



224+256

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

Date of Decision : 21-04-2025

224

224-1

CWP-15254-2016 (O&M)

HARYANA VIDYUT PARSARAN NIGAM LTD

.....Petitioner

VERSUS

**PRESIDING OFFICER INDUSTRIAL TRIBUNAL CUM LABOUR
COURT AND ORS**

.....Respondent(s)

224- 2

CWP-17426-2016 (O&M)

HARYANA VIDYUT PARSARAN NIGAM LTD

.....Petitioner

VERSUS

**PRESIDING OFFICER INDUSTRIAL TRIBUNAL CUM LABOUR
COURT AND ORS**

.....Respondent(s)

224- 3

CWP-19112-2016 (O&M)

HARYANA VIDYUT PARSARAN NIGAM LTD.

.....Petitioner

VERSUS

**PRESIDING OFFICER INDUSTRIAL TRIBUNAL CUM LABOUR
COURT AND ORS**

.....Respondent(s)

256

256-1

CWP-1805-2019 (O&M)

RAMWATI-I

.....Petitioner

VERSUS

**PRESIDING OFFICER INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-II FARIDABAD AND OTHERS**

.....Respondent(s)

256-2

CWP-1806-2019 (O&M)

SURESH

.....Petitioner

VERSUS
PRESIDING OFFICER INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-II FARIDABAD AND OTHERS

.....Respondent(s)

256-3

CWP-1807-2019 (O&M)

MUKESH

.....Petitioner

VERSUS
PRESIDING OFFICER INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-II FARIDABAD AND OTHERS

.....Respondent(s)

256-4

CWP-1808-2019 (O&M)

RAMWATI-II

.....Petitioner

VERSUS
PRESIDING OFFICER INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-II FARIDABAD AND OTHERS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajesh Gaur, Advocate
for the petitioner(s).

Ms. Tarranum Madan, Advocate
For the petitioners in CWP Nos.1805, 1806,
1807 and 1808 of 2019.

Mr. Navreet Singh Chhokar, Advocate
for respondent No.2 in CWP No.19112 of 2016.

Ms. Roma Gill, Advocate
For respondent No.3 in CWP No.15254 of 2016 and
CWP No.17426 of 2016.

Mr. Ashim Aggarwal, Advocate
For the respondent No.2 in CWP Nos.1805, 1806,
1807 and 1808 of 2019.

Mr. Anil Shukla, Advocate
For respondent No.3 in CWP Nos.1805, 1806,
1807 and 1808 of 2019.

HARSIMRAN SINGH SETHI, J. (Oral)

1. Present bunch of seven writ petitions involve common question of law in the context of common set of facts and thus they are being decided by a common order. However, in CWP No.1805, 1806, 1807, 1809 of 2019 although the facts and issue of law involved is similar but, the award impugned has been passed against the Workmen. For the sake of convenience and better understanding facts are drawn from CWP No.15254 of 2016.

2. Learned counsel appearing on behalf of the petitioner-Department argues that there existed no master and servant relationship between the petitioner and the respondent-Workmen as the respondent No.3-Contractor was the employer of the workmen concerned and without deciding and pondering upon the said issue, the respondent-Workman has been treated as the employee of the petitioner-Department ignoring the fact that employee himself has mentioned in the present bunch of petitions that he was employed with petitioner-Department through the Contractor.

4. Learned counsel for the petitioner-Department further submits that merely by recording that "*from the evidence and material records*" it is proved that their existed master and servant relationship between the petitioner-Department and the respondent-Workman but no such evidence or the facts have been placed on record to support the said finding hence, findings recorded by the Labour Court are perverse to the facts and evidence, which has come on record.

5. Learned counsel appearing on behalf of the respondent-Workmen submits that though the respondent-workmen were working through the Contractor but as they were performing the duties with the

petitioner(s) and the petitioner(s) were having the control over their duties, the master and servant relationship between the petitioner(s) and the respondent-Workmen has been rightly recognised by the Labour Court and the award dated 13.01.2016 (Annexure P-6) may kindly be upheld.

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

7. The factum that the respondent-Workmen were recruited through the Contractor is not in dispute. Further, even while filing the claim petition, the Contractor has been impleaded as a party by the Workmen. The only issue which was to be decided by the Labour Court was whether there existed a master and servant relationship between the present employees in the Department and the Workmen or the Workman was the employee of the Contractor.

8. The argument of the Workmen is that the petitioner(s) had the control over them while they were discharging their duties, it may be noticed that the said argument cannot be taken into account for the grant of benefit of reinstatement in service along with backwages to the respondent-Workmen. As per the judgement of the Hon'ble Supreme Court of India in Civil Appeal No.4014 of 2025 titled "***The Joint Secretary, CBSE and ors. Vs. Raj Kumar Mishra and ors.***", decided on 17.03.2025, it has been held that unless the master and servant relationship is proved through the documentary evidence, merely on the ground that there was a direct supervisory control of the employer over the employee, cannot be taken as a ground to decide the master and servant relationship between both the petitioners and the respondent-Workmen. The relevant paragraph 6 of the said judgement is as under:-

*“Having considered the facts and circumstances of the case(s) and submissions of learned counsel for the parties, we find substance in the contentions of learned counsel for the appellants. The issue whether the private respondents were employees of the appellants, is the crux of the matter. Whatever material has been placed and even the best point which was argued by the learned Senior Counsel for the private respondents before this **Court** was that since there was supervisory and jurisdictional control over the private respondents by the appellants, ipso facto, they would become employees of the appellants is noted only to be rejected.”*

9. A bare perusal of the above reproduction would show that as per the judgment of the Hon'ble Supreme Court of India in **Raj Kumar Mishra's case (supra)**, the master and servant relationship needs to be proved through the cogent evidence such as the appointment order, the payment of salary etc. merely that the principal employer was having control and supervision over the workman is not good enough to hold that there exists a master and servant relationship.

10. By applying the said ration in the facts and circumstances of the present case, it may be noticed that the workmen have themselves conceded before the Labour Court that they were appointed with the petitioner-Department through the Contractor. Once, the conceded fact has gone un rebutted by the counsel for the respondent-Workmen, merely on the ground that the principal employer had the supervisory control over the workmen, is not good enough to hold that there existed master and servant relationship between the petitioner-Department and the respondent-Workmen.

11. Once, the master and servant relationship is to be proved on the basis of the cogent evidence such as the appointment order in favour of the Workman by one against whom the relationship is claimed, merely by stating that there is a supervisory control over workmen by principal employer is not good enough to hold that there exists a master and servant relationship between them, the employees working through the outsourcing agency, are to be treated as the employees of the outsourcing agency and any violations of the provisions of the 1947 Act will attract a claim only against the outsourcing agency and not the principal employer.

12. The principal employer will only become liable in case, the Contractor has been impleaded as a party to the litigation and it is proved by way of cogent evidence that the Contractor was not eligible to hold the contract under law to supply workforce. Unless and until, the said aspect is proved and that too by giving due representation/hearing to the Contractor, the principal employees cannot be held liable for termination of the services of employees who were working through the outsourcing agency.

13. Keeping in view the totality of the circumstances in the present case i.e. CWP Nos.15254, 17426, 19112, of 2016 mentions the petitioners here as well holding the principal employer liable for termination being in violation of the 1947 Act and passing an order granting the relief to the respondent-Workman against the principal employer in, the award passed/challenged in the abovementioned cases are accordingly set aside as the same cannot be upheld as these award passed are perverse to the settled principle of law noticed hereinbefore hence, the abovesaid writ petitions are allowed.

14. Keeping in view the abovementioned settled principle of law, the findings recorded by the Labour Court in CWP Nos.18066, 1807, 1808 and 1809 of 2019 wherein, as per the impugned award, the master and servant relationship between the principal employer and the workman has not been proved in consonance with the settled principle of law noticed hereinbefore and the same needs no interference as no perversity has been pointed out so as to set aside the said award and the said writ petitions stands dismissed.

15. Furthermore, it should be noted that in both the set of writ petitions, the workmen had impleaded the Contractor as a party in the reference raised by them before the Labour Court but no finding in respect of the claim qua Contractor has been dealt with, therefore, the said issue in both sets of these writ petitions is remanded back to the Labour Court for fresh adjudication to decide upon the issue that while terminating the services of the workmen whether provisions of the 1947 Act were violated or not and qua and whether any relief is admissible to the workmen from the Contractor through whom they were working?

16. Relevant parties are directed to appear before the Appellate Labour Court on 02.07.2025.

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

17. Photocopy of this order be placed on the files of other connected cases.

21-04-2025
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES
Whether reportable: NO