(2026:HHC:9621)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 3661 of 2026
Decided on: 31.03.2026

Gurbachan Singh **.....Petitioner**

Versus

The Executive Engineer, Changer Area Lift Irrigation Project, Bassi,
.....Respondent

Coram

Ms. Justice Jyotsna Rewal Dua

Whether approved for reporting?[1]

For the Petitioner: Mr. Rahul Mahajan, advocate.

For the Respondent: Mr. Y.P.S. Dhaulta, Additional Advocate General.

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 31.12.2024 primarily on the ground that the petitioner failed to discharge burden of proving employer-employee relationship between him and the respondent. Feeling aggrieved, petitioner has laid challenge to the aforesaid award in this writ petition.

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

---

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

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 Gurbachan Singh S/o Shri Chuhara Ram, R/o V.P.O Bassi, Tehsil Shri Naina Deviji, District Bilaspur, H.P. w.e.f. 01-07-2012 (as alleged by workman) by the Executive Engineer, Changer Area Lift Irrigation Project Division Bassi, District Bilaspur, H.P., 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 employer?"

3(ii). The claim set up by the petitioner (Annexure P-2) was that on the basis of result of an interview process conducted by the respondent on 01.05.2011 he was employed by the respondent as Daily Waged Helper on 01.05.2011 in Changer Area Medium Lift Irrigation Project, Division Bassi, District Bilaspur, H.P. He continued to work till 30.06.2012. With effect from 01.07.2012, the respondent awarded entire work to contractor. Consequently, services of the petitioner alongwith 12 other workers were terminated. It was the case set up by the petitioner that his daily waged services were terminated under a verbal order of the respondent on 01.07.2012 without any notice. That before awarding work to the contractor, notice was not even issued to the

petitioner. Petitioner alleged concealment of his muster roll, attendance register and demand register by the respondent. According to the petitioner, despite making repeated requests, he was not reinstated in service. Petitioner asserted violation of provisions of Sections 25-F(a), 25-F(b), 25-G and 25-H of the Industrial Disputes Act, 1947 as also the principle of 'Last come first go'. Petitioner prayed for reinstatement in service alongwith seniority, continuity of service and other consequential benefits including back wages.

3(iii). Respondent in its reply (Annexure P-3) raised several preliminary objections including there being no relation of employer-employee between petitioner and respondent. Respondent denied petitioner having worked under it upto 30.06.2012 and awarding the work to contractor on 01.07.2012. Respondent denied terminating services of the petitioner alongwith 12 workers. According to the respondent, Changer Area Medium Lift Irrigation Project was constructed through different contractors. Upon completion of the project, the same was again awarded to several contractors for purpose of operation and maintenance of project by outsourcing labour; Respondent neither engaged nor terminated services of

the petitioner. There was no relationship of employer and employee between them.

3(iv). In support of his claim, petitioner furnished his affidavit, Ext. PW1/A (Annexure P-5) reiterating the facts alleged in the claim petition. Petitioner also produced on record list of workers employed in the project and termed it as seniority list maintained by the respondent. Respondent examined one Shri S.K. Patial, Executive Engineer, Changer Area Medium Lift Irrigation Project. The said witness besides his affidavit Ex. RW1/A (Annexure P-6) also placed on record several documents. Learned Labour Court after considering the entire case, 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, where respondents were held to be appellant's employees, laid down following tests through which relationship between employer and employee could be determined in case of an industrial dispute:-

> "1. Control Test, where the hirer has control over the work assigned and the Control manner in which it is to be done. The control test is

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

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 claim petition had asserted having been employed by the respondent pursuant to an interview conducted on 01.05.2011. However, during course of his cross-examination, he admitted of having not been interviewed by anyone. The stand of the respondent had been that work of Changer Area Medium Lift Irrigation Project had been carried out by the contractors; On completion of work, it was again awarded for operation and maintenance to contractors by outsourcing of labour. Learned Labour Court has properly appreciated the evidence adduced by the parties and drew conclusion that Ex. PW1/B produced by the petitioner as seniority list was actually only a list of employees working in the project. Though according to the petitioner, he had not worked under the contractor

but there was no oral or documentary evidence produced by the petitioner to prove that he was being paid wages directly by the respondent. There was no documentary or oral evidence on record to establish that petitioner had been working under the control or supervision of the respondent. This factor assumes significance in view of the stand taken by the respondent that work under the project was being executed by them all throughout by different contractors on outsource labour basis. The documents produced by the respondent Exts. RW1/B, RW1/C and RW1/D were pointer to the fact that work of project had been awarded to contractors on prescribed terms of agreement. Learned Labour Court drew justiciable conclusions from the evidence on record that the petitioner while raising his dispute before the Labour-cum-Conciliation Officer did not mention his employment under the contractor. Respondent in its reply filed before Labour-cum-Conciliation Officer (Ex. RW1/I) had mentioned existence of neither any attendance register nor muster roll in favour of the petitioner. That there was no appointment letter issued by it in favour of the petitioner. So called seniority list Ex. PW1/B was not a seniority list maintained by the respondent but list of workers in the project. In view of above, learned Labour

Court correctly held that work had been awarded by the respondent to the independent contractors for different purposes. The contractor had not even been impleaded by the respondent. The petitioner failed to demonstrate his employment under the respondent or that his services were terminated by the respondent.

In the given facts & circumstances, the evidence led by the parties and the law laid down, learned Labour Court had correctly concluded that the petitioner failed to establish employer-employee relationship between him and the respondent. Petitioner having failed to discharge this burden cast upon him, 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

March 31, 2026
yogesh