

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. CWP No.1519 of 2014 (O&M)
Date of decision : 04.08.2015

Sajjan Kumar Sharma ...Petitioner

Versus

The Presiding Officer, Industrial Tribunal cum Labour Court & ors.

...Respondents

2. CWP No.3610 of 2014 (O&M)
Date of decision : 04.08.2015

Jagat Phool Singh ...Petitioner

Versus

The Presiding Officer, Industrial Tribunal cum Labour Court & ors.

...Respondents

3. CWP No.3618 of 2014 (O&M)
Date of decision : 04.08.2015

Rajinder Pal & ors. ...Petitioners

Versus

The Presiding Officer, Industrial Tribunal cum Labour Court & ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Raj Kaushik, Advocate for the petitioner.

Mr. D.K. Khanna, Advocate for respondent-Management.

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of three writ petitions i.e. CWP Nos.1519, 3610 & 3618 of 2014, as common question of facts has been involved in all the three writ petitions. For deciding the controversy raised in the aforementioned writ petition, facts are taken from CWP No.1519 of 2014.

Challenge in the aforementioned writ petition is to the award dated 04.02.2013 (Annexure P-3) passed by Labour Court, whereby application filed under Section 33(c)(2) of the Industrial Disputes Act, 1947 (hereinafter to be referred as 1947 Act) has been dismissed on following points:-

- i) That the petitioners are not workman as per Section 2(s) of 1947 Act.
- ii) All of them were Divisional Accountant and nature of duty was supervisory therefore, could not be termed as workman.

Mr. Raj Kaushik, learned counsel appearing on behalf of the petitioner submits that Labour Court has committed illegality and perversity in declining the application as the petitioner had claimed retrenchment compensation owing to the fact that Corporation has been closed. He further submits that the post of Divisional Accountant exist at the bottom in the

hierarchy, inasmuch as there are five officers to whom the Divisional Accountant had to report.

He further submits that question whether the nature of the job performed by the petitioner was supervisory or not, has already been discussed and held in their favour by the Hon'ble Supreme Court in *National Engineering Industries Ltd. Vs. Shri Kishan Bhageria and ors.*, AIR 1988 Supreme Court 329.

The aforementioned case pertains to the retrenchment of the Auditor and the Hon'ble Supreme Court had held that the nature of the job of Auditor was not supervisory in nature and, therefore, he would fall in the definition under Section 2(s) of 1947 Act. He further pointed out that the Management vide CWP No.11679 of 2014 had challenged the award dated 06.12.2013 rendered in favour of the Jai Prakash and others, who were working on the post of Head Assistant & on closure of Haryana State Minor Irrigation and Tubewell Corporation Ltd., similar stand/objection was taken before the Labour Court, that the aforementioned persons do not fall in the category of the workman as they were drawing more salary than prescribed in the Act before causing amendment in 2010.

The aforementioned award was passed in favour of the workman and the same has been upheld by this Court vide judgment dated 30.06.2014. The management challenged the said order before Hon'ble Supreme Court vide Petition(s) for Special Leave to Appeal(C) No.7141 of 2015 and the same vide order dated 16.03.2015 had also been dismissed. Copy of the order passed by the Hon'ble Supreme Court has been handed over to the Court during the course of hearing. The order read thus as

under:-

*“Petition(s) for Special Leave to Appeal (c) No(s). 7141/2015
(Arising out of impugned final judgment and order dated
30.06.2014 in CWP No.11679/2014 passed by the High Court
of Punjab & Haryana At Chandigarh)*

HARYANA STATE MINOR IRRIGATION &

TUBEWELL CORPORATION LTD ...Petitioner(s)

VERSUS

JAI PARKASH CHHABRA AND ORS ... Respondent(s)

(with interim relief and office report)

*Date : 16/03/2015 This petition was called on for hearing
today.*

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA

HON'BLE MR. JUSTICE C. NAGAPPAN

For Petitioner (s)

Mr. Ajay Bansal, AAG

Mr. Umang Shankar, Adv.

For Respondent (s)

UPON hearing the counsel the Court made the following

ORDER

Heard learned counsel for the petitioner.

*No ground for interference is made out to exercise our
jurisdiction under Article 136 of the Constitution of India.*

The special leave petition is dismissed.

(VINOD KR. JHA)

(MALA KUMARI SHARMA)

COURT MASTER

COURT MASTER”

He further submits that award of the Labour Court is not
sustainable in the eyes of law and is liable to be set aside.

Mr. D.K. Khanna, learned counsel appearing on behalf of

Management submits that petitioner do not fall in the category/definition of the workman as per Section 2(s) of the Act as they are drawing more than Rs.3500/- per month and, therefore, Labour Court has rightly declined the reference. Even otherwise, the management has closed and, therefore the services were retrenched after observing all the legal formalities. Thus, the claim under Section 33(c)(2) of the Act was not maintainable.

He further submits that the nature of job of petitioner was supervisory and administrative duties in various offices and as per Rule 8.2 of the Service Bye-Laws 1980, the petitioners, being ex-regular employee, were not entitled to the three months wages or in lieu of the notice and the services have been terminated due to the closure of the corporation.

I have heard learned counsel for the parties and appraised the paper book.

During the course of hearing, this court requisitioned the copy of the paper book bearing CWP No.11679 of 2014 in order to ascertain whether objection similar to the one in the aforementioned petition had been dealt with or not.

I have gone through the contents of the writ petition which contains the reply filed by the HSMITC, wherein similar objection that workman had been discharging the duties which was supervisory in nature had been taken. Not only this, even in the judgment rendered in National Engineering Industries Ltd. (Supra), Hon'ble Supreme Court had occasion to decide the controversy whether the job of the Internal Auditor on a monthly salary would be supervisory in nature or not and after considering the facts found that such Internal Auditor would fall in the definition of the Section 2

(s) of the Act.

Even this Court while deciding CWP No.11679 of 2014 did not accept the contention of the management vis-a-vis their identity as workman and upheld the order of the Labour Court, whereby the claim of similar situated workman under Section 33(c) (2) was allowed by the Labour Court and the same has been upheld by the Hon'ble Supreme Court as noticed above.

Since the petitioners appointed on a regular basis and were discharging duties of Divisional Accountant and there are senior officers in hierarchy as per averments made in the writ petition, it has not been specifically denied that the work of the Divisional Accountant was only to check the Account and compile the same and sent it to the Higher Officer for approval.

Keeping in view the aforementioned observation, petitioners would definitely fall within the definition of workman as per Section 2(s) of the Industrial Disputes Act and thus, claim petition under Section 33(C)(2) for retrenchment compensation was thus maintainable. The management has not denied the claim but only raised objection that they do not fall under the definition of Section (2)(s) of the Act.

Accordingly, the award of the Labour Court is set aside. Application filed by the workman/petitioners under Section 33(C)(2) of the Act is allowed.

Resultantly, writ petitions are also allowed.

04.08.2015

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**(AMIT RAWAL)
JUDGE**