

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

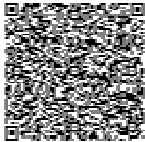
224 (11 cases)

CWP-6108-2014
Date of Decision : 18.11.2024

NARENDER
V/S
.... PETITIONER

PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, HISAR & ANR
.... RESPONDENTS

Sr. No.	Case No.	Parties Name
2.	CWP-6349-2014	SUNDER LAL V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNA-CUM-LABOUR COURT, HISAR AND OTHERS
3.	CWP-15085-2014	VED PRAKASH SHARMA V/S BHIWANI TEXTILE MILLS AND OTHERS
4.	CWP-20985-2014	PARMA NAND V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, HISAR AND OTHERS
5.	CWP-20995-2014	AJAY KUMAR V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, HISAR AND OTHERS
6.	CWP-21673-2014	BIJENDER V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR AND OTHERS
7.	CWP-21891-2014	BISHNU SINGH V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, HISAR AND OTHERS
8.	CWP-23040-2014	SUKHBIR V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR



		COURT, HISAR AND OTHERS
9.	CWP-23057-2014	SANT KUMAR V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR AND OTHERS
10.	CWP-22939-2014	PARDEEP V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR AND OTHERS
11.	CWP-23024-2014	SANDEEP V/S PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR AND OTHERS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. S.S. Dalal, Advocate
for the petitioner in CWP-6108 & 6349-2014).

Mr.Rajiv Sharma (Hisarwale), Advocate and
Ms. Indu Bala Sharma, Advocate
for the petitioner in CWP Nos.15085, 20985, 20995, 21673,
21891, 21916, 23040, 23057, 22939 & 23024 of 2014.

Mr. Ashwani Talwar, Advocate and
Mr. Deepak Goyat, Advocate and
Mr. Ishan Vashisht, Advocate
for respondent No.1 in CWP-15085-2014 and
for respondent No.2 in CWP Nos. 6108, 6349, 20985,
20995, 21673, 21891, 23040, 23057, 22939 & 23024 of
2014.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, the above-noted petitions are hereby adjudicated as issues involved and prayer sought in all the petitions are common. For the sake of convenience and with the consent of parties, the facts are borrowed from CWP-6108-2014.



2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of Award dated 20.12.2013 (Annexure P-4) whereby Labour Court has answered the reference against him.

3. The petitioner from 2004 to 2011 worked with respondent No.2-Management as Paledar (Bandhani). His job was to load and unload material manufactured by respondent No. 2. He was engaged through a contractor. The respondent No. 2 has engaged multiple contractors to supply manpower. The contractors are registered under Contract Labour (Regulation & Abolition) Act, 1970 (for short '1970 Act'). The respondent No. 2 is also registered under the said Act. The respondent No. 2 has entered into an agreement with contractor. In accordance with the contract, the respondent has engaged multiple workers through contractor. The respondent No. 2 in terms of Section 40 of Employees' State Insurance Act, 1948 (for short '1948 Act') and paragraph 30 of Employees' Provident Fund Scheme, 1952 (for short '1952 Scheme') made contribution of ESI and Provident Fund. The respondent instead of paying to contractor, directly deposited its contribution along with contribution of workman. The salary was not paid by respondent whereas it was paid by contractor. At one point of time, the workman filed petition before Labour Authorities claiming minimum wages. The said petition was dismissed for non-prosecution. The said petition was filed against contractor which indicates that workman was well aware that he has been engaged through a contractor. The contractor did not avail service of



petitioner after 2011. The petitioner did not file claim against contractor, however, opted to serve demand notice against respondent No. 2. The matter came to be referred to Labour Court which vide impugned Award has answered against the workman.

4. Mr. S.S. Dalal, Advocate and Mr. Rajiv Sharma, Advocate submit that Labour Court has misread evidence led by both sides. The contribution towards ESI and PF was made by respondent No. 2, thus, petitioner was employee of respondent No. 2. The Labour Court has wrongly declined claim of the petitioner.

5. Per contra, Mr. Ashwani Talwar, Advocate submits that there is no jurisdictional error or factual infirmity in the impugned Award. The Labour Court has appreciated entire record and thereafter concluded that petitioner was an employee of the contractor, thus, he cannot make claim against principal employer.

6. In ***Bharat Heavy Electricals Limited vs. Mahendra Prasad Jakhmola and others, (2019) 13 SCC 82***, question of liability of principal employer came up for consideration before a two judge Bench of Supreme Court against orders passed by High Court of Uttaranchal whereby High Court had dismissed writ petition against Labour Court's award. The dispute before the Labour Court was whether termination of services of workman was justified or not. The Labour Court answered the reference in favour of 64 workmen. The management preferred writ petition before the High Court which dismissed the same vide order dated



24.04.2014. The High Court held that workmen were performing duties which were identical with regular employees, therefore, it can be said that they were under the command, control and management of BHEL and concomitantly, the contractor has absolutely no control over the workmen in performing such duties. The contract with the contractor was declared sham and consequently, the Labour Court award was upheld.

Supreme Court by judgment dated 20.02.2019 set aside order of High Court as well as Labour Court. The Court considered parameters with respect to expression “control and supervision”. Considering the nature of job and control of management vis-à-vis contractor, the Court found that the findings recorded by Labour Court as well as High Court are incorrect, accordingly, judgment of High Court was set aside. The relevant extracts of the judgment are reproduced as below:

“21. We, now come to some of the judgments cited by Shri Sudhir Chandra and Ms Asha Jain. In Bengal Nagpur Cotton Mills v. Bharat Lal [Bengal Nagpur Cotton Mills v. Bharat Lal, (2011) 1 SCC 635 : (2011) 1 SCC (L&S) 16] , it was held that the well-recognised tests to find out whether contract labourers are direct employees are as follows : (SCC p. 638, para 10)

“10. It is now well settled that if the industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workman is the direct employee of



the principal employer. Two of the well-recognised tests to find out whether the contract labourers are the direct employees of the principal employer are : (i) whether the principal employer pays the salary instead of the contractor; and (ii) whether the principal employer controls and supervises the work of the employee. In this case, the Industrial Court answered both questions in the affirmative and as a consequence held that the first respondent is a direct employee of the appellant.”

22. *The expression “control and supervision” were further explained with reference to an earlier judgment of this Court as follows : (Bengal Nagpur Cotton Mills case [Bengal Nagpur Cotton Mills v. Bharat Lal, (2011) 1 SCC 635 : (2011) 1 SCC (L&S) 16] , SCC pp. 638-39, para 12)*

“12. The expression “control and supervision” in the context of contract labour was explained by this Court in International Airport Authority of India v. International Air Cargo Workers' Union [International Airport Authority of India v. International Air Cargo Workers' Union, (2009) 13 SCC 374 : (2010) 1 SCC (L&S) 257] thus : (SCC p. 388, paras 38-39)

‘38. ... if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor,



and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.'

23. From this judgment in Bengal Nagpur Cotton Mills case [Bengal Nagpur Cotton Mills v. Bharat Lal, (2011) 1 SCC 635 : (2011) 1 SCC (L&S) 16] , it is clear that Test No. 1 is not met on the facts of this case as the contractor pays the workmen their wages. Secondly, the principal employer cannot be said to control and supervise the work of the employee merely because he directs the workmen of the contractor "what to do" after the contractor assigns/allots the employee to the principal employer. This is precisely what para 12 of Bengal Nagpur Cotton Mills case [Bengal Nagpur Cotton Mills v. Bharat Lal, (2011) 1 SCC 635 : (2011) 1 SCC (L&S) 16] explains as being supervision and



control of the principal employer that is secondary in nature, as such control is exercised only after such workman has been assigned to the principal employer to do a particular work.

24. *We may hasten to add that this view of the law has been reiterated in Balwant Rai Saluja v. Air India Ltd. [Balwant Rai Saluja v. Air India Ltd., (2014) 9 SCC 407 : (2014) 2 SCC (L&S) 804] , as follows : (SCC pp. 437-38, para 65)*

“65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:

(i) who appoints the workers;

(ii) who pays the salary/remuneration;

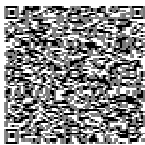
(iii) who has the authority to dismiss;

(iv) who can take disciplinary action;

(v) whether there is continuity of service; and

(vi) extent of control and supervision i.e. whether there exists complete control and supervision.

As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case [Bengal Nagpur Cotton Mills v. Bharat Lal, (2011) 1 SCC 635 : (2011) 1 SCC (L&S) 16] , International Airport Authority of India case [International Airport Authority of India v. International Air Cargo Workers' Union, (2009) 13 SCC 374 : (2010) 1 SCC (L&S) 257] and Nalco case [NALCO Ltd. v. Ananta Kishore Rout, (2014) 6 SCC



756 : (2014) 2 SCC (L&S) 353] .”

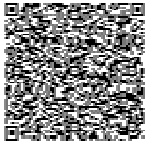
25. *However, Ms Jain has pointed out that contractors were frequently changed, as a result of which, it can be inferred that the workmen are direct employees of BHEL. There is no such finding of the Labour Court or any reference to the same by the High Court. Consequently, this argument made for the first time in this Court together with judgments that support the same, is of no consequence.”*

7. In the case in hand, the Labour Court has recorded categoric findings to the effect that the petitioner was engaged through a contractor. The contract between management and contractor was not a sham transaction. Both the parties were duly registered under 1970 Act. The management has engaged multiple contractors for the purpose of supplying unskilled workers to carry out job of loading and unloading goods. The Labour Court has also considered the factum of payment of wages as well as contribution towards 1948 Act as well as 1952 Scheme.

8. Mr. Talwar despite afore-stated findings of Labour Court, on the asking of Court, agreed to pay lump sum compensation to workman subject to caveat that this may not be treated as precedent because management is still engaging contractors in terms of applicable Rules and Regulations.

9. Mr. Talwar produced cheques as detailed below :

Sr. No.	Name	Writ No.	Amount (in lakhs)
1.	Narender	CWP-6108-2014	1



2.	Sunder Lal	CWP-6349-2014	1
3.	Ved Prakash	CWP-15085-2014	1.5
4.	Parma Nand	CWP-20985-2014	1.5
5.	Ajay Kumar	CWP-20995-2014	0.75
6.	Bijender	CWP-21673-2014	1.5
7.	Bishnu Singh	CWP-21891-2014	1
8.	Sukhbir	CWP-23040-2014	1.5
9.	Sant Kumar	CWP-23057-2014	1
10.	Pardeep	CWP-22939-2014	0.75
11.	Sandeep	CWP-23024-2014	1

10. Mr. Dalal and Mr. Sharma submit that their clients are not ready to accept afore-stated cheques, thus, they are unable to accept the cheques.

11. The petitioners have not accepted cheques offered by respondent-management. They are at liberty, if at any stage they find it appropriate, to collect cheques from the respondent-management.

12. In the backdrop of my above findings, the petitions stand disposed of.

18.11.2024
anju

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No