

Neutral Citation No. - 2023:AHC-LKO:79379

Reserved on 30.11.2023

Delivered on 04.12.2023

Court No. - 8

Case :- WRIT - C No. - 1006350 of 2012

Petitioner :- M/S International Transformers Pvt. Ltd.
Thru M.D. And Another

Respondent :- Presiding Officer Industrial Tribunal ii
U.P. Lucknow And anr

Counsel for Petitioner :- Vinayak Saxena, Abhineet
Jaiswal, Gaurav Mehrotra, Mohd. Kausar Jah, Vinayak
Saxena

Counsel for Respondent :- C.S.C., A N Tripathi, Amar
Nath Shukla, Manoj Kumar Sahu

Hon'ble Pankaj Bhatia, J.

1. Heard Ms. Ritika Singh, learned counsel for the petitioners and perused the material brought on record.
2. None turned up on behalf of the respondents despite the matter being taken up in the revised call.
3. The present writ petition has been filed challenging an award dated 06.06.2012 whereby, the Industrial Tribunal has passed an award directing reinstatement with full back wages.
4. The facts in brief are that the respondent no. 2 was appointed with the petitioner company by means of an

appointment letter dated 09.09.1999 (Annexure No. 2 to the writ petition). In terms of the said appointment which was to commence from 20.09.1999, the respondent no. 2 was appointed and was entrusted to look after the complete production control, quality control, testing, design and further technical development for the company, he was designated as a Work Engineer in terms of the said appointment letter. The appointment letter further provided that the services of the petitioner could be terminated after giving two months notice on either side. Subsequently thereto, as the services of the respondent no. 2 were not found to be satisfactory, a notice dated 15.04.2003 was served by the petitioner company proposing to terminate the services of the respondent no.2, the said notice was in compliance with the Clause 7 of the appointment letter. It appears from the record that the respondent no. 2 never accepted the notice as such, the same was sent under the registered cover. On 16.04.2003 the respondent no. 2 moved an application informing that he would not be able to attend his duties on 17.04.2003, as such, he requested for grant of

leave. It is the case of the petitioner that thereafter the respondent no. 2 never joined with the petitioner company, as such, on 18.07.2003 in continuation to the letter dated 15.04.2003, the company called upon the respondent no. 2 to accept the amount of two months salary as compensation. It is informed that the respondent no. 2 has not collected the said amount and instead gave a notice on 26.08.2003 through his advocate refusing to accept the full and final settlement as was proposed by the petitioner company through a letter dated 18.07.2003. Subsequently, the petitioner raised an industrial dispute, which ultimately culminated in passing of an award which is impugned in the present writ petition being the award dated 06.06.2012.

5. The first contention of the learned counsel for the petitioners is that in terms of the appointment letter, the petitioner could not be termed as workmen as defined under Section 2(s) of the Industrial Disputes Act, 1947. The counsel for the petitioner strenuously argues that on perusal of the appointment letter, which is on record, it is clear that the nature of duties to be

performed was supervisory in nature and would not fall within the definition of 'workmen' as defined under Section 2(s) of the Industrial Disputes Act. She argues that this plea was specifically taken and was noticed by the Tribunal in paragraph 11 of the award, however, while dealing with the said issue, simply relying on a part of the evidence given by the respondent no. 2, which is recorded on internal page 7 of the award, wherein respondent no. 2 had stated that the nature of the job was technical such as designing of the transformer and testing of the SMC, which respondent no. 2 used to do along with the workman, the Tribunal held that the respondent was a workman. She specifically argues that there was no workman employee contract and he was not empowered to either accept or reject any workman's leave applications and was not entrusted with the work of paying wages etc. In contrast to oral evidence given by the respondent no. 2, petitioner also adduced the evidence of Director Mr. Sudhir Lothra, wherein it was specifically that the nature of work on which respondent no. 2 was employed related to Designing, Quality Control,

maintenance, etc and sometime he was entrusted with the work of designing the transformer which was technical in nature. The Tribunal based upon the said two evidence, relying only on the evidence adduced by the respondents, concluded that as the respondent no. 2 was working along with the workmen, he would be treated as workmen, even if the nature of designation assigned to the respondent no. 2 was Work Engineer. Further after holding that the respondent no. 2 was a workman, he proceeded to hold that the services of the respondent no. 2 was terminated 15.04.2003 invoking clause 7 of the appointment letter, could not be termed as termination simpliciter, mainly on the ground that certain aspersions were made by the petitioner in the letter dated 15.04.2003, which could not be termed as termination simpliciter. On the basis of the said the Tribunal held that the termination order passed against the respondent no. 2 was totally illegal because of the aspersion cast and the same being stigmatic in nature. Thereafter, the Tribunal holding that the respondent no. 2 was unemployed after the termination of services, as was stated by the respondent no. 2 in his evidence and

not controverted by the petitioner, the Tribunal directed reinstatement of the respondent no. 2 along with full back wages.

6. The counsel for the petitioners places reliance on the judgment of the Supreme Court in the case of *Burmah Shell Oil Storage and Distribution Company of India Ltd. Versus The Burma Shell Management Staff Association and others, 1970 (3) Supreme Court Cases 378* and specifically places reliance on paragraph 16 of the said judgment, which is quoted herein below:

"We may, to clarify this aspect, take an example of a qualified technical Engineer who is concerned with manufacture of machines. If he himself creates a machine with the use of his technical knowledge, he will certainly be held to be employed to do technical work. On the, other hand, if the machine is being made by others and all he does is to give advice or guidance, the actual technical work will have to be held to be done by the mechanics carrying on the work, while his duty will only be supervisory. A more clear illustration which may be useful is that of a painter. If a person is employed to paint walls of a house or paint furniture, it would clearly be employment to do manual labour. If, on the other hand, he is an artist who paints works of

art as a result of his own creative and imaginative faculty, he would be held to be employed on technical work, 77 4 even though, in creating the work, he will all the time be using his own hands to paint the picture. There can be a third case where a good artist may have pupils working under him who paint artistic pictures and he only guides their work. He may, on occasions, even make some improvements by retouching the work done 'by the pupils. On the face of it, such a person cannot-be held to be employed to do technical work; he would be a technical supervisor. These examples clearly indicate that, in the case of the Transport Engineer, whose principal duties are to see that the work is properly done by the skilled and unskilled workmen working under he is really employed to do supervisory work and not technical work."

7. In the light of the aforesaid, she argues that the appointment letter as well as the nature of job performed, even if statement of the respondent no. 2 is treated to be correct, would not fall within the definition of workman and as such, the Tribunal lacked jurisdiction to pass an award as has been done. She further argues that while the Tribunal had considered the evidence of the respondent no. 2, the evidence led

by the management and duly recorded in the award was not taken into consideration while holding that the respondent no. 2 was workman. She further argues that the manner in which, the termination order dated 15.04.2003 has been interpreted and has been held to be illegal solely on the ground that the same was stigmatic, is further bad in law as the management had clearly specified that they were exercising their power as per clause 7 of the appointment letter. It is lastly argued that apart from the respondent no. 2 stating that he was not gainfully employed after the termination, no evidence to substantiate as to how the respondent no. 2 sustained during all these years was brought forward by the respondent no. 2 and thus the award of full back wages was an improper exercise of power.

8. It also bears from the record that when the writ petition was filed by the petitioners an interim order came to be passed on 08.11.2012, wherein directions were issued that workman would be permitted to join in terms of the award and would be paid his current salary from the date of joining, however, the issue with

regard to reinstatement and back-wages would be subject to the final decision. An affidavit has been filed on record stating that despite the petitioner company calling the respondent giving him an option of joining, the respondent did not join.

09. In the backdrop of the facts as narrated above and the arguments advanced, it is clear that the Tribunal has decided the issue as to whether the respondent no. 2 was a workman as defined under the Industrial Dispute Act or not, solely based upon the oral evidence of the employee, appointment letter and the oral evidence led by the petitioner company was not even considered, thus it is a clear error in the decision making process, in so far as the relevant evidence, that is the appointment letter as well as the evidence led on behalf of the management was not considered. In terms of the appointment letter and evidence led, it is clear that the respondent no. 2 was never appointed as a workman, he was designated as 'workman Engineer', in terms of the appointment letter and there was no material whatsoever, to form a view that the employee respondent no. 2 performed the job of a workman

except for the oral testimony, that being the case, clearly the Tribunal did not have the jurisdiction to decide the dispute. In view thereof and on that count alone the impugned award dated 06.06.2012 cannot be sustained and is accordingly quashed.

10. Considering the fact that the parties have litigated all these years, the present petition is *disposed of* directing the petitioner to pay an amount of Rs.One Lac as compensation to the respondent no. 2 to be remitted in his bank account directly or paid to him through banking channels.

Order Date :- 04.12.2023

Arun