

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.27794 of 2013

Date of Decision: March 30, 2015

Bal Krishan Sharma

...Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurgaon &
another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Pankaj Jain, Advocate,
for the petitioner.

Mr.Babbar Bhan, Advocate,
for Mr.Vinod S. Bhardwaj, Advocate,
for respondent No.2.

AMIT RAWAL, J. (Oral)

The challenge in the present writ petition is to the award dated 2.9.2013 (Annexure P-7), whereby the reference of the petitioner qua his alleged termination, has been declined on the ground that the petitioner does not fall within the definition of “workman” as enshrined under Section 2(s) of the Industrial Disputes Act, 1947 (for short “the Act”).

Mr.Pankaj Jain, learned counsel appearing for the petitioner-workman contended that the Labour Court has committed illegality and perversity in not reading the statement of the witness of Management, which was recorded in the question-answer form. From a plain reading, an irresistible conclusion is drawn that the petitioner had been

working/discharging the duties of the Clerk and, thus, would fall within the definition of “workman”. Once it is discernible from the statement of the Management that the petitioner was discharging the duties of a workman, the Labour Court was enjoined upon an obligation to embark on further enquiry qua alleged termination being in violation of Section 25-F of the Act or not.

Mr.Babbar Bhan Advocate for Mr.Vinod S. Bhardwaj, Advocate appearing on behalf of respondent No.2-Management contended that the petitioner unequivocally admitted that he was performing the duties of WCM Coordinator, though his salary was ₹7500/- per month and, therefore, he does, as per the provisions of Section 2(s) of the Act, fall in the category of workman.

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

At the outset, it is observed that the Labour Court, while rendering the impugned findings, did not discharge the obligation as it was expected to, The witness of the Management to a specific question admitted that he did not have any written document qua the nature and duties of the Supervisor and as well as WCM Coordinator, though he had been working in the Management for the last so many years and, therefore, it cannot be expected that he would not be knowing the nature of the duties of the entire staff working in the management. From the perusal of the answers given by the witnesses, it is crystal clear that the Management has failed to prove that the petitioner did not fall within the definition of “workman”. However, for the reasons best known, the Labour Court has not referred to the

aforementioned statement, but only referred to the statement of the workman by noticing that he was working in the accounts department for checking the bills, bank statements, invoices, hundi, built and serial wise packing slips.

Be that as it may, even the discharging of the aforementioned duties, as noticed by the Labour Court, the aforementioned duties cannot be said to be in clerical in nature and, thus, would not fall within the definition of Supervisor as alleged by the Management. Even the Clerk, as per the settled law, falls within the definition of “workman”. I draw my support from Para 5 of the judgment of the Hon'ble Supreme Court in **Punjab Co-operative Bank Ltd. vs. R.S.Bhatia (dead) through L.Rs., AIR 1975 Supreme Court 1898** and as well as the provisions of Section 25-F of the Act. In Para 5 of the judgment, Hon'ble Supreme Court held as under:-

5. The first point urged on behalf of the appellant is that the respondent was not a workman within the meaning of the Act and that the Labour Court committed an error in saying that there was no evidence led on this issue and resting its judgment on the principles of *res judicata* on the basis of the decision of Shri Kaul in I.D. No. 66/1962. In our opinion the Labour Court rightly applied the principles of *res judicata* to the issue whether the respondent was a workman or not within the meaning of the Act. The same parties in I.D. No. 69/1962 joined issue on the aforesaid question. A decision given by the competent Labour Court in that regard has rightly been held as a bar on the principles of *res judicata* in the trial of the same issue in the present proceeding. Moreover, we find that even apart from the previous order operating as *res judicata*, practically there was no evidence on behalf of the appellant in support of its case that the respondent was not a workman. The

only evidence of M.W.1 was that in his capacity as an Accountant the respondent used to sign the salary bills of the staff including himself. But then he further stated that these bills used to be submitted to the Head Office of the Bank. The accountant is supposed to sign to the salary bills of the staff even while performing the duties of a clerk. That did not make the respondents "employed mainly in a managerial or administrative capacity," within the meaning of sub-clause (iii) of the clause (s) of Section 2 of the Act. The witness further stated that during the period of his accountancy as well as the managership (meaning thereby the officiating managership) the respondent conducted himself as an officer and the Bank authorities also treated him as such. There was no paper produced to show any entrustment of managerial or administrative duty to the respondent while he was working as a mere Accountant. In South Indian Bank Ltd. v. A.K.Chacho, (1964) 5 SCR 625 it has been pointed out at pages 631 and 632 that there are Accountants in Banks who are really officers and there are other types of Accountants who are merely senior clerks with supervisory duties. The respondent was merely a senior clerk doing mainly clerical duties and had no duty assigned to him of a managerial or administrative nature. It may further be added that relying upon the order of Shri Kaul the Labour Court held in the present proceeding that the respondent was an officiating Manager and hence not a workman from 9-10-1958 to 4-4-1961. The claim for that period has been disallowed on that ground alone."

In view of what has been observed above, the award of the Labour Court holding that the petitioner does not fall within the definition of "workman" is hereby set-aside. It is declared that the petitioner falls within the definition of workman. Accordingly, the matter is remitted back

to the Labour Court to decide the same on merits with regard to the alleged termination being in consonance with the provisions of Section 25-F of the Act or other provisions or not. The Labour Court shall decide the dispute on merits in accordance with law and take a decision within a period of six months.

The writ petition is allowed.

March 30, 2015
ramesh

(AMIT RAWAL)
JUDGE