

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.8659 of 2013

Date of Decision: May 12, 2015

Sudershan Singh

...Petitioner

Versus

M/s The Indian Airlines Pilots Co-operative House Building Society Ltd.,
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.Ashwani Bakshi, Advocate,
for the petitioner.

Mr.Rajesh Arora, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

The challenge in the present writ petition is to the award dated 13.1.2012 (Annexure P-11), whereby the reference of the workman has been declined on two grounds, i.e., (i) the workman had not proved and pleaded that he had worked for 240 days and (ii) whether the Management, i.e., M/s The Indian Airlines Pilots Co-op. House Building Society Ltd., would be an industry as per Section 2(j) of the Industrial Disputes Act, 1947 (for short "the Act").

Mr.Ashwani Bakshi, learned counsel appearing for the petitioner contends that though the workman has not pleaded that he had

completed 240 days, but the fact remains that the Management did not deny the factum of appointment of petitioner as Senior Security Guard. However, as regards the finding rendered by the Labour Court that respondent No.1 Society is not an industry, he submits that since the Society is employing the persons for discharging various duties for supervising, maintenance of the society etc. and, therefore, it would fall within the definition of industry as per Section 2(j) of the Act.

Mr.Rajesh Arora, learned counsel appearing on behalf of respondent No.1-Society submits that the reference of the workman, *ex-facie*, was not maintainable in view of the fact that the Society does not fall within the definition of 'industry' as per provisions of Section 2(j) of the Act and, therefore, adjudication of the pleas/issues as to whether the workman had completed 240 days or not would be meaningless. In support of his contention, he has relied upon the judgments of the Hon'ble Supreme Court rendered in Md.Manjur and others Versus Shyam Kunj Occupants' Society and others, AIR 2005 (SC) 1501 and MGT, Som Vihar Apt.Owners' Housing and Maintenance Society Ltd. Versus Workmen C/o Indian Engg.Genl.Mazdoor, 2002(1) S.C.T. 207.

I have heard the learned counsel for the parties, appraised the paper book and the case law cited at bar.

It would be farcical exercise to ponder upon the issue that the workman had completed 240 days, much less, discharged the onus to prove that he had completed 240 days in the year preceding to the order of termination. In order to bring the Society within the alleged violation of Section 25-F of the Act, it has to be seen whether the Housing Society is an

industry as per Section 2(j) of the Act or not. In case the Society is not an industry, the claim/reference of the workman was not maintainable.

In view of the ratio decidendi culled out by the Hon'ble Supreme Court in the aforementioned judgments, it leaves no manner of doubts that the Housing/Cooperative Society is not an industry and, therefore, the workman appointed for domestic purposes would not fall within the definition of "workman".

I draw my support from the findings rendered by the Hon'ble Supreme Court in Md.Manjur's & MGT, Som Vihar Apt.Owners' Housing and Maintenance Society's cases (supra), where the workman had also raised a demand notice with regard to grant of minimum wages, dearness allowance, house rent allowance etc. and on adjudication of the dispute between the parties to the lis, the Hon'ble Supreme Court has held that the person employed by the Housing Society cannot be treated as a workman as defined under Section 2(s) of the Act.

In view of the ratio decidendi culled out by the Hon'ble Supreme Court in the aforementioned judgments, I do not feel hesitant to uphold the award of the Labour Court.

Accordingly, the writ petition is dismissed.

May 12, 2015
ramesh

(AMIT RAWAL)
JUDGE