

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

+ **Writ Petition (Civil) No. 8451/2009**

Date of Decision : 24.04.2009

Shri Divyash Pandit Petitioner
Through: Mr. K. C. Dubey, Advocate

Versus

The Management of National Council for Cement and Building Materials Respondent
Through : Nemo

CORAM:
HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ? | NO |
| 3. | Whether the judgment should be reported in the Digest ? | NO |

V.K. SHALI, J. (Oral)

1. The petitioner in the instant writ petition has challenged the award dated 25th July, 2008 passed by the learned Labour Court No.XX in ID No. 231/2006 (old No. 67/1988) in case titled **M/s National Council for Cement & Building Material Vs. Divyash Pandit**. The appropriate government vide order dated 11th August, 1988 had made a reference to the learned Labour Court in the following terms:

“Whether the dismissal of service of Sh. Divyash Pandit is illegal and/or unjustified, and if so, to what relief is the entitled and what directions are necessary in this respect?”

2. On the basis of the aforesaid reference, notice was issued to the parties who file their statement of claim and written statement. After

completion of pleadings, the following issues were framed which are as under:

- “(1) Whether the management is not an industry within the meaning of Section 2(j) of the ID Act?
- (2) Whether the Delhi Administration is not the “appropriate Government” as alleged in preliminary objection No.2?
- (3) Whether the petitioner is a “workman” within the meaning of section 2(s) of the ID Act?
- (4) Whether the domestic enquiry held by the management is improper and invalid and whether the finding is perverse?
- (5) As per terms of reference?”

3. The learned Labour Court with regard to issue no. 3 has come to a finding that the petitioner herein is not the workman within the definition of Section 2(s) of the Industrial Disputes Act, 1947 on account of the fact that he was a Graduate Engineer Trainee doing the research work, and accordingly, the reference was answered in negative.

4. The petitioner feeling aggrieved by the aforesaid finding in the award has challenged the same. The main contention of the learned counsel for the petitioner is that the finding of the learned Labour Court that the petitioner is not a workman within the definition of Section 2(s) of the Industrial Disputes Act, 1947 is not correct inasmuch as merely on account of the designation, it cannot be held that the petitioner is not a workman. The petitioner was working as a skilled person and the respondents who were admittedly in possession of the various documents like appointment letter etc. the same were not produced in order to establish that the petitioner was working as a scientist. Further, it was alleged that originally the case of the respondent was that the petitioner was appointed at the level L-I while as during the course of evidence it has been stated that he was appointed at the level-M.

5. It was urged that there is inconsistency in the stands of the respondent. Basing his argument on the same and reliance on the judgment of the Hon'ble Supreme Court **Hussan Mithu Mhasvadkar Vs. Bombay Iron & Steel Labour Board** (2001) 7 SCC 394 it was urged by the learned counsel merely on account of the fact that the designation of the petitioner is a Graduate Engineer Trainee that it was not the reason to held that the petitioner was not a workman.

6. I have carefully considered the submissions made by the learned counsel for the parties and also gone through the record. At the outset, it must be stated that although the principle of Evidence Act are not applicable to the proceedings before the learned Labour Court, however, the broad principle would also apply to the recording of evidence before any quasi judicial body. The petitioner along with the writ petition has placed on record his own statement recorded as WW-1 it may be pertinent here to reproduce a portion of statement which shows not only the designation he holds but also the type of duties which he was discharging. The statement reads as under:-

“WW-I statement of Shri Divyash pandit S/o Shri Hari Prakash Pandit aged 32 years R/o 100-D, Kamla Nagar, Delhi. On SA.

I joined the management in February 1982 as a graduate engineer trainee after completion of one year of training I was appointed as regular officer cadre as Cadre Official level Li. Copy of my appointment is Ex.WW1/1. My nature of duties was research work in process Engg. Field related to cement industry. I was a member of projects in various projects namely R&D 49 i.e. development statistical methods of quality central (b) development and data base. (3) beneficiation of low grade lime stone. My duties were confined only as a research work which involves technical scale for which I have special knowledge. I did not exercise any supervisory or managerial functions. No employee was working under me.”

Therefore, the above statement of the petitioner clearly shows that he by any stretch of imagination cannot be called a workman.

7. As against this, it was contended that the petitioner was an admittedly recruited as a graduate Trainee Engineer and was doing the research work and how such a person be said to be a workman within the definition under Section 2(S) of the Industrial Disputes Act, 1947.

8. So far as the management is concerned, the management has also examined one witness namely Sh.K.Suryanarayana (AW-1) who has also stated as under:-

I am working as a Scientist (Grade E2) at Hyderabad center of the management. I am conversant with the facts and circumstances of the case as such competent to swear this affidavit.

That I know Mr. Divyash Pandit who was earlier working with the management as a Scientist in Grade E2. I have worked with him during the period from 1986 to 1987 when I was posted as laboratory assistant in Grade A10 in the pay scale of Rs. 1640-2900 (pre revised) at Chennai. At present the revised pay scale of Grade A10 is Rs. 5500-900.

That during the period between May 1985 to May 1994 when I was working as laboratory assistant, at NCB IIT (Madras), Sh. Divyash Pandit was working in the said unit as scientist in Grade E@ (earlier called as level M) in the pay scale of Rs. 2200-4000 (pre-revised) Rs. 8000-13500 revised. The duties of a scientist in E2 Grade is was to generate, develop manage and protect new knowledge/techniques by research, design, development and extension etc. He performs the work of imaginative and creative in nature.

That Sh. Divyash Pandit who was working as scientist Grade E@ with the management was engaged in the above state scientific activities as mentioned hereinabove. As a scientist he used to impart advise/guidance to the team working under him. He was my superior officer also. His activities were to research/education/delivering lectures, collecting scientific data for research etc. He used to supervise the employees working on projects which included supervising manual and other routine jobs

assigned to them. He was not performing stereo type of functions.

That as scientist Grade E2, I as other scientists in the said category, I am also performing the functions as were done by Sh. Divyash Pandit while he was working with the management as stated hereinabove. “

9. Although both these witnesses, namely, the workmen, the petitioner and the management witnesses were subjected to extensive cross examination by the respective sides but nothing could be brought about which would discredit the testimony either of them. The petitioner was admittedly appointed as a graduate engineer trainee and his job was essentially that of a research in a cement industry. Having been so established it could hardly be said by any reasonable person that a person with such a designation and with such nature of duties the petitioner could be deemed to be workman within the definition of the industrial disputes. The learned Labour Court also after analyzing the evidence adduce before it has come to a detailed finding that the petitioner is not a workman. It may be pertinent here to produce the finding of the learned Labour Court also which are as under:

“It has been submitted on behalf of the management that the claimant is not a workman as it has been admitted by the claimant that he is B.Sc. Engineering (Chemical) and has specialized knowledge in the type of research work undertaken by the management. The workman is a qualified engineer to carry out research work and he was engaged in research work and was not doing unskilled, semi skilled, or skilled technical and clerical work. On the other hand it has been argued on behalf of the workman that he was not doing any supervisory, or managerial work and his work was only clerical manual and technical, as such he is a workman within the definition of Workman as provided under Section 2(s) of the Industrial Disputes, Act. Workman during his cross examination, has admitted that his duties were doing research work in a Process Engineering. Even in his statement of claim, the workman has admitted that the duties

performed by him included research work in Process Engineering field relating to Cement Industry. He is B.S. Engineering (Chemical) which is equivalent to BE. He was further stated that since he was specialized knowledge in the type of research work was to be undertaken with the management, the workman was employed after written test and interview. Now, admittedly the main function of the claimant was to carry out research work in the field of Cement Industry. As such, the work of the claimant cannot be said to be clerical or manual. The workman had been performing research and had been preparing scientific reports and had been collecting different scientific data as such the work carried out by the claimant was of intellectual, imaginative and creative. Accordingly, it cannot be said that the claimant was performing only clerical, manual and technical work. Keeping in view the above discussion, I am of the considered opinion that the scientist engaged in research work cannot be termed as a workman. Furthermore, MW-4 in his affidavit has specifically stated that Sh. Divyash Pandit was working in the said unit as scientist Grade E@ (earlier called as level M in the pay scale of Rs.2200-4000 pre revised, Rs. 8000/- to Rs.13,500/- revised). As such the salary of the claimant was more than Rs.1600/- per month. It has been further deposed by MW-4 that the duty of the scientist in E2 grade is /was to generate, develop, manage and protect new knowledge; techniques to research, design, developments and extension etc. Keeping in view the nature of duties of the claimant, I am of the considered opinion that a scientist like the claimant performing the above said duties of creative nature cannot be termed as a workman. As such the claimant is not a workman as defined under Section 2 (s) of the Industrial Disputes Act, 1947. Accordingly, issue no. 3 is decided in favour of the management and against the workman.

10. On the basis of the aforesaid analysis of evidence done by the learned Labour Court and its finding that the petitioner is not a workman, this Court cannot sit as Court of appeal and re-appreciate the evidence and come to a contrary finding which on the face of it seems to be totally absurd position that a graduate engineer trainee working in an industry is held to be a workmen within the definition of Section 2 (S) of the Industrial Disputes Act, 1947.

11. I am in full agreement with the finding of the learned Labour Court and hold that there is no perversity, illegality or violation of any rule and regulation of principle of natural justice so far as the award of the learned Labour Court is concerned, accordingly, the writ petition is totally meritless and the same is dismissed.

V.K. SHALI, J.

APRIL 24, 2009
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