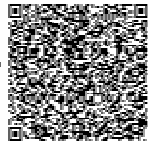


2024:PHHC:115123



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

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CWP-27862-2017 (O&M)
Date of Decision : 04.09.2024

STATE OF HARYANA PUBLIC HEALTH ENGINEERING
DEPARTMENT AND ANR.

.... PETITIONERS

V/S

DEEPAK KUMAR AND OTHERS

.... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Raman Sharma, Addl.A.G., Haryana.

Mr. Rahul Jain, Advocate
for respondents No.1 to 3.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of award dated 25.05.2017 (Annexure P-1) whereby the Labour Court has answered the reference in favour of workmen.
2. The petitioner is State of Haryana and respondents No.1 to 3 are workmen. The Labour Court has passed a common award with respect to all the workmen and facts were borrowed from the case of Deepak Kumar-respondent No.1. The respondent No.1 from June' 2012



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to January' 2016 worked with petitioner-Public Health Engineering Department. The period of commencement of service of other respondents is little earlier. They were engaged through contractor. During the aforesaid period, their services were shown to be availed through two different contractors. They were not allowed to work after January' 2016 which compelled them to approach Labour Court by way of reference in terms of Section 10 of Industrial Disputes Act (for short 'ID Act'). The Labour Court rejecting contention of petitioner that workmen were working through contractor has held that the management was liable to comply with provisions of Section 25B read with Section 25F of ID Act. As there was no compliance of aforesaid provisions, the Labour Court found it appropriate to direct the management to reinstate the workmen with 50% back wages.

3. Mr. Raman Sharma, Addl.A.G., Haryana, submits that from the record of provident fund, it is evident that contribution towards provident fund was made by contractor, thus, it is evident beyond the pale of doubt that workmen were engaged through contractors who were licensed contractors in terms of Contract Labour (Abolition and Regulation) Act, 1970 (for short '1970 Act'). There was no responsibility of petitioner to comply with provisions of ID Act and Labour Court exceeding its jurisdiction has ordered to reinstate the workmen. The workmen are not entitled to wages in terms of Section 17B of ID Act because they were gainfully employed during the pendency of present petition. Deepak Kumar-respondent No.1 has filed



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documents on the official site of State of Haryana wherein he has disclosed his income Rs.60,000/- per annum. The said document vindicates stand of the petitioner. In any case, the workmen are labourer and they could not survive without working and earning their livelihood.

4. Per contra, Mr. Rahul Jain, Advocate submits that workmen submitted their affidavits before this Court in August' 2018 disclosing that they are not gainfully employed, thus, they are entitled to benefit arising out of Section 17B of ID Act. The respondent has placed on record statement of one year of Deepak Kumar disclosing income of Rs.60,000/- per annum. Neither evidence with respect to income of other workers has been brought on record nor any documentary evidence with respect to income of Deepak Kumar except one year has been brought on record.

5. I have heard the arguments of counsel for the parties and perused the record.

6. The Labour Court has recorded findings to the effect that the petitioner-management has failed to prove that workmen were working through contractor. There is no evidence of license under 1970 Act. contractors, thus, contention of management that workmen were engaged through contractors is misconceived. The Court has further relied upon judgment of Supreme Court in **Bhilwara Dugdh Utpadak Sahakari Samiti Ltd. v. Vinod Kumar Sharma, (2011) 15 SCC 209** wherein Court has held that in order to avoid liability under various labour statutes, employers are resorting to subterfuge by trying to show that their



employees are, in fact, the employees of a contractor.

7. From the perusal of statement of provident fund contribution, it is evident that workmen were engaged through contractor. The liability qua provident fund was discharged by contractor. Had workmen not been engaged through contractor, there was no question of deposit of provident fund by contractor. The petitioner examined Sube Ram Contractor who had supplied work force for a short period of 06 months but did not examine another contractor who had supplied work force from 2012 to 2015. On account of non-leading of evidence with respect to another contractor, the Labour Court has passed impugned order.

8. The matter is pending before this Court since 2017 and as per Section 17B of ID Act, workman is entitled to last drawn salary subject to furnishing affidavit to the effect that he is not gainfully employed. The workmen had filed their affidavit in August' 2018 and as per Annexure P-12, respondent No.1-Deepak Kumar had disclosed his income Rs.60,000/- per annum before State of Haryana-petitioner. The said document does not disclose whether the income relates to one particular year or it was constant income, thus, it is difficult to conclude that Deepak Kumar was earning Rs.60,000/- per annum each year. The Labour Court has awarded back wages to the tune of 50%. The workmen were discharged in January' 2016 and impugned order was passed on 25.05.2017 meaning thereby there is gap of 1½ year between the date of discharge and date of impugned order. The workmen were getting salary



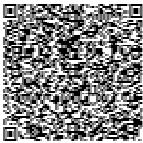
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Rs.5800/- per month.

9. In *Senior Superintendent Telegraph (Traffic), Bhopal vs. Santosh Kumar Seal and others*, (2010) 6 SCC 773, *Hari Nandan Prasad and another vs. Employer I/R to Management of Food Corporation of India and another*, (2014) 7 SCC 190, *District Development Officer and another vs. Satish Kantilal Amrelia*, (2018) 12 SCC 298, *State of Uttarakhand and another vs. Raj Kumar* (2019) 14 SCC 353 and *Ranbir Singh vs. Executive Engineer PWD* (2021) 14 SCC 815 Supreme Court has held that it is neither mandatory nor automatic to reinstate workman who has been retrenched without complying with provisions of Section 25F of 1947 Act. He may be granted compensation.

10. Considering the fact that workmen were engaged through contractor, this Court does not find it appropriate to uphold impugned order qua their reinstatement, however, they deserve lump sum compensation in view of Section 17B of ID Act as well as 50% back wages granted by impugned order. There is substance in the argument of petitioner that workmen must be working during the pendency of present petition because they could not survive without earning, however, there is no evidence led by petitioner except Annexure P-12 as discussed hereinabove.

11. Considering the length of service, last drawn salary and the fact that the workmen were engaged through contractor, this Court finds it appropriate to direct the petitioner to pay a lump sum compensation of



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Rs.3.5 lakhs to each workman within three months from today. The amount would carry interest @ 15% per annum from the expiry of three months if the payment is not made within aforesaid period.

- 11. Disposed of.
- 12. Pending miscellaneous application (s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

04.09.2024
anju

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