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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision : 22-01-2025

1. CWP-28158-2019 (O&M)
KURUKSHETRA UNIVERSITY, KURUKSHETRA AND ANOTHER
.....Petitioner(s)
VERSUS
PRESIDING OFFICER, LABOUR COURT AND OTHERS
.....Respondent(s)
2. CWP-28131-2019 (O&M)
KURUKSHETRA UNIVERSITY, KURUKSHETRA AND ANOTHER
.....Petitioner(s)
VERSUS
PRESIDING OFFICER, LABOUR COURT AND OTHER
.....Respondent(s)
3. CWP-28211-2019 (O&M)
KURUKSHETRA UNIVERSITY, KURUKSHETRA AND ANOTHER
.....Petitioner(s)
VERSUS
PRESIDING OFFICER, LABOUR COURT AND OTHERS
.....Respondent(s)
4. CWP-28220-2019 (O&M)
KURUKSHETRA UNIVERSITY, KURUKSHETRA AND ANOTHER
.....Petitioner(s)
VERSUS
PRESIDING OFFICER, LABOUR COURT AND OTHERS
.....Respondent(s)
5. CWP-28225-2019 (O&M)
KURUKSHETRA UNIVERSITY, KURUKSHETRA AND ANOTHER
.....Petitioner(s)
VERSUS
PRESIDING OFFICER, LABOUR COURT AND OTHERS
.....Respondent(s)

6. CWP-28235-2019 (O&M)
KURUKSHETRA UNIVERSITY, KURUKSHETRA AND ANOTHER
.....Petitioner(s)
VERSUS
PRESIDING OFFICER, LABOUR COURT AND OTHERS
.....Respondent(s)

7. CWP-28243-2019 (O&M)
KURUKSHETRA UNIVERSITY, KURUKSHETRA AND ANOTHER
.....Petitioner(s)
VERSUS
PRESIDING OFFICER, LABOUR COURT AND OTHERS
.....Respondent(s)

8. CWP-28301-2019 (O&M)
KURUKSHETRA UNIVERSITY, KURUKSHETRA AND ANOTHER
.....Petitioner(s)
VERSUS
PRESIDING OFFICER, LABOUR COURT AND OTHERS
.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. A.S Virk, Advocate
for the petitioner(s).

Mr. J.S Cooner, Advocate
For respondent Nos.6 and 11 in CWP No.28158 of 2019.
For respondent Nos.2 to 5, 7, 8, 10, 12 to 14 and 18 to 20 in
CWP No.28220 of 2019.
For respondent Nos.5, 6, 8 and 9 in CWP No.28131 of 2019.
For respondent Nos.2 , 4 to 6, 10,11 and 13 in
CWP No.28225 of 2019.
For respondent Nos.7 and 11 in CWP No.28301 of 2019.

Mr. Pankaj Bali, Advocate
for respondent No.2 to 7 in CWP No.28235 of 2019.

Mr. Samrat Malik, Advocate
For the respondent.

Mr. Naveen Nandal, Advocate and
Mr. Rajesh Bansal, Advocate for
For respondent Nos.2, 3, 6, 8, 9 and 10 in
CWP No.28301 of 2019
For respondent Nos.7, 10,11 and 13 in CWP No.28131 of 2019.

HARSIMRAN SINGH SETHI, J. (Oral)

1. Present bunch of eight writ petitions involve common question of law in the background of common set of facts and thus they are being decided by a common order.

2. In the present bunch of petitions, the challenge is to the impugned award passed by the Ld. Presiding Officer, Labour Court, Ambala dated 29.11.2018 (Annexure P-1) whereby, the claim of the petitioners have been allowed so as to hold that the services of the workmen were terminated without compliance of the mandatory provisions of Section 25F of the Industrial Disputes 1947 Act so as to grant them benefit of reinstatement in service with continuity of service along with all consequential benefits.

3. Learned counsel for the petitioner(s) submits that the petitioner(s) were employed through a contractor starting from 01.09.2007 and they were continuing in service till 2017 but after, their services were terminated by the contractor, the issue was raised before the Labour Court by raising a plea that the services of the employees were terminated wrongly in the year 2007 so as to place them at the disposal of the contractor, which act on the part of the respondent-University is arbitrary and illegal and further that the contractor was not having any licence under the Contract Labour (Regulation and Abolition) Act 1970 hence, the petitioners are to be treated as the employees of the respondent-University and not to that of the contractor.

4. The said plea of the workmen has been accepted by the Labour Court to hold that the termination of services of the workmen is without following the mandate of Section 25F of the Industrial Disputes 1947 Act hence, it is violative that workmen has been reinstated with continuity and full backwages. The said award is under challenge in the present petition.

5. Learned counsel for the respondent-University submits that since September, 2007 onwards, the workmen were working under the contractor and without raising any objection.

6. Learned counsel for the petitioner(s) further contends that the contractor being the actual employer of the workmen, was not impleaded so as to raise the plea that whether the award of the contract in favour of the contractor to supply workforce was valid or not. Learned counsel for the petitioner(s) further submits that no finding has been given regarding fact that the contractor was not having any licence under the Contract Labour (Regulation and Abolition) Act 1970 but still, the benefit has been granted to the workmen by treating the respondent-University as their employer hence, the award passed by the Ld. Labour Court is perverse keeping in view the findings brought on record and same has been passed without giving requisite finding qua the ineligibility of the contractor to obtain the contract to supply workforce or to treat the petitioner(s) as the employer of the workmen.

7. Upon notice of motion, the respondents have appeared and submitted that the contractor was not eligible to hold the contract hence, the workmen has rightly been treated to be the employee of the University and as, while terminating their services under Section 25F of the Industrial

Disputes Act was not complied with, the benefit has rightly been granted by the Labour Court, which needs to be upheld.

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

9. All the facts which have been mentioned herein before transpires that initially the petitioners were the working with the respondent-University but starting from 01.09.2007, they were working under the contractor. They worked with the contractor for a period of 1 decade but never raised any grievance qua shifting of their services from University to the contractor.

10. The services of the petitioner(s) were terminated in the year 2017 by the contractor and rather than impleading the contractor, the claim was raised against the respondent-University with the plea that the University being the principle employer, was liable to follow the provisions of the Industrial Disputes Act including Section 25F of the Industrial Disputes Act, 1947, which process was not followed hence, the termination of the services of the petitioners was bad in the eyes of law.

11. It may be noticed that it is a conceded position that the workmen was working with the contractor for a period of one decade before the termination of their services even if, any allegation was to be raised qua the ineligibility of the contractor to get the contract to supply the workforce, contractor should have been impleaded as a party so that contractor could prove eligibility before the Labour Court to supply the manpower. In the absence of the Contractor or even the contract between the University and the contractor on record, the petitioners have failed to substantiate that the

contractor was ineligible to hold the contract keeping in view the provisions of Contract Labour (Regulation and Abolition) Act 1970.

12. Further, a bare perusal of the impugned award in favour of the workmen would show that even Industrial Tribunal has not given any finding qua the ineligibility of the contractor to hold the contract. Once, the said finding has not been recorded keeping in view the evidence which has been brought on record, the finding recorded by the Ld. Labour Court that the University is to be treated as the employer of the workmen, cannot be sustained. It is only in case, where the contractor was ineligible, the principle employer could have been made liable qua the termination of the services of the workmen.

13. In the absence of any cogent findings given on the basis of the evidence on record, that the contractor was ineligible to hold the contract, the findings recorded by the Labour Court to hold the University as an employer, are perverse to the evidence on record and cannot be sustained and are accordingly set aside.

14. Further, learned counsel for the petitioners have argued that the workmen only remained as the employee of the University till the year 2007 and thereafter, were the employees of the contractor and no action was taken by the workmen when their services were transferred to contractor in the year 2007. Hence, in the year 2017, no grounds could have been entertained by the Labour Court qua any act which took place, in the year 2007 as the grievance was raised by the workmen in the year 2017.

15. Learned counsel for the respondents workmen had submitted that only when the workmen were terminated, the action was taken which is justifiable and has rightly been adjudicated by the Labour Court.

16. It may be noticed that the petitioners never raised any grievance against the alleged termination which happened in the year 2007. The reference was only raised after their services were terminated by the contractor in the year 2017. Further, even if it is assumed that the services of the workmen were terminated in the year 2007 by the respondent-University, the tribunal was required to take into consideration of provision of Section 2(A) Sub-Clause 3 of the 1947 Act, which is as under:-

“2.A. Dismissal, etc., of an individual workmen to be deemed to be an industrial dispute.

(1) Where an employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workmen, any dispute or difference between that workmen and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to an industrial dispute notwithstanding that no other workmen nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workmen as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in

accordance with the provisions of this Act and all the provisions of this Act shall apply in relating to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”

14. A bare perusal of the above reproduction would show that he workmen were required to approach the competent court of law within a period of 3 years of termination/discharge or dismissal or retrenchment as the case may be whereas in the present case, the reference was raised only in the year 2018, which was found otherwise impermissible to hold that the services of the workmen were wrongly terminated by the University when the workmen were working under University in the year 2007.

15. Keeping in view the above, the award dated 29.11.2018 (Annexure P-1) is liable to be set aside. The case is remanded back to the Labour Court.

16. Present petitions are disposed of accordingly.

17. The workmen have undertaken that they will implead the contractor also as a party to the said dispute so as to prove their allegations. The Labour Court is directed to decide the case accordingly keeping in view the evidence, which has come on record.

18. This Court has been informed that during the pendency of the present petition, certain employee have been again re-employed by the respondent-University.

19. Though, the award has been set aside, but, it is directed that the status quo of the services of the respondent-workmen including the salary will continue till the fresh award is given by the Labour Court.

20. Pending application, if any, also stands disposed of.

21. Photocopy of this order be placed on the file of other connected cases.

22-01-2025
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES
 Whether reportable: NO