

**CWP-20161-2017****-1-**207

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

CWP-20161-2017**Date of Decision : 01.04.2026****SUNIL KUMAR****.....Petitioner**

VERSUS

PRESIDING OFFICER, LABOUR COURT, AMBALA AND ORS.**.....Respondents****CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. J.S. Cooner, Advocate,
for the petitioner.

Mr. A.S. Virk, Advocate,
for respondents no.2 and 3-management.

KULDEEP TIWARI, J. (Oral)

1. Through the instant petition, as cast under Article 226/227 of the Constitution of India, the legality of the Award dated 07.12.2011 (Annexure P-1), has been put to question by the workman as the reference made under Section 10(1)(c) the Industrial Disputes Act, 1947, pertaining to the legality of his termination, has been answered against him.

2. Learned counsel for the petitioner submits that the learned Tribunal concerned, has neither considered, nor recorded any finding on the following legal issues:

i) As to whether, the petitioner has completed 240 days in preceding year, or not?

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ii) As to whether, the act of the respondents-management, while terminating his service would tantamount to retrenchment or not?

iii) As to whether, by adopting the outsourcing policy, as floated by the Government on dated 01.09.2006, the respondents-management is empowered to terminate the services of a directly recruited employee?

3. Learned counsel for appearing for respondents-management, strongly opposed the aforesaid submissions, and raised a preliminary objection by submitting that the instant writ petition is liable to be dismissed on account of delay and laches, as it has been filed after a lapse of six years from the date of passing of the Award. However, he fairly concedes that the aforesaid three legal issues, as raised by learned counsel for the petitioner, arise from the pleadings and evidence led by the parties concerned, and ought to have been adjudicated by the learned Tribunal concerned, which, unfortunately has not been done.

4. This Court has considered the rival submissions, as made by both the parties concerned, and has perused the entire case file.

5. From the facts of the instant case, it emerges that the petitioner-workman served a demand notice on 02.12.2008 (Annexure P-2), with an assertion that he was directly appointed by the respondents-management, in April 1997, on daily wages. He claims to have worked in various divisions under respondents-management and to have been continuously engaged against the permanent post, and for the work of

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essential in nature, as in the construction branch, repairs etc., are continuously done. He further asserted that he continued to work upto 30.06.2007. Thereafter, he was not allowed to join his duties, as the SDO concerned, informed him that his services have been terminated. Finally, it was asserted that the respondents-management engaged a new person through a Contractor, which amounts to an unfair labour practice.

6. The claim statement of the petitioner, was contested by the respondents-management by filing a written statement, on the ground that there existed no relationship of employer and employee. Further, that the petitioner was engaged on the basis of work, on daily wages, and he was disengaged when the work was completed. The appointment of the petitioner-workman against any permanent post was also denied by the respondents-management.

7. The main contention of the respondents-management is that, in view of the adoption of an outsourcing policy, appointments are now being made through outsourcing agencies, and consequently, the services of the petitioner were discontinued. It has further been submitted that the petitioner-workman did not complete 240 days of service in the preceding year, and therefore, he is not entitled to any relief.

8. The learned Tribunal concerned has failed to consider all the three legal issues, that arise for determination from the pleadings and evidence led by the parties, rather the learned Tribunal, has considered the only fact that after adopting the outsourcing policy, the respondents-management has now started employing the workmen through



outsourcing agency, and therefore, the petitioner's termination cannot be considered as an illegal termination. The relevant observation is extracted hereinafter:

“Issue No. 1

7. *The authorized representative for the claimant argued that the complete record of attendance etc. was called but the management produced part of it. No cross-examination was conducted on the claimant suggesting that he had not completed 240 days in the 12 months preceding the termination. He further contended that the claimant had worked upto 30.6.2007 whereas MWI stated that the outsourcing policy was adopted on 1.9.2006, showing that the claimant had worked even after the policy was adopted.*

8. *The All these arguments would be of no avail to the claimant because outsourcing policy of the Government was dated 1.9.2006 and MWI stated that the said policy was adopted and thereafter the workers were engaged through contractor. instructions/policy of the Government was of that date and was obviously carried into action later on. The policy could not have been adopted on the day it was issued. Also completion of 240 days will make no difference in view of the peculiar facts and circumstances*

9. *The claimant admitted in his cross-examination that he was engaged as a daily wager for particular work and not against any fixed post. He admitted that the management had adopted the outsourcing policy of the Government and since then the workers were being engaged only through contractor. No such worker was employed directly by the management.*

10. *Since the University has not been engaging workers directly after adopting the above said policy, it cannot be said that there was any illegal termination or that the claimant was not intentionally taken back. In view of the peculiarity of facts, the authority produced by the claimant which is reported as Ramesh Kumar Vs State of Haryana 2010 (2) RSJ 165 will not be applicable here.*

11. *Thus, the claimant has no right to the work for which he was engaged and at most it can be said that it was his misfortune that the Government issued a policy which was adopted by the management.*

This issue is answered against the claimant.”



9. Upon a careful scrutiny of the aforesaid observations, this Court finds that the learned Tribunal concerned, has erred in law, by not adjudicating the issues; as to whether, by adopting outsourcing policy and terminating the services of a directly appointed workman, would fall within the ambit of definition of 'retrenchment', and, as to whether, the workman completed 240 days of service in the preceding year. These vital issues have never been considered by the learned Tribunal concerned.

10. Though there is no dispute with regard to the fact that there is a delay on the part of the petitioner-workman to approach this Court, however, considering the fact that the serious prejudice has been caused to the petitioner, while not adjudicating the relevant issues by the learned Tribunal concerned, such delay can be ignored. Therefore, this Court **sets aside** the impugned Award, and **remit** the matter back to the learned Tribunal concerned, for adjudication afresh, on the issues as framed by learned Tribunal concerned, including the legal issues as raised by the petitioner before this Court.

11. Consequently, the instant petition stands **disposed of**, with the direction upon the parties concerned, to cause appearance before the learned Industrial Tribunal concerned, on 27.04.2026 at 11:00 AM.

12. Since the reference is of the year 2009, therefore, it is expected that learned Tribunal concerned, shall make all its endeavours to decide the reference afresh as early as possible, but not later than 06 from



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the date of receipt of a certified copy of this order

13. Further a *mandamus* is passed upon both the parties concerned, that they shall not adopt any dilatory tactics to delay the adjudication of the reference, as the evidence have already been led by both the parties concerned, and the matter is to be re-argued by the parties concerned, on the legal issues, as raised before this Court.

14. All pending application(s), if any, also stand **disposed** of accordingly.

April 01, 2026
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No