

Decided on:03.07.2025

versus

versus

versus

versus

Mr. Anand Bishnoi, Advocate
for respondent No.2 in CWP-12350-2023.



CWP-12350-2023(O&M)

Mr. Amandeep Rana, Advocate
for respondent No.2 in CWP-12368-2023.

Harsimran Singh Sethi, J. (Oral)

1. In the present bunch of four petitions, the challenge is to the award dated 01.03.2023 appended as Annexure P-17, passed by the Labour Court wherein, the benefit of reinstatement with continuity of service along with full backwages has been extended in favour of the respondents by treating them as workmen of the petitioner-company.

2. Learned counsel appearing on behalf of the petitioner submits that the respondent-workmen were working on the various posts, which were supervisory in nature, but the benefit to be treated as workman has been given to them on the ground that the petitioner-company has failed to prove that the respondents were not the workmen. Learned counsel for the petitioner-company further submits that in order to claim the benefit of reinstatement, continuity in service along with full backwages, the respondent has to prove that they are workmen and are entitled for the said benefit under the provisions of Industrial Dispute Act, 1947 (hereinafter referred as '1947 Act') and then only, the burden of proving that the respondents-workmen were not employees of the company will shift upon the company to dislodge the said fact whereas, the burden of proof has been put upon the company by the Labour Court vide order dated 01.03.2023 (Annexure P-17) while granting relief to the workmen, which is incorrect.

3. Learned counsel on behalf of the petitioner-company submits that the respondent-workmen were working on the post of Engineers



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having more salary which comes under the exemption keeping in view the definition under Section 2(s) of workman as given under 1947 Act, which fact has also been ignored by the Labour Court while granting the relief of reinstatement, continuity in service along with full backwages vide order dated 01.03.2023 (Annexure P-17).

4. Learned counsel for the respondents submits that though their appointment orders were mentioned by the designation, the definition itself shows that they were workmen under Section 2(s) of as given under the 1947 Act and therefore, the benefit of reinstatement, continuity in service along with full backwages granted to the respondents by the Labour Court by the impugned award dated 01.03.2023 (Annexure P-17) is perfectly valid and legal and the same may kindly be upheld.

5. I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

6. The first question, which arises is whether a person, who raises a claim and approach the Labour Court stating that he/she is covered under the provisions of 1947 Act, is to make specific averments showing that he/she is a workman as per the job profile of the post, duties of which is being performed by such person so as to claim the benefit of 1947 Act.

7. In the present case, no details of the duties being performed by the respondent have been brought on record. Further, the duties of the post on which the respondent were working is also missing from the award passed by Labour Court dated 01.03.2023 (Annexure P-17). Unless and until, the duties of a post on which respondent were performing are mentioned and analysed by the Labour Court, no finding could have been



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recorded as to whether the respondent are workmen or not. The bare perusal of the impugned award dated 01.03.2023 (Annexure P-17) would show that no such exercise was undertaken by the Labour Court while recording the finding that the respondents were workmen.

8. Further the only reason given to treat the respondents as workmen is that the petitioner-company failed to rebut the said contention. It may be noticed that the contention can only be rebutted in case any contention is made by the claimant claiming to be a workman on the basis of certain facts. The facts such as nature of duties being performed is missing in the claim petition and therefore, question of rebutting the same by the company does not arise. Hence, the Labour Court while recording the finding that the respondents are workmen, is without any material fact as well as evidence on record as of now.

9. Further, the respondents have also not been able to point out any certain fact with regard to the nature of duties being performed by them, which will be recovered under Section 2(s) the definition of Workman as envisaged under 1947 Act. In the absence of any such material fact, the grant of benefit by treating the respondents as workmen, cannot be accepted.

10. Consequently, the impugned award(s) is/are set aside. The case is remanded back to the Labour Court for fresh adjudication. It will be within the jurisdiction of Labour Court to grant either of the parties the liberty to lead evidence to prove their respective assertion qua the factual aspect whether the respondents are workmen or not. As the claim petitions were pending since long, the Labour Court is requested to decide



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the issue as expeditiously as possible preferably within a period of six months.

- 11. Parties are directed to appear before the Labour Court on 07.08.2025.
- 12. Any civil miscellaneous application pending, if any, also stands disposed of.
- 13. The photocopy of this order be placed on the connected files.

03.07.2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/non-speaking?	Yes
Whether reportable?	No