

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

Judgment Reserved on February 19, 2014

Judgment Delivered on February 24, 2014

+ **W.P.(C) 4508/2012 & CM Nos. 9342-43/2012**

BHIM SAIN Petitioner

Represented by: Petitioner in person

versus

THE GOVT. OF NCT OF DELHI THROUGH ITS SECRETARY
(LABOUR) AND ORS. Respondents

Represented by: Mr.Rajiv, Advocate with
Mr.M.K.Vikkey, Advocate for the
respondent Nos. 1 and 2
Mr. S.K.Chaturvedi, Advocate for
respondent No. 3
Mr.Sumeet Pushkarna, Advocate
for R-4

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge by the petitioner Bhim Sain is to the Award dated December 10, 2010 passed by the Industrial Tribunal, Karkardooma Courts, Delhi in I.D No.112/07 whereby the Industrial Tribunal on a finding that the petitioner is not a “workman” within the definition of Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) had not granted any relief to the petitioner.

2. The petitioner initially was appointed as a Junior Clerk with the erstwhile D.E.S.U. He was promoted to the post of Senior Clerk with effect from June 14, 1989. He was selected and appointed as Legal

Assistant, a Group-B post on deputation in the Legal Cell. He was permanently absorbed as Legal Assistant vide office order dated January 13, 1995 in the erstwhile D.E.S.U. A charge-sheet was issued to the petitioner under Rule 14 of the CCS(CCA) Rules, 1965. The petitioner was found guilty of the charges framed against him and a punishment of compulsory retirement was imposed upon the petitioner. It was the case of the petitioner before the Industrial Tribunal that the inquiry was conducted in an unfair, corrupt and illegal manner. The petitioner had sought a declaration that the penalty of compulsory retirement imposed upon him be declared as unauthorized and sought a further direction against the respondent for compensation.

3. At the time of raising the industrial dispute, since the erstwhile D.E.S.U was privatized, the two respondents who were successor of the D.E.S.U/D.V.B were made parties in the industrial dispute before the Industrial Tribunal.

4. It was the case of the respondent No.1 (Delhi Power Company Ltd.) that the Legal Assistant, the post on which the petitioner was working, is the power of attorney holder given by the department. Being a Power of Attorney Holder the officer has a duty and responsibility to protect the interest of department by properly prosecuting the cases in Court. It is further stated that the petitioner had not taken prompt action in forwarding the comments received by the Law Department on December 13, 1996 from the Executive Engineer and on May 14, 1997 from the Commercial Officer (Bulk Supply) II to the concerned department. It is a case where the petitioner had shirked his

responsibility by claiming absence of his immediate superior although the petitioner himself filed documents to show that he was Assistant Legal Officer (ALO). The respondent has also stated that the petitioner being a holder of the post of Legal Assistant in D.V.B, his duties are supervisory in nature. On the aspect of disciplinary proceedings suffice would it be to say that the respondent was justified in imposing the punishment.

5. The Delhi Transco Ltd. has also filed a reply before the Industrial Tribunal wherein it has also stated that the post of Legal Assistant in DVB was a supervisory post and the petitioner could not have approached the Industrial Tribunal under the Industrial Disputes Act.

6. Three issues were framed by the Industrial Tribunal, which are as under:

(a) Whether the claimant is a workman within Section 2(2) of the I.D Act.

(b) If answer to issue No.1 is in affirmative whether inquiry conducted against the workman was just, fair and proper.

(c) As per terms of reference.

7. On the issue No.1 the Tribunal has by relying upon the judgment of the Supreme Court in Muir Mills Unit of NTC (U.P) Ltd. vs. Swayam Prakash Srivastava & Anr. (2007) 1 SCC 491 has held that the petitioner does not fall within the definition of workman as defined under Section 2(s) of the Act.

8. On the basis of the conclusion against issue No.1, the issue Nos.2 & 3 were not gone into and no relief was given to the petitioner.

9. The petitioner who appeared in person would submit that he is not a professional. According to him as per the delegation, the Superintendent of the Circle and another officer were to act as Nodal Officers for legal cases filed by or against the department. He states that he was not doing any supervisory work. He would dispute the applicability of the judgment of the Supreme Court in Muir Mills' case (supra) as the facts of that case are different from this case.

10. I note that the petitioner appeared in the witness box. His deposition was very lengthy but the relevant deposition with regard to his qualification and nature of duties is reproduced as under:

“My educational qualification is M.A., LL.B. I did my LL.B in year 1993 or 94. I joined my service in DESU in the year 1969 as Security Guard. I have not written in my affidavit that I joined my services in DESU as Security Guard. In 1969 I had passed higher secondary from CBSE and was pursuing graduation course from Delhi University, Evening College. When I was appointed as Jr. clerk in DESU, I was pursuing my graduation course. I do not remember when I did my MA. Although I had done my all the abovesaid courses during my service tenure with DESU. Upto 1988 I worked as Jr. Clerk and after that I had been promoted as Sr. Clerk. I do not remember exactly what was the requisite qualification for Jr or Sr Clerk when I was appointed as such but post of Sr Clerk was promotional post. I do not remember what was the requisite length of service for promotion to the post of Sr Clerk. The post of legal assistant was a selection post. I was appointed as legal assistant in the year 1989. The requisite qualification for this post were that the candidate should have put in minimum 3 years service of Sr. Clerk

and should be LL.B. Qualification of LL.B was essential qualification for the said post. I have done MA, LL.B. and diploma in labour law. I have done this diploma before joining the post of legal assistant. I had taken due permission from the department to pursue my studies as per the rules. I have done LL.B as professional degree and on its basis I am doing practice as an advocate. I worked as legal assistant upto 8.8.01. I do not remember what was the pay scale of my post at that time. It was a Grade B post. The abovesaid appointment as LA was an adhoc appointment and subsequently I was absorbed permanently at this post on 13.1.95. I was assisting Asst. Legal Officer or legal officer while working as LA. I used to go in the Court. I used to liason with the advocate so that case could be presented properly. After coming from the court, I used to apprise my department about courts proceedings and further course of action to the ALO/LO. It was not mu duty to suggest name of the lawyer to be engaged for cases but I used to do the same on the instructions of my ALO. I used to put up the note as per instructions of ALO. About 14-15 other legal assistants were working during that period. Basically I was assigned the duty to look after the matter pending in Hon'ble High Court of Delhi. I was assigned to coordinate with the lawyers with respect to litigations with the department in the court. I used to visit the lawyers to assist the ALO for briefing the matters whenever it was required by him. During my tenure Mr. Kuldeep Kurich was ALO who was later promoted as LO. After Kurich no ALO was there to work in his place. Initially this post of ALO remained vacant but thereafter the AGM asked me to officiate on abvoesaid post who was not authorised to do so. I did not get the pay of ALO during my officiation nor officiating allowance, although I had claimed for it by representation. No reply was received by me. I had filed a writ petition bearing no.3638 of 1989 before Hon'ble High Court of Delhi claiming officiating allowance for the post of ALO. Apart from this officiating allowance, I had also claimed some other relief challenging the appointment of ALO on deputation. It is wrong to suggest that AGMA was competent to pass order regarding deployment of any official on officiating post. It is wrong to suggest that

AGMA was the appointing authority for the post of LO and ALO. At relevant point of time Delhi Electricity Supply Committee was appointing authority for these two posts. I do not remember who was the member and how many members were there in the committee. When I was appointed as LA it was DESU. The DESU remained in existence till 23.2.1997. The abovesaid committee was appointing authority when DESU was in existence. After DESU, DVB came into existence. At the time of DVB my appointing authority as DVB and the chairman was head of the Board. The board was the appointing authority for the post of LA as well as ALO and LO.

(The witness has been shown a notification dated 25.5.1999).

I do not admit document mark A. It is wrong to suggest that after Mr. Kurish I was working as officiating ALO. For the post of ALO, 5 years minimum regular service of LA was required. For the job assignment for the post of ALO. It is wrong to suggest that while working as LA, I was appearing in the court personally because I was not authorized to do so. It is correct that on certain occasion I signed official documents as ALO officiating. Vol. I was misled by the order of AGMA. The post of Legal Assistance requires limited mental application to assist the ALO. It is correct that only legal matter LA was required to assist the ALO because the LA was a qualified legal professional qualification. To practice law as an Advocate licence from Bar Council is necessary. When I was working as LA I had obtained the licence from the Bar council after approval from the management. I do not recollect my enrolment number but it was issued in the year 1989. Now a days I am practising as an Advocate. While working with DESU as Legal Assistant I was the attorney of the DESU with reference to my duties. My only even as an Attorney was to assist ALO nothing else. The attorney has not been on record. I do not remember if I was given authority as Attorney to engage lawyers compromise the matter, to sign vakalatnama on behalf of DESU. It is correct to suggest that while working as a LA under the said Attorney I was

assigned to protect the interest of DESU. It is wrong to suggest that I was performing supervisory duties while working as a LA.

While working as a LA on the instructions of ALO I used to prepare draft communications to the department. It is wrong to suggest that I used to prepare pleadings. I have opined a number of matter on the instructions given by LO/ALO. I had challenged the letter dated 11/13/7/1998 Ex. WW1/26. It is wrong to suggest that I was discharging professional duties while working with the DVB when the compulsory retirement was given to me. It is wrong to suggest that even prior to the said compulsory retirement I was discharging my professional duty as a Legal Assistant. It is wrong to suggest that the post of LA was a professional post. It is wrong to suggest that I am deposing falsely.

I was assigned to look after the matter in the Hon'ble High Court since 1990 and since then I have been looking after the matters of Hon'ble High Court. During my tenure of working with Hon'ble High Court as Legal Asst. I was assigned to look after the matter titled as Ajanta Iron Steel vs. MCD/DESU. It is correct that in the abovesaid matter the Hon'ble High Court vide its order dated 30.7.96 directed the department to file affidavit on behalf of DESU. After 30.7.96 I wrote letter to the department for providing comments/documents to the advocates. I do not remember that whether I was present on 30.7.96 before the court during the course of hearing or not. Normally I used to assist the advocate in the court or if the matters were more than one at the same time, then we used to contract advocate to know the proceedings took place the court. It is correct that I used to coordinate with the panel advocate for each and every hearing and the proceedings taken place before the court. The referred matter i.e. Ajanta Iron Steel vs. MCD was a suit and probably it was a theft case. I used to report about the proceedings to the ALO concerned and if in case the ALO concerned was not available then I personally used to prepare the note in case of urgency. In case I was sending any letter to the

concerned department or to the advocate concerned with the matter, I used to prepare the letter and send it to the dispatch section. It was a normal practice that dispatch section used to send the said letter to concerned department and advocate and thereafter I cannot say how the concerned clerk deals with the case/record. I do not remember whether I had written any letter to the concerned department/advocate about the proceedings of 30.7.96 prior to my letter dated 21/22.4.99. I have not filed any documents before this court showing that I have written any letter to the concerned department prior to 21/22.4.99. It is correct that the legal assistant was required to submit a daily report to ALO or LO indicating the case attended and proceedings took place before the court and also about next date of hearing. I do not remember whether I had submitted the daily report or not w.r.t the abovesaid matter. It is correct that on 30.7.96 my ALO Mr.Kurich was holding the office. I do not remember when exactly Mr.Kurich had retired. I was never allowed to officiate as ALO by any competent authority or by any valid order but I was made to work as legal assistant.”

11. On the other hand, the management witness Mr.Surender Singh Salhotra has deposed as under:

“Post of claimant was Legal Asst. The appointing authority for the post of Legal Asst. in DVB was AGM (Admn). After checking record I can say whether workman was transferred permanently on the post of Legal Asst. vide office order dated 13.1.95. After checking record I can say whether there was duty assignment by the competent authority by issuing any office order on the post of legal assistant. I do not know whether I have filed before inquiry authority or before this tribunal, any duty list for the post of legal assistant. I have not gone through report of inquiry officer in connection with filing of documents filed by the workman in his defence. I do not know whether the workman was allowed by competent authority for officiating to the post of Asst. Legal Officer. I do not know whether

any orders were passed by competent authority of DVB for officiating of the workman to the post of ALO. I do not know exactly how many people worked under the claimant but this post being supervisory in nature, there must have been people working under him. The claimant was authorised to mark his subordinate as absent if they did not come and to grant leave to them. I cannot tell if workman was authorised to fill in ACR forms of the workers working under him. I cannot tell if the workman was ever worked with Sh. K R Kurish Asst. Legal Officer to assist him in legal matters. The case of suit no.601/1989 before Hon'ble High Court of Delhi was assigned to panel advocates. The chairman was summoned in M/s Ajanta Iron Steel case, suit no.601/1989, by Hon'ble High Court of Delhi because the counter affidavit on behalf of DVB was not filed. I do not know whether the Chairman, DVB after his summoning in Hon'ble High Court, in his office note dated 17.9.99 referred this case to CVO to trace the moment of papers and give his report fixing responsibility on enforcement, bulk supply or any where else in dealing with the suit no.601/89. I have no knowledge as to whether CVO while giving his report also submitted any document along with that. I have no knowledge if Chairman was complaint against the claimant. Case of Ajanta Iron and Steels relates to theft of electricity. I have no knowledge if claimant had been placed under suspension under the relevant service rules. AGMA appointed Sh. NK Jain Addl. Chief Personnel Officer, P-III, as Inquiry Authority in this case. I will have to checked the records whether post of AGMA was created after formation of DVB. I cannot say how many documents out of the list of documents, given by him in his application Ex WW 17, were given to him. Vol. Most of the documents were supplied. It is wrong to suggest that management did not supply even a single document to the claimant to defend his case, as requested for by him. I have no knowledge if the claimant had filed 8 documents during inquiry

proceedings. I have no knowledge if claimant had filed any list of duties of Legal Assst. Which was issued by AGM with the approval of GME. I have no knowledge if claimant had filed four number of orders issued by competent authority which provided that SE Enforcement, appointed as Nodal Officer, who filed counter affidavit in Hon'ble High Court on behalf of Chairman. I have no knowledge if management has any document in its possession to show that comments regarding Bulk Supply in the relevant case were ever delivered to claimant by any official of the management. I have no idea if alongwith inquiry report the statement of witnesses and documents proved by the parties during the course of inquiry has also been produced in the court or not. Since it was not necessary, therefore, the prior approval of either the Chairman of DVB was not taken before compulsorily retiring the claimant. I have no knowledge that the resolution passed by DVB for amending the service conditions of employees and to amend DESU (DMC), Service regulation, 1981 and 1976 were approved by any statutory authority and published in Delhi Gazette under the provision of Sec 79 of Electricity Supply Act, 1948. Addl. CPO who was appointed as inquiry authority, was working under the supervision and control of Chairman, DVB. It is wrong to suggest that CVO while making preliminary investigation in this case, acted with malice against the workman. I have no knowledge if management did not take any action against staff of Enforcement and Bulk Supply and the workman was signed out for the purpose of disciplinary action. It is wrong to suggest that the claimant was made escape goat for lapses on part of SE Enforcement and SE Bulk Supply."

12. The short question which arises for this Court's consideration is whether the conclusion of the Industrial Tribunal on issue No.1 that the petitioner is not a workman within the definition of Section 2(s) of the

Act is proper. The Tribunal primarily relied upon the judgment of the Supreme Court Muir Mills case (supra) wherein the Supreme Court dealing with a case related to termination of a Legal Assistant in the litigation section of the petitioner company, performing the duties including supervising the court cases and whenever necessary to prepare draft, reply to matters that were pending in the court has held as under:

“38. Furthermore if we draw a distinction between occupation and profession we can see that an occupation is a principal activity (job, work or calling) that earns money (regular wage or salary) for a person and a profession is an occupation that requires extensive training and the study and mastery of specialized knowledge, and usually has a professional association, ethical code and process of certification or licensing. Classically, there were only three professions: ministry, medicine, and law. These three professions each hold to a specific code of ethics, and members are almost universally required to swear some form of oath to uphold those ethics, therefore "professing" to a higher standard of accountability. Each of these professions also provides and requires extensive training in the meaning, value, and importance of its particular oath in the practice of that profession.

39. A member of a profession is termed a professional. However, professional is also used for the acceptance of payment for an activity. Also a profession can also refer to any activity from which one earns one's living, so in that sense sport is a profession.

40. Therefore, it is clear that respondent No.1 herein is a professional and never can a professional be termed as a workman under any law.”

13. In the present case the appointment letter dated June 13, 1989 (Ex.WW1) whereby the petitioner was transferred on deputation to the post of Legal Assistant, it is noted that he was posted in legal cell under the OSD (E&L). As per his own stand before the Tribunal, his duties as Legal Assistant are as under:

“(a) Legal Assistant attached to ALO or any Court shall maintain all the records of litigation cases and assist the ALO in coordinating various activities in the Legal Cell as well as in the Courts and also various Sectional Heads or Departmental Heads.

(b) Each L.A will submit a daily report to his ALO indicating the case attended and status of the case and next date of hearing etc. on a prescribed proforma.

Any other duties/functions/responsibilities assigned to him by the seniors in hierarchy from time to time.”

14. That apart from the deposition of the petitioner himself, it is revealed that the petitioner was assisting the Assistant Legal Officer (ALO) or the Legal Officer (LO). His qualifications also included L.L.B. The post of Legal Assistant was a selection post. The qualification of L.L.B was essential for the said post. He did L.L.B as a professional degree and on its basis he was doing practice as an Advocate. He was going to the Court. He used to liaison with the Advocate so that the case could be presented properly. After coming from the Court he used to apprise the department about the Court's proceedings and further course of action to the ALO/LO. He was assigned the duty to look after the matter pending in the High Court. He used to visit the lawyers along with the ALO for briefing the matters whenever it was required by him. He was also asked by the AGM to officiate on the post of ALO, even though he was not authorized to do so. He had filed a petition before the High Court for claiming officiating allowance as ALO. The Legal Assistant was a feeder post to the ALO. On certain occasions he was signing the official documents as ALO (officiating). He admits that the Legal Assistant was required to assist the ALO in legal matters because the Legal Assistant was having legal professional qualification. The

petitioner while working as a Legal Assistant obtained the license from the Bar Council after approval from the management in the year 1989. As the Legal Assistant he was the attorney of the erstwhile DESU with reference to his duties. As an attorney he was given the authority to engage lawyers, compromise the matter, to sign Vakalatnama on behalf of DESU. As an Legal Assistant on the instructions of ALO he used to prepare draft communications to the department.

15. He had denied the performing the supervisory duties. He also denied discharging professional duties as Legal Assistant. He has also deposed that he was looking after the matter titled as '*Ajanta Iron Steels vs. MCD/DESU*'. With regard to the said matter, he had written to the department for providing comments/documents to the Advocate. He has also deposed that he used to assist the Advocate in the Court. It has also come on record that he used to coordinate with the panel Advocate for each and every hearing. From the deposition of the petitioner it is clear that the petitioner herein was a professional. As a Legal Assistant he was supervising the court cases, coordinating with the concerned department and the Advocates. He was assisting the Advocates in the Court. He had also officiated as ALO.

16. It is clear that the petitioner was a professional. Hence, the petitioner being a professional he cannot be termed as a "*workman*" within the meaning of Section 2(s) of the Act. The Tribunal has rightly decided the issue No.1 by placing reliance on the judgment of the Supreme Court in Muir Mills case (supra)

17. I do not see any infirmity in the impugned order of the Tribunal.

One aspect which needs to be considered is that the right of the petitioner to challenge the order of compulsory retirement cannot be taken away. The petitioner shall be at liberty to challenge the inquiry which was initiated against him and the penalty of compulsory retirement imposed upon him in appropriate forum in accordance with the law.

18. The writ petition is dismissed without any order as to costs.

CM Nos. 9342-43/2012

Disposed of as infructuous.

(V.KAMESWAR RAO)
JUDGE

FEBRUARY 24, 2014
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