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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 4972 of 2026
Decided on: 31.07.2026

The Block Medical Officer-cum- Chairman,
Executive Committee , Rogi Kalyan Samiti

.....Petitioner

Versus

Jyoti Devi **.....Respondent**

Coram

Ms. Justice Jyotsna Rewal Dua

Whether approved for reporting?[1]

For the Petitioner: Mr. Uday Singh Banyal, Advocate.

For the Respondent: Mr. Tek Chand, Advocate.

Jyotsna Rewal Dua, Judge

This writ petition has been filed by the the Block Medical Officer-cum-Chairman, Executive Committee, Rogi Kalyan Samiti, Civil Hospital, Jawalamukhi, District Kangra, H.P. against similar awards passed by learned Labour Court-cum- Industrial Tribunal, Kangra at Dharamshala, ordering reinstatement of the respondent on the post of 'Safai Karamchari' alongwith compensation in the sum of ₹50,000/- by way of back wages. With consent of learned counsel for the parties, this matter is being heard today.

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

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2. The Case.

2(i). Following reference was sent for adjudication by the appropriate authority to the learned Labour Court:-

> "Whether the termination of services of Smt. Jyoti Devi w/o Shri Shashi Kumar, R/o Village Jodi Taal, Ward No.1, P.O. & Tehsil Jawalamukhi, District Kangra, H.P. by the Block Medical Officer-cum- Chairman, Executive Committee, Rogi Kalyan Samiti, Civil Hospital, Jawalamukhi, District Kangra, H.P. w.e.f. 01.01.2022, 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?".

2(ii). The claim set up by the respondent was that she was appointed as 'Safai Karamchari' in December, 2019 at Civil Hospital, Jawalamukhi under Rogi Kalyan Samiti on monthly salary. She completed seven years of continuous service and completed more than 240 days in each calendar year. She became eligible for regularization as 'Safai Karamchari' on completion of requisite tenure. Her work was never faulted with by her superiors. Respondent had also served the petitioner during Covid-19 pandemic and was awarded certificate of appreciation. On 31.12.2021, the petitioner terminated respondent's service without any prior notice. The

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petitioner allowed 'Safai Karamcharis' to work on outsource basis through contractor. Respondent alleged that her termination on 31.12.2021 was in violation of provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) as neither any notice was issued to her nor any inquiry was conducted by the petitioner. The entire process of retrenchment was completed within a day's time.

2(iii). Petitioner denied having appointed the respondent as 'Safai Karamchari' in December, 2019. According to the petitioner, it had called quotations during the year 2013 through various contractors for providing workers for doing sanitation work. Respondent was an employee of one such contractor. The payment to the contractor was made from the fund of Rogi Kalyan Samiti through cheques. It was prerogative of the contractor to engage or disengage the workers as per his choice. Petitioner never had any direct control either over the engagement or disengagement of workers. The contractor was lastly paid in March, 2017. Respondent did not continue with the contractor. On 30.11.2021, an urgent meeting was called for reconciliation of part time workers' engagement under Rogi Kalyan Samiti at Civil

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Hospital, Jawalamukhi. It was proposed to the contractor that he should adjust and engage the workers who had already been engaged in sanitation work in the hospital. The workers were also given the option to work with the contractor. Two such workers agreed to serve under the contractor. Respondent however refused to acknowledge conciliation and to serve under the contractor. Hence, she was not on post after 30.12.2021.

The parties led evidence in support of their respective stands.

On considering the entire case, learned Labour Court allowed the claim to the extent that petitioner was directed to reinstate respondent on the similar post and similar wages from the date of retrenchment alongwith compensation in the sum of ₹50,000/- by way of back wages. Feeling aggrieved against the award, petitioner has preferred this writ petition.

3. Heard and considered the case file.

4. Consideration

4(i) It was the specific case of the respondent that she had worked continuously and uninterruptedly with the petitioner till 31.12.2021. That she was employed and also paid by the hospital authorities. Learned Labour

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Court on appreciation of evidence has held that respondent had been working in the concerned hospital through contractor from March, 2020. However, after March, 2020 till 31.12.2021, she had worked on part time basis at government rate with the petitioner. At the time of termination of her services, the respondent was an employee of the petitioner. This fact has not even been disputed before me. Learned Labour Court has justly held that Industrial Dispute Act does not differentiate between part time, full time, contract, daily wages, regular and permanent workers for their inclusion in the definition of 'workman'. Therefore, even as part time worker, the respondent will still fall within the ambit of workman under the Act. The respondent had completed 240 days of continuous service within last preceding 12 months of her employment with the petitioner. The petitioner did not dispute continuous employment of respondent with petitioner for more than 02 years. It was also an admitted position that before terminating services of respondent, notice under Section 25-F of the Act or wages in lieu thereof had not been issued/paid to the respondent. In the given facts, learned Labour Court did not error in

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concluding that termination of respondent's service was in violation of provisions of Section 25F of the Act.

4(ii). On the issue of employer and employee relationship, it will be pertinent to take note of ***General Manager, U.P. Cooperative Bank Ltd. Versus Achchey Lal & Anr[2].*** Hon'ble Apex Court 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 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

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

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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

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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

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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.

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(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

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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

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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”;

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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

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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

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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."

In the instant case, learned Labour Court returned the findings that though respondent had been employed on six hourly basis per day through Rogi Kalyan Samiti but Rogi Kalyan Samiti was a committee under the Chairmanship of Sub-Divisional Magistrate of the concerned area and the Block Medical Officer, a government official was the member of Rogi Kalyan Samiti; The respondent, therefore, was working at Civil Hospital, Jawalamukhi under direct control and supervision of the Block Medical Officer. The payments were made to the respondent under the grant received from the State Government or as per bye laws, "funds pattern and resources mobility" of Rogi Kalyan Samiti. The payment of wages was made through Block Medical Officer to Rogi Kalyan Samiti. The respondent was not

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only working under direct control and supervision but was also being paid through the Block Medical Officer. There was clear and distinguished relationship of employer and employee between Block Medical Office, hospital and the respondent. Petitioner could not demonstrate any perversity in above recorded findings. It is well settled that High Court can interfere with the award passed by learned Labour Court only if it is vitiated by fundamental flaws, where decision has been rendered in gross violation of legal principles, or where Labour Court has made patent mistakes in admitting evidence illegally. These aspects are not met in the present case.

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

Jyotsna Rewal Dua
Judge

July 31, 2026
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