

* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Writ Petition (Civil) No.588/2008**

% Date of Decision : January 30, 2008

C.P. Sharma Petitioner

Through : Mr. Neeraj Shekhar,
Advocate

Versus

Group 4 Securities Indian Pvt. Ltd. & Anr. Respondents

Through : Nemo

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SUDERSHAN KUMAR MISRA, J : *(Oral)*

1. On 21st January, 2008, after some arguments, petitioner's counsel had sought an adjournment to obtain further instructions. Today, the petitioner has tried to demonstrate that the Tribunal's conclusion that the petitioner was engaged in supervisory duties, and hence was not a workman, is perverse. According to him, the status of the petitioner has been totally misconstrued by the learned Tribunal, and that the Tribunal failed to consider the petitioner's statement to the effect that he was merely a workman with no supervisory role whatsoever. He states that, therefore, the finding of the learned Labour Court to the effect that the claimant i.e. the petitioner, was a Head Guard, and that he was promoted to Senior Guard later on, and further that the nature of the job being performed

by the petitioner was of a supervisory nature and not of the workman, has occasioned a complete failure of justice. He relies upon the statement of a management witness, Sh. Ram Janak, who has stated in cross examination that the management does not have any document in support of the supervisory nature of duties being performed by the petitioner except the description in Exhibit NW-1/1. To support the plea that the Tribunal could not arrive at this conclusion in the absence of documentary proof by the management, the learned counsel for the petitioner has relied upon para 14 of the decision of the Supreme Court in the case of **Anand Regional Cooperative Oilseeds Growers' Union Ltd. Vs. Shailesh Kumar Harshadbhai Shah reported as (2006) SCC 548** paragraph 14 thereof which states as follows :

“14. For determining the question as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also the terms of the appointment in the job performed are relevant considerations.”

2. I do not agree with the contentions raised by the learned counsel for the petitioner in this behalf. An examination of the impugned judgment, and in particular paragraph 23 thereof, clearly shows that there has been an extensive application of mind by the learned Tribunal on this aspect. The Tribunal has noted the fact that the workman himself has filed documents wherein he is designated as Supervisor and also as the Head Guard. Even in his written statement, he has described himself as Head Guard, as also in his affidavit by way of evidence. Furthermore, in his additional affidavit also, he has stated that he was appointed as Head Guard and promoted later on as the Senior Guard. His statement in another portion of his additional affidavit that he has no control or supervision

over other Guards has also been noticed and duly considered. The learned Tribunal has also considered the arguments put forward by the claimant to the effect that in fact the management has manipulated the documents which were actually filed by the claimant himself. Petitioner's contention that the letter "H" was added in some of the documents later on, has also been noted. In fact, learned Tribunal had specifically drawn the attention of the petitioner to the portion of his affidavit where he described himself as Head Guard and found that he was not able to give any satisfactory explanation for the same. Not only that, it appears that in cross examination also, the petitioner stated that he was supervising the job of six guards. A reading of the impugned judgment shows quite clearly that the learned Tribunal had applied its mind to this controversy. It has taken note of the contentions and the stand of the petitioner as well as the fact that admittedly, he was drawing wages exceeding Rs.1,600/- per month; and then arrived at its conclusion to the effect that the petitioner was not a workman. I do not find any perversity in the reasoning of the learned Tribunal or in the conclusions drawn by it. The conclusion arrived at is plausible and it cannot be said that the finding in this regard is one which could never have been arrived at by any Tribunal. In the case of **Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union & Anr AIR 2000 SC 1508** the Supreme Court held:

"17.... The findings of fact recorded by fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for a mere reason of having been based on material or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based on some material which are relevant for the purpose or even on the ground

that there is yet another view which can reasonably & possibly be taken....”

3. Furthermore, it is settled law that scope of interference by this Court under Article 226 is very limited. This Court is not sitting in appellate jurisdiction and cannot examine the matter as if it were a first appeal. This proposition has been time & again highlighted by the Hon'ble Supreme Court in myriad cases. In ***Apparel Export Promotion Council Vs. A.K.Chopra (1999) 1 SCC 759*** it was observed that “since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent for that of the departmental authorities.”

4. Similarly in the case of ***Govt. of A.P. And Others Vs. Mohd. Nasrullah Khan (2006) 2 SCC373*** paragraph 11 states as follows:

“11. By now it is well established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an appellate authority. Its jurisdiction is circumscribed and confined to errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of Natural Justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority.”

5. In ***Mukand Ltd. Vs. Mukand Staff & Officers' Association (2004) 10 SCC 460*** the Supreme court relying upon its own earlier judgments, observed that writ jurisdiction can be invoked to interfere with the award of the Tribunal when such award is given in bad faith, made without proper jurisdiction, in violation of principles of Natural Justice & so on. In that case, the Court also reiterated its earlier

decision in ***Syed Yakoob Vs. K.S.Radhakrishnan AIR 1964 SC 477*** where it had held that, “There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of appreciation of evidence cannot be reopened or questioned in writ proceedings.”

6. Even a Division Bench of Bombay High Court in the case of ***C.C.Palkar Vs. K.M.Mills Ltd. (1992) 4 SLR 82 (Bom)*** in para 8 therein observed as follows:

“8.....if the adjudicator's award is challenged before the High Court in writ jurisdiction it can be quashed if it is vitiated by the fundamental flaws of gross miscarriage of justice, absence of legal evidence, perverse misreading of facts, serious errors of law on the face of the order, jurisdictional failure & the like. The High Court has to be cautious both in not overstepping as if Article 226 were as large as an appeal and not failing to intervene where a grave error of law has crept in....”

7. Reliance of learned counsel for the petitioner on paragraph 14 of the aforesaid decision of the Supreme Court in ***Anand Regional Cooperative Oilseeds Growers' Union Ltd. Vs. Shailesh Kumar Harshadbhai Shah (supra)*** also does not help him very much. That authority, while laying down the law, merely states that in addition to the nature of the work performed by the petitioner, the terms of the appointment and the job performed are also relevant considerations. It is not as if the terms of appointment should be the sole consideration. Furthermore, as has been held by Supreme Court in ***Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. Burmah Shell Management Staff Association AIR 1971***

SC 922, in determining whether an employee is covered by the definition of “workman”, the Court has to see what is the main or substantial work that an employee is engaged in. Even in **Anand Regional Coop. Oil Seedgrowers' Union Ltd. Vs. Shaileshkumar Harshadbhai Shah (2006) 6 SCC 548**, the Surpeme Court has stated that what is important is the primary duties performed by the employee rather than his designation. In this case, the learned Tribunal has relied upon the documents filed by the petitioner himself, as also his own statements, his examination-in-chief, as well as the cross examination. It has also kept in mind the apparent inconsistency in his own statements and has then arrived at a conclusion about the nature of the duties. It is therefore obvious that the contention of the learned counsel for the petitioner to the effect that the Tribunal has failed to consider his statement that he was merely a workman with no supervisory role, must be rejected. No other ground is pressed by the petitioner.

8. Under the circumstances, I do not find any ground to interfere in the exercise of writ jurisdiction.

9. Petition is dismissed.

Sudershan Kumar Misra, J

January 30, 2008
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