IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.1177 of 2026

Decided on: 23rd February, 2026

Kamal Singh **.....Petitioner**

Versus

The Partners, M/s Universal Electric Engineers and another **.....Respondents**

Coram

Ms. Justice Jyotsna Rewal Dua

Whether approved for reporting?[1]

For the Petitioner: Mr. Rahul Mahajan, Advocate.

For the Respondents: Mr. Y.P.S. Dhaulta, Additional Advocate General, for respondent No.2.

Jyotsna Rewal Dua, Judge

Reference of the petitioner moved under Section 10(1) of the Industrial Disputes Act, 1947 has been decided against him by the learned Presiding Judge, Labour Court-cum-Industrial Tribunal, Kangra at Dharamshala on 15.01.2025 primarily on the ground that the petitioner failed to discharge burden of proving employer-employee relationship between him and respondent No.2, against whom the case was set up. Feeling aggrieved, petitioner has laid challenge to the aforesaid award in this writ petition.

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[1] **Whether reporters of print and electronic media may be allowed to see the order? Yes.**

2. **Heard** and considered the case file.

3. **The case:-**

3(i). Following reference was sent by the Appropriate Government for adjudication by the learned Labour Court:-

> *"Whether termination of services of Shri Kamal Singh S/O Shri Hari Singh, R/O Village Jadour, P.O. Tarsuh, Tehsil Shri Naina Deviji, District Bilaspur, H.P. w.e.f. 01-07-2012 by (i) the Partners, M/S Universal Electric Engineers, Dalhousie Road Pathankot, Punjab (Contractor) and (ii) the Executive Engineer, Changer Area Lift Irrigation Project Division Bassi, District Bilaspur, H.P. (Principal Employer), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?"*

3(ii). The claim set up by the petitioner (Annexure P-2) was that he had worked as Daily Waged Beldar in Changer Area, Medium Lift Irrigation Scheme w.e.f. 01.11.2011 continuously till 30.06.2012. His services were terminated orally on 01.07.2012. Oral termination of petitioner's services was without assigning any reason. No notice was issued to him. Such termination of petitioner's services was alleged to be an act of unfair labour practice and in violation of Sections 25B, 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as also the principle of 'Last come first go'. Petitioner had also asserted that he had put in 240 days in the calendar year before oral termination of his services. Relief prayed for was with respect to

petitioner's reinstatement in service alongwith seniority, continuity of service and other consequential benefits including back wages.

3(iii). Respondent No.1-the Contractor in its reply (Annexure P-3) raised several preliminary objections including there being no relation of employer-employee between petitioner and respondent No.1. Respondent No.1 denied petitioner having continuously worked for 240 days w.e.f. 01.11.2011 to 30.06.2012. However, as per respondent No.1, petitioner was a daily rated casual labourer engaged for operating pumping machines; Respondent No.1's contract with respondent No.2 ended in May, 2013 and as such, services of the petitioner were not required by respondent No.1; Before completion of contract, one month notice was issued by respondent No.1 to the petitioner and his due payments were also cleared by respondent No.1. Further, according to respondent No.1, after completion of its contract, a new contract qua operation & maintenance of pumping machinery was awarded by respondent No.2 to a different contractor and the labour continued to work under the said new contractor.

3(iv). Respondent No.2 in its reply (Annexure P-4) denied employer-employee relationship with the petitioner.

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Respondent No.2 also denied terminating petitioner's services. As per this respondent, Changer Area, Medium Lift Irrigation Project was constructed through various contractors; After its completion, the project was awarded to different contractors for its operation and maintenance, who outsourced the labour; Petitioner was neither engaged nor his services were terminated by respondent No.2; There was no relationship of employer and employee between the petitioner and respondent No.2.

3(v). In support of his claim, petitioner furnished his affidavit, Ext. PW1/A (Annexure P-6). Respondent No.1 did not lead any evidence. Respondent No.2 examined one Sh. Satish Kumar Sharma-Executive Engineer, Jal Shakti Division, Bilaspur. The said witness, besides his affidavit (Ext. RW1/A-Annexure P/7), also placed on record several documents. Learned Labour Court after appreciating the evidence and material on record, dismissed the claim petition.

4. Consideration:-

4(i). Hon'ble Apex Court in ***General Manager, U.P. Cooperative Bank Ltd. Versus Achchey Lal & Anr.***[2], while allowing the appeal against the impugned decision,

[2] Civil Appeal No.2974/2016, decided on 11.09.2025

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where respondents were held to be appellant's employees, laid down following tests through which relationship between employer and employee can be determined in case of an industrial dispute:-

1. *Control Test, where the hirer has control over the work assigned and the manner in which it is to be done. The control test is derived from common law application in vicarious liability claims.*
2. *Organization/Integration Test, which looks at the degree of integration in the work committed in the hirer's primary business with the understanding that the higher the level of integration, the more likely the worker is to be an employee. A combination of control and integration test allows the professional workers to be classified as employees, notwithstanding lack of control over the manner of work.*
3. *Multiple Factor Test, which includes control, ownership of the tools, integration/organization, chance of profit, risk of loss, master's power of selecting his servant, payment of wages or other remuneration, master's right to control the method of doing the work and master's right of suspension or dismissal. Where the question arises regarding sham arrangement, Court has to examine following factors:-*
    a) *Who is the appointing authority?*
    b) *Who is the paymaster?*
    c) *Who can dismiss?*
    d) *Duration of an "alternative service".*
    e) *Extent of control and supervision.*
    f) *Nature of the job, e.g. whether professional or skilled work;*
    g) *Nature of establishment.*

h) Right to reject.

4. Refinement of the multifactor test, which includes consisting of following factors:-

a) Control over the work and manner in which it is conducted.

b) Level of integration into employers' business.

c) Manner in which remuneration is disbursed to workers.

d) Economic control over workers.

e) Whether work being conducted is for oneself or a third party.

Relevant paras of the decision in ***Achchey Lal***[2] read as under:-

> *"75. As held in Parimal Chandra Raha (supra), if there is a mere obligation to provide facilities to run a canteen, the canteen would not form part of the establishment. If the Bank is discharging the same as a mere obligation, it permits to run a canteen and at the same time, it is not having any control or right of supervision over the staff, the canteen will not form part of the establishment. Likewise, the nature and character of management, and the interest shown by the Management in having control and supervision over the running of the canteen also has to be taken into consideration. The material on record would indicate that the Bank had nothing to do with the working of the canteen. The only contribution made by the Management was to provide infrastructure and subsidy to the Society. If there is total lack of evidence on this point and what the Bank discharged was only an obligation to provide a facility, under no stretch of imagination can it be said that the canteen staff is also part of the establishment, i.e., the Bank.*
>
> *FEW TESTS TO DETERMINE EMPLOYER EMPLOYEE RELATIONSHIP TO BE KEPT IN MIND WHILE DECIDING MATTERS ARISING FROM LEGISLATIONS LIKE INDUSTRIAL DISPUTES ACT, 1947, THE FACTORIES ACT, 1948 ETC:*

1. Control Test

(i) The control test postulates that when the hirer has control over the work assigned and the manner in which it is to be done, an employer-employee relationship is established. The control test is derived from common law application in vicarious liability claims.

(ii) The earliest instance of applying the control test in India is in Shivanandan Sharma v. Punjab National Bank Ltd. reported in AIR 1955 SC 404. Here, a claim under the Industrial Disputes Act arose as to whether a head cashier was the bank's employee. The bank had an agreement with a contracted treasurer who nominated people to work for discharging function of the bank under the agreement, including the cashier in question. The court held that although the treasurer chose the nominees who discharged the functions, yet the bank had complete control over the nominee's disciplinary matters, leave of absence, how the nominees discharged their functions, and, importantly, their salaries were paid by the treasurer from the funds provided by the bank. It was held that the bank manager had the same degree of control over the nominees as he did over numerous other employees, and thus an employer-employee relationship existed. The bank also had the right to select bank personnel who would have the authority to supervise how the cash department conducted its work. The court concluded that the cashier was an employee of the bank. The scope of indirect employment was expounded as under:

> *"If a master employs a servant and authorises him to employ a number of persons to do a particular job and to guarantee their fidelity and efficiency for a cash consideration, the employees thus appointed by the servant would be equally with the employer, servants of the master."*
>
> *(emphasis supplied)*

(iii) While Shivanandan Sharma (supra) was the first instance of the control test being applied, an important step in the test's evolution was in Dharangadhara Chemical Works Ltd. v. State of Saurashtra reported in (1957) 1 LLJ 477. The dispute was whether agarias (salt workers) were employees and whether the claim under the Industrial Disputes Act 1947 was maintainable. To establish that the hirer had control

over the hired person, it was ruled that control must exist in two aspects. First, control over the nature of the work performed and, secondly, the manner in which the work is conducted. It was argued that since agarias assisted several persons in performing work, they were independent contractors.

(iv) For the court, the true difference between the workers and independent contractors was whether the work was being committed for oneself or a third party. The existence of external help would not rule out an employer-employee relationship. The court opined that the greater the degree of control, the more likely the hired person would be an employee. Accordingly, the agarias were held as employees and eligible for benefits under the Industrial Disputes Act 1947.

(v) The court enunciates the manner to make this distinction as under:

> *"The correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer."*
>
> *(emphasis added)*

(vi) Thus, the control test was expanded to mean due control and supervision. In numerous cases, the control test adopted in Dharangadhara (supra) remained the sole factor determining employer-employee relationship. The degree and level of control required would depend on the facts and circumstances of each case.

2. *Organisation/ Integration Test*

(i) The first instance of the shift from the control test as a sole determinative factor was in Silver Jubilee Tailoring House v. Chief Inspector of Shops and Establishments reported in (1974) 3 SCC 498. This Court observed that the earlier reliance on the control test was attributed to the agrarian economy, where masters often exercised control over workers. This occurred due to masters having more knowledge, skill and experience. The shift to a multifactor test is due to modern work being conducted by professionals where masters lack the technical expertise to direct the manner in which the work is undertaken. The court arrived at these conclusions relying on judgements in the Market Investigations Ltd. v Minister of Social Security reported in (1969) 2 WLR 1, Cassidy v Ministry of Health reported in (1951) 2KB 343, Montreal v Montreal Locomotive Works Ltd reported in 1947 1 DLR

161 (Privy council). In Silver Jubilee (supra) reliance was placed on a combination of the organisation test (also known as the integration test) as interpreted in the Market Investigations Ltd. (supra), Cassidy (supra), Montreal Locomotive Works (supra) and the control test used in India.

(ii) The organisation test looks at the degree of integration in the work committed in the hirer's primary business with the understanding that the higher the level of integration, the more likely the worker is to be an employee. A combination of control and integration tests allows the professional workers to be classified as employees, notwithstanding a lack of control over the manner of work. Furthermore, the existence and potential use of factors beyond the control and integration in future cases was also recognised. This opened the path for the multifactor test.

3. Multiple Factor test

(i) The multifactor test includes:

- *a) Control*
- *b) Ownership of the tools*
- *c) Integration/Organisation*
- *d) Chance of profit*
- *e) Risk of loss*
- *f) The master's power of selecting his servant g) the payment of wages or other remuneration*
- *h) The master's right to control the method of doing the work, and*
- *i) The master's right of suspension or dismissal.*

(ii) In Steel Authority of India Limited v. National Union Waterfront Workers, reported in 2017 NLS Bus L. Rev. 20, it was opined that where sham arrangements exist, the Contract Labour (Regulation and Abolition) Act, 1970 would not apply, and workers would be deemed employees and have the right to raise an industrial dispute in the same manner as an employee.

(iii) To identify whether sham arrangements exist, this Court in Workmen of Nilgiri Coop. Mktg. Society Ltd. v. State of T.N. reported in (2004) 5 SCC 514 ruled that piercing the veil was necessary. Whether the arrangement was a sham was not considered as a question of law. Such a determination must be adjudicated based on the evidence adduced in the court by either party and not merely by referring to the provisions. The relevance of factors other than the control and integration to determine whether the

workers are employees or independent contractors was brought out. The court examined the following factors:

a) who is the appointing authority?
b) who is the paymaster?
c) who can dismiss?
d) the duration of an "alternative service";
e) the extent of control and supervision;
f) the nature of the job, e.g. whether it is professional or skilled work;
g) nature of establishment;
h) the right to reject.

(iv) This Court in Bengal Nagpur Cotton Mills v. Bharat Lal reported in (2011) 1 SCC 635 laid down two factors to be considered to determine the true nature of the hiring entity, i.e., whether it is the principal employer or contractor:

(i) Whether the principal employer pays the salary instead of the contractor; and
(ii) Whether the principal employer controls and supervises the work of the employee?

4. Refinement of the multifactor test

(i) The courts, over the years, have refined the scope of the multifactor test by adding various factors based on the facts and circumstances. This Court, in many cases, has applied the refinement of the multifactor test.

(ii) In Sushilaben Indravadan Gandhi v The New India Assurance Company Limited, reported in (2021) 7 SCC 151, this Court revisited the distinction between a contract of service and a contract for service. After analysing Market Investigations Ltd. (supra), Cassidy (supra) and Montreal Locomotive Works (supra), the multifactor test was reiterated, consisting of the following factors:

a) Control over the work and manner in which it is conducted
b) Level of integration into employers' business
c) Manner in which remuneration is disbursed to workers
d) Economic control over workers
e) Whether work being conducted is for oneself or a third party

(iii) In Sushilaben (supra) priority was given to factors of control and mode of remuneration, noting

these would ordinarily suffice to identify the true nature of the relationship unless other contractual terms indicated otherwise.

(iv) In Sushilaben (supra) the articulation of the control test has been given importance as it varies from that in Balwant Rai Saluja v Air India Ltd. reported in 2014 9 SCC 407. This was elucidated as under:

> *"The three-tier test laid down by some of the English judgments, namely, whether wage or other remuneration is paid by the employer; whether there is a sufficient degree of control by the employer and other factors would be a test elastic enough to apply to a large variety of cases."*
>
> *(emphasis added)*

(v) The use of the term "sufficient degree of control" is in stark contrast to the "effective and absolute control" ruling in Balwant Rai Saluja (supra). However, no reference to Balwant Rai Saluja (supra) was made while discussing the evolution of the various tests. (Referral: IIMA, Working Paper by M.P. Ram Mohan and Sai Muralidhar K.)

76. In the overall view of the matter, we are convinced that the Labour Court as well as the High Court committed an egregious error in taking the view that the respondents could be termed as employees of the Bank and since their services came to be terminated with the closure of the Canteen, they are entitled to be reinstated with full back wages in accordance with the provisions of the Industrial Disputes Act.

77. We need not say anything further.

78. In the result, these appeals succeed and are hereby allowed.

79. The impugned judgments and orders passed by the High Court are set aside. Consequently, the Award passed by the Labour Court also stands set aside."

4(ii). Petitioner in his affidavit (Ext. PW1/A) has claimed to have been engaged only by respondent No.2. The said affidavit has been placed on record as Annexure P-6. Petitioner has unequivocally sworn therein that his services

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were engaged by respondent No.2/Department, i.e. Executive Engineer, Changer Area Lift Irrigation Project, Division Bassi, District Bilaspur on muster roll as Beldar on daily wage basis w.e.f. 01.11.2011; He continued to work in the said capacity till 30.06.2012; His services were unlawfully terminated by respondent No.2 w.e.f. 01.07.2012. That for the period in question, he had never worked under respondent No.1 (Contractor). Petitioner has specifically denied having worked under respondent No.1 or that he was engaged by respondent No.1. His entire emphasis in the claim is to establish himself as an employee of respondent No.2 and having been terminated unlawfully by respondent No.2. However, but for his self-serving statement, no other evidence in support of the claim has been placed on record by the petitioner.

As against the claim of the petitioner, Sh. Satish Kumar Sharma appearing as RW1 on behalf of respondent No.2 has categorically reiterated the stand of respondent No.2 about petitioner being neither engaged nor his services having been terminated by respondent No.2. According to RW1, petitioner was under the direct control and supervision of respondent No.1; It was the prerogative of respondent No.1 to engage, disengage or terminate any worker employed by it. That payments for operation and

maintenance were made directly to respondent No.1. No payments were made by respondent No.2 to the petitioner. This witness has also placed on record Ext. RW1/F (notice inviting tender) and Letters (Ext. RW1/E, Ext. RW1/G, Ext. RW1/H, Ext. RW1/J, Ext. RW1/K, Ext. RW1/L, Ext. RW1/M & Ext. RW1/N), reflecting award of works of several schemes to private contractors. Even during the course of cross-examination, RW1 maintained that control & supervision over the workers engaged in different schemes was not with the department and that respondent No.2 only made payment to the Contractors. The stand taken by respondent No.2 has been endorsed by respondent No.1 in its reply that it had engaged the services of the petitioner for the period of the contract, which was assigned to it by respondent No.2. Respondent No.1 has also admitted issuing notice to the petitioner on completion of the project/agreement and releasing his all admissible payments.

In the given facts & circumstances, the evidence led by the parties and the law laid down, learned Labour Court has correctly concluded that claim set up by the petitioner, the relief claimed by him, was only against respondent No.2, but the petitioner failed to establish employer-employee relationship between him and

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respondent No.2. Petitioner having failed to discharge this burden, his claim was justly dismissed by the learned Labour Court.

5. For the foregoing reasons, no interference is called for with the impugned award. This writ petition, therefore, lacks merit and is accordingly dismissed. Pending miscellaneous application(s), if any, also stand disposed of.

Jyotsna Rewal Dua
Judge

February 23, 2026
Mukesh