



CWP-11355-2016

1

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

(226)

CWP-11355-2016

Date of Decision : 19.08.2025

Sanjay Kumar

...Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-
Labour Court, Hisar and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Anupal Singh, Advocate and
Mr. Abhimanyu Singh, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

KULDEEP TIWARI, J.(ORAL)

1. The reference, as to whether, the act of termination of services of the petitioner is legal, or not, was answered by the learned Industrial Tribunal-cum-Labour Court, Hisar (hereinafter referred to as the 'learned Tribunal'), against the petitioner/workman, vide award dated 05.04.2016 (Annexure P-6). This has caused the grievance to the petitioner and propelled him to file the instant writ petition, cast under Articles 226/227 of the Constitution of India, and thrown a challenge to the award (*supra*).

2. Learned counsel for the petitioner, would submits that the evidence, which was led by the petitioner, has not been appreciated, in its right perspective, by the learned Tribunal concerned, therefore, the impugned award requires interference of this Court.



CWP-11355-2016

2

3. Learned counsel for the petitioner has drawn the attention of this Court, towards the statement of one co-regular employee, namely, Sombir, who stepped into the witness box as WW1, to submit that his evidence was sufficient to establish that he was working with the respondent/Management, as Motor Operator. He was put to cross-examination and nothing adverse could be extracted by the respondent/Management, so as to impeach the credibility of the said witness. Learned counsel has placed reliance upon the judgment passed by the Hon'ble Supreme Court in '***R.M. Yellatti vs. The Assistant Executive Engineer' 2006(1) SCC 106***, to submit that onus cannot be shifted upon the workman, to establish that he has worked continuously for the last 240 days, on account of the fact that the workman may not have the control over the record of the respondent/Management. Further, he submits that sufficient evidence has been led to *prima facie* establish the workman and employer relationship between the petitioner and the respondent/Management, which ought to have been given weightage by the learned Tribunal concerned, and specifically in light of the ratio laid down by the Hon'ble Supreme Court in the judgment (*supra*). However, unfortunately, the same has not been done.

4. On the other hand, learned counsel for the State, representing the respondent/Management, submits that there exists no employer and employee relationship, and there is nothing on record to establish that the petitioner has ever worked with the respondent/Management, and has completed 240 days, in a previous calendar year. He has placed reliance upon the judgment dated 17.03.2025, passed by the Hon'ble Supreme Court in SLP (Civil) No.22030 of 2023, titled '*The Joint Secretary, Central Board of Secondary Education and another versus Raj Kumar Mishra and another*' to submit that it is for the workman to establish initially that there exists relationship of master and the



servant, and that the workman has completed 240 days, in the previous calendar year.

5. Learned counsel for the State, has further drawn the attention of this Court, towards the statement of Mr. Dalbir Singh Ranga, Junior Engineer, Public Health Engineering Division, Charkhi Dadri, District Bhiwani, as MW1, who tendered his evidence by way of an affidavit (Exh.MW1/A), stating therein, that the petitioner was never appointed as Operator, in the month of April, 2001, or after that as Operator of the Motor of Sewer in Charkhi Dadri, nor was posted with the respondent, so the question of termination of his services, w.e.f. 07.04.2015, does not arise at all. He further submits that the respondent/Management, has clearly denied the relationship of master and the servant, and in that eventuality, the onus was upon the petitioner, to bring on record any document, so as to establish the said relationship. He also submits that all these facts have been duly considered and appreciated in right perspective by the learned Tribunal concerned, and it has finally answered the reference against the petitioner/workman.

6. This Court has considered the submissions, as made by the learned counsel for the parties concerned, and has also examined the statement made by one, Sombir, WW1, upon which the learned counsel for the petitioner has placed much reliance. The cross-examination of the said witness in fact, demolish the case of the petitioner, inasmuch as Sombir (WW1), has categorically, admitted that he has never seen the Junior Engineer concerned, obtaining any signature of the petitioner-Sanjay Kumar, while making the payment of wages to the petitioner-Sanjay Kumar. Rather, he suggested in his cross-examination, that the petitioner was being paid wages monthly, in his presence and that too in the form of cash.



7. The respondent/Management is a Govt. establishment, wherethrough, no Junior Engineer is entitled to pay any wages to any workman, in cash, specifically in the year 2014-15, therefore, the statement of Sombir, WW1, is not reliable and carries no significance for this Court, to place reliance upon and to hold that there exists the master and the servant relationship, between the petitioner and the respondent/Management. Further, this aspect has already been considered in right perspective by the learned Tribunal concerned. The relevant portion is extracted hereinafter:-

“14. On the other hand, the respondents have examined Sh. Dalbir Singh Ranga, Junior Engineer, Public Health Engineering Division Charkhi Dadri, District Bhiwani as MW1 who tendered in evidence his affidavit Ex.MW1/A stating therein that the petitioner was never appointed as Operator in the month of April 2001 or after that as operator of the Motor of sewer in Charkhi Dadri nor was posted with respondent. So, the question of termination of services of the petitioner w.e.f. 07.04.2015 does not arise at all as he was never engaged for alleged work. During cross-examination, he has stated that he denied the suggestion that the petitioner had continuously worked from April 2001 to 06.04.2015 as daily wages worker as Operator. It is correct that no notice, notice pay and retrenchment compensation was offered or paid to the petitioner before terminating his services. He further stated that the department had not maintained the attendance and payment records of daily wages workers.

15. It is the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the respondents/management. It was for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that in fact the claimant had worked for 240



days in a year. There is no proof of receipt of salary or wages for 240 days. Mere non-production of attendance record by the management is not sufficient for Labour Court to hold that the petitioner had worked for 240 days as claimed. Though, there is attendance record on the file i.e. Ex.W2 but this record pertains to regular employees and it is own case of the claimant that he was not the regular employee of the management. During cross-examination, it has been specifically stated by MW1, Sh. Dalbir Singh that the department had not maintained the attendance and payment records of daily wages workers. Not only that the own witness of claimant i.e. WW1 in his cross-examination has also admitted that J.E. used to make the payment of wages to Sanjay monthly in his presence. Ld. AR for the petitioner while placing reliance upon judgment Ex.W4 argued that the petitioner Sanjay has been arrayed as an accused in the case FIR No. 173 dated 06.10.2003, under Sections 336/337/338/34 IPC. In this situation, it shall be presumed that claimant Sanjay was the employee of the respondents/management but this argument of the Ld. AR of the claimant is meritless, reason for the same is that in this judgment it has nowhere been mentioned as to whether the claimant was the employee of the respondents/management. In view of the facts discussed above, the violation of provisions contained under Section 25-F of the Act is not proved.”

8. In view of the above discussion, this Court, finds no perversity or illegality in the findings, as returned by the learned Tribunal concerned, requiring any interference of this Court, while exercising its supervisory jurisdiction, as envisaged under Article 227 of the Constitution of India.

9. Consequently, the instant writ petition is **dismissed**.

(KULDEEP TIWARI)
JUDGE

August 19, 2025

Manpreet	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No