

CM-3673-CWP-2025 in/and
CWP-6664-2018 (O&M)

2025:PHHC:035861



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(111+258)

CM-3673-CWP-2025 in/and
CWP-6664-2018 (O&M)
Date of Decision : 17.03.2025

Municipal Committee, Cheeka and another

...Petitioners

Versus

District & Sessions Judge, Presiding Officer, Labour Court, Ambala and
another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. G.S. Aulakh, Advocate for
Mr. Hitesh Malik, Advocate for the petitioners.

Mr. Jasbir Singh, Advocate for respondent No. 2.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the challenge is to the Award dated 31.10.2017 (Annexure P-14) by which, respondent No. 2-Workman has been reinstated in service along with continuity and 50% back wages.

2. The counsel for respondent No. 2-Workman claims that respondent No. 2-workman was appointed as a Driver and had worked with the petitioner for a period of six years and that his services were wrongly terminated by the petitioner in the year 2010. After a period of six years of the termination, the claim was raised before the Labour Court by respondent No. 2-workman with regard to the termination of his service by impleading the petitioner as a respondent in the proceeding before the Labour Court and



stated therein that the respondent No. 2-Workman was indeed the employee of the petitioner and his services were wrongly terminated by the petitioner.

3. The petitioner appeared before the Labour Court as a respondent and stated therein that there was no existing master and servant relationship between the petitioner and respondent No. 2 so as to treat respondent No. 2 as employee of the petitioner and that respondent No. 2-workman was appointed with the petitioner through an outsourcing agency and a private Contractor. Keeping in view the fact that the appointments with the petitioner were being made through outsourcing agency only and, therefore, as there exists no master and servant relationship between the petitioner and respondent No. 2-workman, the claim of respondent No. 2-Workman qua his termination should have been dismissed. Whereas, the said issue has been decided by the Labour Court while passing the impugned Award dated 31.10.2017 (Annexure P-14) and the claim of the respondent No. 2-Workman qua his termination has been allowed. As per the findings of the impugned Award, the respondent No. 2-Workman has been treated as the employee of the petitioner and not that of the Contractor and thus, has been granted the benefit of reinstatement along with continuity in service and 50% back wages, which Award is under challenge in the present petition.

4. Learned counsel for the petitioner argues that once, it is clear that the respondent No. 2-Workman was appointed as a Driver with the petitioner through an outsourcing agency, therefore, there exists no master and servant relationship between the petitioner and the Workman, hence, the grant of benefit of reinstatement with continuity in service with the petitioner



along with 50% back wages by the Labour Court, is incorrect and the Award of the Labour Court dated 31.10.2017 (Annexure P-14) is liable to be set-aside on this ground alone.

5. Upon notice of motion, the counsel for respondent No. 2-Workman has appeared and has supported the impugned Award. Learned counsel appearing on behalf of the respondent No. 2-Workman does not dispute the fact that the respondent No. 2-Workman was working with the petitioner through an outsourcing agency but rather submits that as, the Contractor was not eligible to get the contract of employment with the petitioner to provide them with Labour force as the Contractor did not have any valid License to do the same, therefore, the Principal Employer has been rightly treated as the Employer of respondent No. 2-workman in the facts and circumstances of the present case hence, the benefit of reinstatement along with continuity in service and 50% back wages has been granted by the Labour Court vide its impugned order, which should be upheld.

6. I have heard learned counsel for the parties and have gone through the record with their able assistance.

7. The only question which arise for consideration is whether, by recording a finding and holding that the Contractor having no valid License and registration was not eligible to get the contract for supply of the workforce, passing of an Award by the Labour Court against the Principal Employer, in the facts and circumstances of the present case, is correct or not. It may be noticed that the respondent No. 2-Workman had approached



the Labour Court for adjudication upon his claim even without disclosing the fact that the respondent No. 2-Workman was working with the petitioner as a Driver through Contractor. Workman was claiming that his appointment as a Driver was with the petitioner so as he could be granted with the benefit under the 1947 Act. Further, the claim against his termination was raised before the Labour Court after a period of six years of the termination of his services and that too in the absence of impleading the Contractor as a party to raise the claim.

8. The ground which has been taken by the Labour Court while recording a finding in the impugned Award that the Contractor was not eligible to get the contract is on the basis that the management witness who appeared on behalf of the petitioner submitted that he does not have any registration certificate required under Contract Labour Act, 1970 nor does he has any License required under the said Act. It may be noticed that in order to record a finding that the Contractor was not eligible to hold a Contract for providing workforce to the petitioner, the Contractor should have been made a party to the litigation. In the present claim, the respondent No. 2-Workman did not even disclose the fact that he was working with the petitioner as a Driver through the Contractor. He had withheld the vital piece of information and had not impleaded his Employer who was the Contractor as a party before the proceedings of Labour Court. In the absence of Contractor being a party to the proceedings, no finding could have been recorded by the Labour Court to hold that the Contractor lacked the capability to get the contract from the petitioner to supply the workforce. In case, any finding is



to be recorded against the Contractor, the Contractor has to be a party and has to be given due opportunity of hearing so as to rebut the said contention. Once the respondent No. 2-Workman failed to implead the Contractor as a party necessary to the proceedings, recording of the finding that the Contract was not eligible to hold the contract, merely on the statement of the management witness that he has not brought the record with regard to the license of the Contractor is incorrect.

9. Further, learned counsel appearing on behalf of the respondent No. 2-Workman concedes to the fact that he was working with the petitioner through the Contractor and that too not only with one Contractor, but various Contractors during the period when the respondent No. 2-Workman worked. Once, the respondent No. 2-Workman has conceded before this Court that there were various Contractors under whom he had worked, nothing has been brought on record to show that each one of the Contractor through which petitioner was employed was not eligible to hold the contract. Rather, even the names of the Contractor have not been even supplied by the respondent No. 2-Workman , which names were only placed on record by the petitioner.

10. Though, it is a settled principle of law that in case the Contractor is not eligible to hold the contract, the Principal Employer becomes liable for any liability imposed, but the said finding has to be recorded after giving due opportunity of hearing to the Contractor to prove the assertion that the Contractor was not eligible to hold the contract.



11. Further, no such issue was framed so as to contemplate upon the aspect that whether, the Contractor was eligible to hold the contract or not. Had that been issue framed, even the petitioner would have brought certain documents available with them to prove their assertion that they had entered into an agreement with an eligible Contractor. In the absence of any such issue framed, merely on the basis of one statement of a witness that the record of the Contractor was not brought, has been used against the petitioner so as to hold the petitioner liable as a Principal Employer is not at all correct.

12. Keeping in view the above, holding the petitioner liable as a Principal Employer without giving them opportunity to rebut the contention of the respondent-workman that the Contractor was not eligible for the contract, cannot be accepted.

13. The impugned Award dated 31.10.2017 (Annexure P-14) is set-aside. The matter is remanded back to the Labour Court for fresh adjudication upon the same and by giving due opportunity of hearing to the petitioner to prove upon the issue that whether the Contractor was eligible to hold the contract or not. Let the parties appear before the Labour Court on 21.04.2025.

14. Petition is allowed in above terms.

15. Pending miscellaneous application, if any, also stands disposed of.

March 17, 2025
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No