

**(2017) 06 SHI CK 0027**  
**In the High Court Of Himachal Pradesh**  
**Case No : 660 of 2017; 65 of 2017**

|                                         |            |
|-----------------------------------------|------------|
| EXECUTIVE ENGINEER, BSNL CIVIL DIVISION | APPELLANT  |
| Vs                                      |            |
| KRISHAN CHAND AND ANOTHER               | RESPONDENT |

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**Date of Decision :** 12-06-2017

**Acts Referred:**

[Industrial Disputes Act, 1947](#), [Section 25F](#) - Conditions precedent to retrenchment of workmen

**Citation :** (2017) 06 SHI CK 0027

**Hon'ble Judges :** Sanjay Karol, Tarlok Singh Chauhan

**Bench :** Division Bench

**Advocate :** Rajiv Jiwan

**Final Decision :** Dismissed

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## Judgement

1. By medium of this application, the applicant/appellant has sought condonation of 234 days? delay that has crept up in filing of the appeal. For the reasons stated in the application duly supported by an affidavit of the Executive Engineer of the appellant, we find that the applicant/appellant has carved out sufficient cause which prevented it from filing the appeal within the prescribed period of limitation. Accordingly, delay of 234 days? in filing of the appeal is condoned. Application stands disposed of. Appeal be registered.
2. By medium of this Letters Patent Appeal, the appellant has assailed the judgment passed by the learned writ Court whereby it affirmed the findings rendered by the learned Industrial Tribunal-cum-Labour Court (for short "Labour Court") and dismissed the writ petition filed by the appellant.
3. It is vehemently argued by the learned counsel for the appellant that the learned Labour Court had passed the impugned award by drawing an adverse inference against it that too without affording an opportunity for filing written and addressing oral arguments. It is further argued that the learned writ Court fell in error in not considering that the respondents were not the employees of

the appellant and were the workers supplied on out source basis by ?M/s Jaswant Singh and Sons?. Lastly, it is argued that the services of the respondents stood terminated on the expiry of the term of the contract and, therefore, there was no occasion either for the learned Labour Court or even for the learned writ Court to have directed their reinstatement.

4. We have heard the learned counsel for the appellant and also gone through the material placed on record.

5. The brief facts leading to the filing of the present appeal are that upon an industrial dispute, the following references were made by the Government for adjudication to the learned Labour Court:- "Whether the action of Executive Engineer, Telecom Civil Division, Shimla in terminating the services of Sh.Krishan Chand S/o Sh. Sant Ram is legal and justified? If not, to what relief the workman is entitled? Whether the action of Executive Engineer, Telecom Civil Division, Shimla in terminating the services of Ms.Maya W/o Sh. Nand Lal w.e.f. 11/11/97 is legal and justified? If not, to what relief the workman is entitled?"

6. The respondents filed their respective claims and as regards, Krishan Chand, it was averred that he was employed as Plumber/Carpenter/Peon with the appellant on 25.04.1996 and continued as such till 15.12.1997 when his services were terminated illegally, whereas, his juniors were retained.

7. Insofar as Maya Devi is concerned, her claim was that she was engaged as Typist-Clerk by the SDO, Telecommunication, Solan Sub Division, in the month of January, 1997 and continued to perform her duties as such till 10.11.1997 when her services came to be illegally terminated.

8. The appellant contested these claims by filing reply wherein it was averred that none of the respondents were directly engaged or employed by it and rather their services were engaged through a Contractor, who had been engaged to supply labour to the appellant for maintenance of work in Telecommunication Department. It was the further case of the appellant that the services of both the workmen/respondents had been terminated on expiry of term of contract and thus there was no relationship of Employer-Employee between the parties and, therefore, the claim petitions be dismissed.

9. It is not in dispute that as regards the claim petition filed by Krishan Chand, the appellant did not lead any evidence and insofar as the claim petition filed by Maya Devi is concerned, she was neither cross-examined by the appellant nor any evidence led in support of their case. This constrained the learned Labour Court to draw an adverse inference against the appellant.

10. Insofar as the evidence led by the respondents is concerned, it was duly proved on record that both of them had completed 240 days in preceding 12 months from the date of illegal termination and in absence of notice the retrenchment was held in violation of Section 25F of the Industrial Disputes Act and, consequently, they were ordered to be reinstated in service.

11. As regards the plea of the Management that there was no relationship of Employer-Employee between the parties, the same was turned down as the appellant failed to lead any evidence in support of such plea.

12. The learned writ Court on the basis of the material placed before it upheld the findings of the learned Labour Court by holding that the averments made in the pleadings of the appellant could not be construed as evidence. Here, it shall be apt to reproduce the relevant observations which read thus:- "12. In my considered view, there is no perversity or infirmity with the findings which have been returned by the learned Labour Court in favour of the claimants. While the claimants duly substantiated their contention of having been terminated from service by the Management in violation of the statutory provision of Section 25 F of the I.D. Act despite their having completed 240 days in preceding 12 months, as from the date of their illegal termination. On the other hand, the Management did not produce any evidence on record to substantiate its contention that the claimants were not engaged by the Management and there was no relationship of employer and employee between the claimant and the Management. No iota of evidence has been placed on record to substantiate that the claimants were engaged through a contractor by way of outsourcing. Even during the course of arguments in this petition, the learned counsel for the petitioner could not draw the attention of this Court towards any material on record from which it could be gathered that the services of the claimants were engaged by way of outsourcing through a contractor and their wages were paid by the contractor and not by the Management.

13. In my considered view, simple reliance on the averments made in the pleadings by the Management is not a substitute for cogent evidence from where it could be inferred that the engagements of the claimants was by way of outsourcing through a contractor.

14. The Management has not placed on record any affidavit etc. of any such contractor to substantiate its plea. Similarly, neither any contract has been placed on record from where it could be inferred that an agreement was entered into by the Management with someone to supply workmen to it against which the claimants were provided to the Management, nor it has placed on record any receipts from which it could be inferred that the wages of the claimants were actually paid by a contractor and not by Management. There is no material placed on record from where it could be inferred that the Management was making payments to the contractor in lieu of his having supplied workmen to the Management by way of outsourcing. Therefore, in view of what has been discussed above, in my considered it can not be said that the findings returned by the learned Labour Court are either perverse or there is any infirmity in the same or they are not substantiated from the material which was produced on record by the claimants.

15. It has been held by this Court in LPA No. 4 of 2016 titled State of H.P. and another Vs. Shankar Lal and other connected matters, decided on 02.01.2016,

as under:- "The awards passed by the Labour Court are based on the facts and the evidence led by the parties. It is well settled principle of law that the Writ Court cannot sit as an Appellate Court and set aside the award made by the Labour Court, which is based on evidence and facts."

16. Thus, it is evident that as far as the award passed by the learned Labour Court is concerned, the finding of fact so recorded by the learned Labour Court should not be interfered until and unless the findings so returned by the learned Labour Court are perverse or not borne out from the material on record. " 13. It is not in dispute that against the judgment of the learned writ Court, the appellant had filed a review petition No.98 of 2016 on the ground that no opportunity had been granted by the learned Labour Court to the appellant to lead any evidence. In order to verify the veracity and correctness of such allegations, the learned single Judge called for the records of the case and after perusal thereof came to the conclusion that several opportunities had infact been granted to the appellant to lead its evidence and having failed to do so, the Labour Court had no option but to close the same. It was thereafter that the review petition came to be dismissed on 15.03.2017.

14. It is once again argued by the learned counsel for the appellant that the respondents were not its employees as they had been engaged/employed through a Contractor, who had been engaged to supply labour to the appellant for maintenance of the work in the Telecommunication Department and, therefore, could not have been ordered to be reinstated in service.

15. We find it rather intriguing that though this has been the consistent stand of the appellant in its pleadings, but neither before the learned Labour Court nor before the learned writ Court and more surprisingly even before this Court the appellant had made no endeavour or has rather failed to place on record any document which may even remotely prove this plea. Nothing prevented the appellant from filing an application for leading additional evidence before the learned writ Court or even before this Court and thus the learned writ Court or for that matter even the learned Labour Court committed no error in drawing an adverse inference against the appellant.

16. It is more than settled that the findings of fact recorded by the learned Labour Court as a result of appreciation of pleadings and evidence cannot be questioned in a writ petition and, therefore, obviously cannot be made subject-matter before an appellate Court.

17. At this stage, it shall also be profitable to refer to a recent judgment of this Court in Harbans Singh vs. Industrial Tribunal-cum-Labour Court and another 2016(3) SLC 1549 wherein similar issue came up before this Court and it was held as under:- "12. It is also a moot question ? whether the Writ Court in a writ petition or an Appellate Court in an appeal can interfere with the finding of facts, which was made foundation by the Labour Court while making the award? The answer is in the negative for the following reasons:

13. The Apex Court in the case titled as Bhuvnesh Kumar Dwivedi versus M/s. Hindalco Industries Ltd., reported in 2014 AIR SCW 3157, held that the findings of fact reached by Tribunal as a result of the appreciation of evidence cannot be questioned in writ proceedings and the Writ Court cannot act as an Appellate Court. It is profitable to reproduce para 18 of the judgment herein:

"18. A careful reading of the judgments reveals that the High Court can interfere with an Order of the Tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. The High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts. The High Court granting contrary relief under Articles 226 and 227 of the Constitution amounts to exceeding its jurisdiction conferred upon it. Therefore, we accordingly answer the point No. 1 in favour of the appellant."

14. This Court has also laid down the same principle in a batch of writ petitions, CWP No. 4622 of 2013, titled as M/s Himachal Futuristic Communications Ltd. versus State of HP and another, being the lead case, decided on 04.08.2014. It is worthwhile to reproduce para 13 of the judgment herein:

"13. Applying the test to the instant case, the question of fact determined by the Tribunal cannot be made subject matter of the writ petition and more so, when the writ petitioner(s) have failed to prove the defence raised, in answer to the references before the Tribunal. " 15. This Court in a series of cases, being CWP No. 4622 of 2013 (supra); LPA No. 485 of 2012, titled as Arpana Kumari versus State of H.P. and others, decided on 11th August, 2014; LPA No. 23 of 2006, titled as Ajmer Singh versus State of H.P. and others, decided on 21st August, 2014; LPA No. 125 of 2014, titled as M/s. Delux Enterprises versus H.P. State Electricity Board Ltd. & others, decided on 21st October, 2014; LPA No. 143 of 2015, titled as Gurcharan Singh (deceased) through its LRs versus State of H.P. and others, decided on 15th December, 2015, and LPA No. 207 of 2015, titled as State of H.P. and another versus Gagan Singh, decided on 16th December, 2015, while relying upon the latest decision of the Apex Court in Bhuvnesh Kumar Dwivedi's case (supra), has held that question of fact cannot be interfered with by the Writ Court. However, such findings can be questioned if it is shown that the Tribunal/Court has erroneously refused to admit admissible and material evidence or has erroneously admitted inadmissible evidence, which has influenced the impugned findings."

18. In view of the aforesaid discussion, no fault can be found with the award passed by the learned Labour Court as affirmed by the learned writ Court. Consequently, there is no merit in this appeal and accordingly the same is dismissed, leaving the parties to bear their own costs. Pending application, if any, also stands disposed of.