

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

+ **W.P.(C) No. 12886/2006**

% Judgment reserved on: 19.02.2010
Judgment delivered on: 19.04.2010

Maheshwar Singh Petitioner
Through: Mr. A.K. Bajpai, Adv.

versus

M/s.Indomag Steel Technology Ltd.. Respondent
Through: Mr. Lalit Bhasin, Adv.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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

KAILASH GAMBHIR, J.

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1. By this petition filed under Article 226/227 of the Constitution of India, the petitioner seeks quashing of the award dated 9.5.2006 passed by the Ld. Labour Court in ID No. 172/99

whereby the reference was answered against the petitioner and in favour of the respondent management.

2. Brief facts relevant for deciding the present petition are that the petitioner was appointed as a draftsman on 26.8.1996 with the respondent and was regularized on 20.2.1997. It is alleged by the petitioner that his services were terminated verbally without any order in writing and hence the petitioner raised an industrial dispute bearing ID No. 172/99 whereby vide an award dated 9.5.2006, the labour court held that the petitioner is not a workman u/s 2(s) of the I.D. Act and hence not entitled to any relief. Feeling aggrieved with the same, the petitioner has preferred the present petition.

3. Mr. A.K. Bajpai, counsel for the petitioner submitted that the petitioner is very well covered within the definition of workman under Section 2 (s) of the Industrial Disputes Act, 1947 as he was discharging the duties of a skilled person. Counsel further submitted that the category of the petitioner does not fall in the category of exclusion clauses envisaged under (i) to (iv) of Section 2 (s) of the I.D. Act. Counsel further submitted that

under Clause (iv) of Section 2 (s) of the I.D. Act, a person who is employed and is discharging duties of a managerial nature would not be covered within the definition of the workman u/s 2 (s) but in the facts of the present case the petitioner was not discharging any such duties of managerial nature or of supervisory nature as proved by the petitioner on record. In support of his arguments, counsel placed reliance on the judgment of the Apex Court in ***Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd. (1985) 3 SCC 371.***

4. On the other hand, counsel for the respondent submitted that the petitioner was essentially discharging the duties of an independent nature of a draftsman where he alone was taking decision to prepare highly specialized and sophisticated engineering drawings based on his own independent skill and therefore, such a person cannot fall in the category of 'workman' within the definition of Section 2(s) of the I.D. Act. Counsel for the respondent further submitted that the judgment of the Apex Court cited by the counsel for the petitioner in ***Arkal Govind Raj Rao (Supra)***, would not be applicable to the facts of the present case as in the said case the

Apex Court while dealing with a case of stenographer-cum-accountant held that the court should find out the primary and basic duties assigned to a particular job and the additional duties would not change the character and status of a person. Counsel further submitted that so far the facts of the present case are concerned, the primary and basic duties of the draftsman itself are of a highly sophisticated nature where the person uses his own independent talent in preparing the drafts. Counsel placed reliance on the judgment of the Apex Court in ***Burmah Shell Oil Storage & Distribution Company of India Ltd. Vs. The Burmah Shell Management Staff Association & Ors., (1970) 3 SCC 378*** in which the Apex court has laid down the principles to determine different categories of persons discharging their duties whether falling within the scope and definition of 'workman' envisaged under section 2(s) of the I.D. Act. Counsel also placed reliance on the judgment of the Bombay High Court in ***Ramesh Vs. The Commissioner, Revenue Division Amravati 1995 LAB I.C. 546*** to show many facets of the nature of supervision of work that can be undertaken by an employee depending upon the job requirement of work assigned

to him. Counsel further submitted that the labour court has taken into consideration the nature of the duties being performed by the petitioner on the said post of draftsman and then came to the conclusion that such duties cannot be held to be covered under Section 2(s) of the I.D. Act. Counsel further submitted that simply because the petitioner was receiving instructions from his superior that would not take him outside the definition of Section 2(s) of the I.D. Act as in any case after receiving the instructions he was using his own skill to prepare the drawings and designs.

5. Refuting the submissions of counsel for the respondent, counsel for the petitioner submitted that the Bombay High Court in the case of ***Ramesh V. The Commissioner, Revenue Division, Amravati (Supra)*** was dealing with an employee who was employed as Class-II, Gazetted Officer and a sectional Engineer in whose case the court held that such a category of a person cannot be covered within the definition of workman under Section 2 (s) of the I.D. Act and hence does not apply to the facts of the case at hand. Counsel distinguishing the case of ***Burmah Shell Storage & Distribution Company of***

India Ltd.(Supra) submitted that there the Apex Court was dealing with the nature of duties as was assigned to the Junior Managing Staff working in the Burmah Shell Company and after taking into consideration the nature of duties being performed by the said staff the Apex Court came to the conclusion that such employees were not held to be workmen.

6. I have heard learned counsel for the parties at considerable length and gone through the records.

7. Before proceeding to deal with the contentions raised by both the parties, it would be appropriate to reproduce Section 2(s) of the I.D. Act.

“2. DEFINITIONS:

(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person - (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. “

8. A bare look at the aforesaid provision will indicate that a person would come within the purview of the said definition if he is employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work. The question as to whether a particular employee falls within the definition of ‘workman’ or not necessarily has to be determined with reference to his dominant duties and not ancillary duties. It is also a settled legal position that merely designation or nomenclature as assigned to any post alone would not be the determinative factor to infer as to whether a particular assigned job would fall within the definition of ‘workman’ or not. Essentially, the nature of duties being performed by the person would determine as to whether such a person would fall within the definition of workman or not for which the facts and circumstances of the each case and the material placed on record by the parties would help the courts/tribunals to come to the conclusion as to whether a particular employee is discharging

any of the duties as envisaged under Section 2(s) of the I.D. Act or not. It is not always possible to lay down a straightjacket formula which can be determinative to find out the applicability of the definition of workman as attracted to the particular nature of duties.

9. Before adverting to discuss the legal issue involved herein, it would be appropriate to refer to the facts of the present case to see as to what duties the petitioner was essentially discharging in his capacity as a 'draftsman'. The petitioner entered the witness box as WW-1 and in his cross-examination deposed that he was preparing drawings with the help of engineers of the organization. He also deposed that he used to perform his duties as draftsman as per the directions of his superior officers including engineers, manager and other senior officers of the management. He denied the suggestion given by the management that there was no one to supervise his work. He denied the suggestion that various departmental memos were issued to him by the management to improve his work. The management adduced its evidence through MW-1, who in his cross-examination deposed that work was given to the petitioner

workman by S.G. Aggarwal, General Manager. He also deposed that specifications were given by the Head of the Department G.S. Aggarwal. He also deposed that the work of the workman was being assessed by the Head of the Department. He further admitted that the workman had no appointing powers and supervisory duties.

10. Taking the aforesaid facts into consideration, it is not in dispute that the petitioner was employed with the respondent management as draftsman. The duties of a draftsman are certainly skilled and technical in nature. A person can be said to be employed in a technical capacity if he is, in the first place, a skilled person. He must have enough dexterity to discharge the work assigned to him with speed and accuracy. Such a skillful person with the technical expertise has to use his judgment and has to find out whether a particular work can be done in a particular manner or not. A draftsman who has the technical background and expertise may be after doing some technical course or with the background of his experience has to apply his mind to prepare certain plans and designs and to that extent he may have originality in his ideas and thoughts but simply

because of the fact that one with technical expertise and knowledge prepares some plans and designs, the same by itself will not take him from the purview of definition of the workman as envisaged under Section 2(s) of the I.D. Act, more particularly when his ideas or work is subject to the final decision of the superior authorities. Hence, under no circumstances the job of draftsman can be equated with that of artists as discussed in ***Bharat Bhawan Trust Vs. Bharat Bhawan Artists Assn. (2001) 7 SCC 630 (Supra).***

11. In the facts of the present case, it has been proved on record that the petitioner was to prepare drawings with the help of the engineers of the organization and he used to perform his duties in his capacity as 'draftsman' as per the directions of his superior officers including engineers, managers and other senior officers of the management. It has also come on record that specifications were being given by the Head of the Department Sh. G.S. Aggarwal and his work was being assessed by the Head of the Department. It is thus quite evident that the work of the petitioner was under complete supervision of the Head of the Department and he was doing his work only with certain

specifications. No doubt the said specifications were given because of his technical background and that the petitioner was required to use his skillful abilities to prepare plans and designs but ultimately again the same were subject to final approval by the supervisors of the petitioner, which would mean that plans and designs submitted by the petitioner may or may not be finally approved by his supervisors. His supervisors who may possibly be more technically expert or trained people might give further ideas and suggestions to improve upon the work of the petitioner. No evidence has been placed on record by the respondent management to draw conclusion that the petitioner was not under the supervision of his superiors or the petitioner himself was the final authority so far his innovative ideas or thoughts were concerned, and in the absence of any such evidence placed on record from the side of the respondent management, the exclusion of the petitioner from the definition of 'workman' in the face of evidence placed on record by the petitioner sufficiently proves that his nature of duties were skillful and technical in nature and therefore the job of 'draftsman' as assigned to the petitioner cannot be said to fall

outside the ambit and scope of definition of 'workman' envisaged under section 2(s) of the I.D. Act.

12. In the light of the above discussion, I am of the considered view that the reasoning given by the learned labour court is perverse, irrational and illegal. The learned labour court has not correctly applied the principles of law. The impugned award is accordingly set aside and the matter is remanded back to the tribunal for fresh adjudication of the dispute in terms of the reference after treating the petitioner as workman employed on the post of 'draftsman' with the respondent management.

13. The parties are directed to appear before the labour court on 4th May, 2010.

April 19, 2010

KAILASH GAMBHIR,J