Helper and thereafter he has abandoned the job of his own. This witness has also placed on record copies of the ESI returns of his establishment for the period from October, 2007 to March, 2013 Ex. MW4/2 running into pages (1-378) in order to show that they have been depositing the ESI contributions of the claimant during his employment with them in between 1.4.2009 to 30.4.2009 and from 1.4.2010 to 5.2.2013. The above discussed evidence thus leaves no doubt that the workman in fact was on the rolls of respondent No. 2 contractor who had deputed him to work with respondent No. 1 company and as such there was no relationship of employee and employer between the claimant and respondent No. 1.

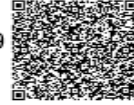
24. However, in the present case, MW1 has clearly stated in his affidavit that respondent No. 1 company has obtained registration certificate from the Government of Haryana under CLRA Act and it has been engaging contract employees through different contractors vide agreement Ex. MW1/2 running into pages 1 to 16.



25. Even for the sake of arguments, it is assumed that the Principal Employer respondent No. No. 1 company had not obtained registration u/s 7 or the Contractor respondent No. 2 did not get licence u/s 12 of the CLRA Act, as being projected on behalf of the workman, then also, as held by the Hon'ble Supreme Court in Dena Nath's case (supra), that non-obtaining of the registration by the Principal Employer and licence by the Contractor under CLRA Act does not ipso facto entitle the workman to claim the status of the direct employee of the Principal Employer.

26. It is also the submission of the learned AR appearing on behalf of the workman that respondent No. 1 company was not having any valid agreement with respondent No. 2 for supply of contract labour. These submissions being beyond pleadings cannot be looked into. Otherwise also, it is for the workman to aver and prove that respondent No. 1 was not having any valid agreement with respondent No. 2 or that the agreement Ex. MW1/2 is void or uncertain, which the workman has failed to do so.

27. Another contention raised on behalf of the workman is that the tractor respondent No. 2 could not have deployed the workman as an Operator in the establishment of respondent No. 1 company and the fact that the workman has worked there in such capacity would, in itself, establish that the workman was the direct employee of respondent No. 1 company. These contentions are again devoid of any merit and hence cannot be accepted. It may be noticed here that as per the Schedule of Haryana Contract Labour (Regulation & Abolition) Rules, 1975 there is no bar to employ any workman through contractor to work as

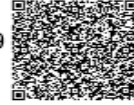


an Operator in the establishment of respondent No. 1 company.”

6. Ms. Abha Rathore, Advocate for the petitioner submits that contract between principal employer and contractor was a camouflage. It was a sham transaction just to deprive the workman from his valuable right granted by Section 25B and 25F of ID Act. The Labour Court has passed impugned award travelling beyond the reference. The Labour Court was not supposed to examine employer-employee relation. The Labour Court has wrongly shifted burden upon workman to prove relation of employer-employee. It was duty of employer to prove non-existence of employer-employee relation. The Court has wrongly relied upon judgment of *Dena Nath and others Vs. National Fertilizer Limited and others 1992 LLR Page 42 (SC)*.

Supreme Court in *B.S.N.L. Versus Bhurumal (2014) 7 SCC 177* has clearly held that employer has to prove that employee was not directly engaged but engaged through a contractor. The workman has worked during the period in question as machine operator which is core activity of respondent. The principal employer could not engage petitioner-workman for core activities. Operating machine in a manufacturing unit is a core activity. The respondent did not produce on record copy of license/registration certificate issued by Competent Authority in favour of principal employer as well as contractor.

7. Per contra, Mr. Mohak Bhandana, Advocate and Mr. Satyaveer Singh, Advocate for respondents No.2 and 3 submit that copy of license issued by Competent Authority in favour of principal employer to engage contractor was produced before Labour Court. The officials of



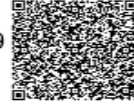
ESI and Provident Fund categorically deposed that it is contractor who is depositing EPF and ESI. Copy of contract executed between principal employer and contractor was placed on record and duly considered by Labour Court. The principal employer as well as contractor discharged their burden and proved beyond *iota* of doubt that workman was engaged through contractor. The contractor was having contract with principal employer up to March' 2013, thus, contractor offered alternative job to workman, however, he refused to work because he was gainfully employed and this fact was duly disclosed before Conciliation Officer and raised in written statement filed before Labour Court.

8. I have heard arguments of learned counsel for both sides and perused the record with their able assistance.

9. From the pleadings and arguments of Ms. Abha Rathore, it comes out that petitioner is assailing impugned order on following counts:

- (i) The Labour Court has travelled beyond the reference made by the State Government;
- (ii) The Management was duty bound to prove absence of employer-employee relation;
- (iii) Burden to deny employer-employee relation was upon Management and not workman;
- (iv) The Management has failed to prove existence of contract and compliance of provisions of The Contract Labour (Regulation and Abolition) Act, 1972 (for short '1972 Act').

10. The petitioner is claiming that Labour Court framed issue

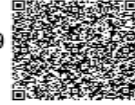


No.1 beyond the reference made by State Government. The Labour Court was not supposed to examine whether petitioner was employee of M/s Showa India Pvt. Ltd., Faridabad or of the contractor.

There is no substance in the contention of the petitioner. The Labour Court was duty bound to examine whether petitioner was employee of M/s Showa India Pvt. Ltd., Faridabad (principal employer) or M/s Leo Enterprises (contractor). The petitioner himself impleaded both the entities as respondents No.1 and 2. In the absence of determination of question whether petitioner was workman of M/s Showa India Pvt. Ltd., Faridabad or M/s Leo Enterprises, it was impossible to determine whether he was legally or illegally terminated. The petitioner by impleading principal employer as well as contractor compelled the Labour Court to decide whether he was workman of respondent No.1 or respondent No.2. It is further apt to notice that issues were framed vide order dated 31.01.2017 and impugned order was passed on 01.06.2018. The petitioner at the time of framing of issues did not object. They did not avail remedy as permissible by law. She, at this stage, cannot be heard to say that issue No.1 was framed beyond the reference.

The Labour Court cannot be expected to act as per need of the workman. The Labour Court was duty bound to examine all the issues connected with the main issue. This Court is of the considered opinion that Labour Court has not travelled beyond the reference. It did not determine rights or liabilities beyond the reference. The question of termination could not be adjudicated without determining status of the workman.

11. The petitioner is not disputing the legal position that a

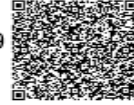


workman engaged through contractor cannot claim reinstatement against principal employer unless and until contract between principal employer and contractor is a sham transaction or camouflage. The petitioner is claiming that he was workman of principal employer, thus, he was entitled to compensation or reinstatement in terms of Section 25F of ID Act against the principal employer. He is not making claim against contractor. The workman was employed for core manufacturing activity of respondent, thus, there was violation of license granted to respondent No.2-principal employer.

12. The workman before Labour Court, Labour Authorities as well as this Court has impleaded M/s Leo Enterprises apart from M/s Showa India Pvt. Ltd., Faridabad. M/s Showa India Pvt. Ltd., Faridabad is engaged in the business of manufacturing automobile parts. The workman by impleading M/s Leo Enterprises has conceded existence of contract between principal employers & contractor. Thus, it is difficult to conclude that workman was unaware of the fact that he was engaged by contractor.

13. The petitioner is claiming that principal employer was supposed to establish existence of contract executed with contractor and existence of contractor. The workman had proved that he was working in the factory premises of principal employer, thus, burden shifted upon principal employer to prove that there was a valid contract between principal employer and contractor and contractor was engaged after complying with provisions of 1972 Act.

The contractor as well as principal employer appeared before Labour Court. Officials of ESI and EPF appeared before Labour Court

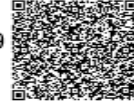


and deposed that contractor is depositing EPF and ESI of the workman.

This Court to allay apprehension of the petitioner that contract between principal employer and contractor was a sham transaction and was a camouflage asked the contractor to produce its income tax and service tax returns. The contractor during the course of hearing produced tax returns and invoices. The same are taken on record. The Registry is directed to tag the same at an appropriate place.

14. From the perusal of income tax and service tax returns as well as invoices issued by the contractor, it can be easily culled out that contractor was not only supplying manpower to M/s Showa India Pvt. Ltd., Faridabad-respondent No.2 but also to others business entities. Contractor was paying service tax on the consideration received from principal employer. It was depositing EPF as well as ESI. It was filing income tax return wherein consideration received from different service recipients was disclosed. Similarly, the principal employer was engaging more than one contractor. These facts collectively satisfy this Court to conclude that contractor was not a dummy entity and it was not created by principal employer. The averments of workman are bald allegations and have no leg to stand.

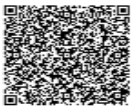
15. The workman has further assiduously pleaded that burden was upon respondent No.2 to prove existence of contract with manpower supplier bring on record license from Competent Authority to engage workers through manpower agency, however, they have failed to discharge their burden. From the findings of Labour Court, it is evident that contract executed between respondents No.2 and 3 i.e. principal employer and contractor was duly placed on record. The contract was



valid during the entire service tenure of the workman. License(s) obtained from Competent Authority were duly placed on record. The officials of EPF and ESI appeared before Labour Court and deposed that contribution of workman towards EPF and ESI has been made by the contractor. The workman is unable to controvert the fact that contribution towards ESI and EPF was made by the contractor.

16. In this backdrop, it cannot be concluded that findings of Labour Court are contrary to record or perverse. The Labour Court has duly considered oral and documentary evidence to conclude that workman was engaged through contractor and he was not engaged by principal employer i.e. respondent No.2.

17. The petitioner has alleged that he was assigned duty of machine operator which is a core manufacturing activity and as per license placed on record by principal employer, no worker engaged through contractor could be employed for core manufacturing activities. The Labour Court has adverted to this argument of the workman. The Court has held that there is no bar to employ any worker through contractor to work as an operator in the establishment. The respondents are pleading that workman was actually performing duty of helper and he was not operating machine. These are disputed questions of fact and ordinarily cannot be adjudicated in writ jurisdiction. In any case, the workman without demur worked from 2008 to 2013 and cannot be heard to say that he was wrongly appointed contrary to license as machine operator. On one hand, petitioner is disputing existence of license to engage contractor and on the other relying upon license produced by Management, thus, stand of petitioner is self-contradictory.



18. The respondent No.3-contractor in its written statement filed before Labour Court categorically pleaded that their contract with principal employer was till March’ 2013 and they offered alternative job to petitioner, however, he refused to join because he was already gainfully employed. The petitioner before this Court has primarily contended that he was actually worker of principal employer. The contractor, as pleaded, offered alternative job with another company before Conciliation Officer, however, workman refused to accept. Had there been any substance in the allegation of workman, he must have pleaded before Labour Court at the first instance that he is willing to work at alternative workplace offered by contractor. The stand of contractor seems to be convincing because it was providing manpower to different companies. It was not providing manpower to only respondent No.2- M/s Showa India Pvt. Ltd., Faridabad.

19. From the aforesaid discussion and findings, this Court finds no substance in the argument of petitioner. The instant petitions deserve to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

21.10.2024
Ali

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>