

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

+ **W.P.(C) 3705/2000**

Judgment reserved on: 03.02.2015

Judgment pronounced on: 10.02.2015

M/S D.C.M. SHRI RAM CONSOLIDATE LTD. Petitioner

Through: Mr Harvinder Singh, Adv.

versus

B.K. GUPTA & ORS.

...Respondents

Through: Mr Rajiv Nanda, Adv for R-1

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide this writ petition, the petitioner has assailed the award of the labour court dated 25.01.2000 by which the labour court has declared the respondent no.1 as a workman within the meaning of Section 2 (s) of the Industrial Disputes Act (hereinafter referred to as 'the I.D.Act) and has termed his termination as illegal and ordered for his reinstatement with full back wages and continuity of service.

2. Admitted facts are that the respondent no.1 was working with the petitioner as Assistant Weaving Master (in short 'AVM'). He was appointed vide appointment letter dated 23.03.1982 with effect from

01.05.1982 and his services were terminated on 26.02.1988. The workman had raised the dispute challenging his dismissal and the appropriate authority has referred the dispute vide reference bearing No.F.24 (1338)/89/11461-66 dated 25.04.1989.

3. The labour court on the basis of pleadings of parties had formulated the following issues:

- “1. *Whether the petitioner is a workman as defined in the I.D.Act?*
2. *As in terms of reference.*”

4. After taking into consideration the evidences of both the parties, the labour court had reached to the conclusion that the claimant was ‘workman’ as defined in the I.D.Act and passed the award dated 25.01.2000.

5. The contention of the petitioner is that the findings of the labour court are perverse. It is submitted that the labour court has not taken into consideration the evidence on record. Its findings thus are contrary to proved facts on record. It is also contended that the intentional concealment of gainful employment on better prospects with other managements from the knowledge of the court by claimant had led the labour court to grant full back wages while ordering his reinstatement. It is also contended that during the pendency of the present writ petition the respondent no.1 had

filed an application under Section 17 B of the I.D. Act and in that application the petitioner had produced documents which showed that the respondent had been working in several organisations and this fact had been taken note of by this court, in the order dated 21.05.2002. This court has observed that the respondent no.1 got the employment with Shamken Multifab Limited who had issued a certificate that respondent no.1 joined the organisation on 01.09.1991 and resigned with effect from 31.01.2000. It is argued that it is not that the respondent no.1 had filed false affidavit in this court but he did so even in his evidence before the labour court which was recorded in the year 1999.

6. It is further alleged that neither of the party had raised the contention before the labour court that the workman was employed in a managerial or administrative capacity, yet the labour court has based its findings on question if the workman was employed in managerial or administrative capacity and drawing wages exceeding Rs.1600/- per month. It is submitted that the plea of the petitioner was that the respondent no.1 was working in the supervisory capacity and this fact had been admitted by respondent no.1 in his cross-examination and thus conclusion of the tribunal is contrary to the cogent evidences on record.

7. Except respondent no.1, all other respondents are performa perties.
8. The respondent no.1/workman has challenged the present petition on the ground that the same is not maintainable as this court cannot disturb the findings of a subordinate court in writ jurisdiction unless the findings are perverse or there is an error apparent on the face of the award or it is passed on no evidence. It is submitted that the findings of the labour court are based on the evidences on record. It is further submitted that respondent no.1 was appointed as Assistant Weaving Master and he was performing duties of checking layers of the cloth manufactured in the mill and was also repairing machines and had no power to transfer the workers in the shift from one machine to another and was not competent to engage the casual labour and he could not sanction leave nor could he take any disciplinary action against any workman. It is argued that it is the nature of the job performed by the employee is the decisive factor and not the designation.
9. It is further contented that the AVM, as per the management witness MW1, is under control and direction of his immediate boss and that MW1 also in his cross examination has pointed out that the respondent no.1 was working under Weaving Master and Deputy Weaving Master as per their direction and control. It is further contended that respondent no.1 has no

power to fill the vacancies. It is submitted that his principle job was not of supervisory nature. Reliance has been placed on the findings in *S.K.Maini vs. M/s Crona Sahu Co. Ltd.* reported in AIR 1994 SSC 1824. Reliance is also placed on findings in *Hussan Mithu Mhasvadkar vs. Bombay Iron and Steel Labour Board* reported in (2001) 7 SCC 394. It is submitted that since the award is based on proved facts, the findings on the facts cannot be disturbed under Article 226 of the Constitution. It is submitted that the writ petition is liable to be dismissed.

10. It is argued on behalf of petitioner that the workman was appointed in the rank of an officer. That management was having 512 workers in the weaving department which included all categories of weavers, helpers, fitters, turners, mistries, sweepers, mechanic etc. The said department runs in three shifts. The Weaving Master was coming in the general shift while Assistant Weaving Masters were deputed to look after a particular shift in the weaving department. The respondent no.1/workman also used to come in shifts and look after the work of his shifts and in the month of February, 1988, he was working in night shift and staff working under him included weavers, jobbers, helpers, fancy jobbers, sweepers, loom turners/setters and carpenters. It is also contended by the petitioner that function of Assistant

Weaving Master was to supervise the work of all the workers working in the shifts and that he was responsible for the production and quality of material produced by the workers working under him. In case any of the workers was not performing well and some disciplinary action was necessary against him, then he was required to send report to the Industrial Relations Department. It has further been argued that the work of Assistant Weaving Master is of highly technical nature. The work of layer by layer checking of goods produced is done by mistries and not by Assistant Weaving Master. Assistant Weaving Master supervises layer by layer checking also. Likewise, the line jobber checks the work done on looms and the Assistant Weaving Master supervises that work also. It is further submitted that the work of Assistant Weaving Master was subject to the control of Weaving Master and the factory manager but that control was not direct. The production programme was seen by the Weaving Master but the actual supervision of the work in a shift including production and quality of the material was the job of Assistant Weaving Master of the shift. Assistant Weaving Master could also transfer the workers in a shift from one machine to another machine and allot the badli workers to specific machines. It was also within his domain to decide whether any casual worker was required to

be engaged and if so, how many and for which work. Assistant Weaving Master also has the power to give reward and adjust the grievances of the workmen and so the respondent no.1 is not a workman.

11. The workman on the other hand has argued that he was working as Assistant Weaving Master and job of Assistant Weaving Master is a technical job and the applicant was performing the duties which was highly technical and that work of weaving involves layer upon layer of checking and checking in hardly (Supervision) and that workman was working under the direction and control of the Weaving Master and the factory manager. He could not take any decisions on behalf of the company and was working under the supervision and control of Weaving Master and factory manager and that his duties involved reporting and checking technical process of weaving on behalf of the management.

12. It is also argued that since the nature of job of respondent no.1 was not of supervisory nature but was of technical nature and he had no supervisory power with him, he was a workman within the meaning of I.D.Act and his designation as an officer is immaterial.

13. I have given due consideration to the rival contentions of the parties and have gone through the record of the case.

14. The sole controversy involves around the question whether respondent no.1 is a workman within the meaning of Section 2 (s) of the I.D.Act.

15. The definition of the workman has been amended from time to time and amendment brought into effect vide Amendment Act 36 of 1956 which came into force from 29.08.1956 was in force when the award had been passed. The subsequent amendment no.24 of 2010, brought further amendment into the definition of workman under Section 2 (s) of the I.D.Act which is not relevant for the purpose this case.

16. Section 2 (s) of I.D.Act (before latest amendment) reads as under:

‘Workman’ means any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Army Act, 1950 (46 of 1950), or the Air Force Act, 1950 (45 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

17. The respondent no.1 has relied on the findings of Supreme Court in ***S.K.Verma vs. Mahesh Chandra & Anr.*** reported in (1983) 4 SCC 214. In this case the court has held as under:

“The words ‘any skilled or unskilled manual, supervisory, technical or clerical work’ are not intended to limit or narrow the amplitude of the definition of ‘workman’; on the other hand they indicate and emphasize the broad sweep of the definition which is designed to cover all manner of persons employed in an industry, irrespective of whether they are engaged in skilled work or unskilled work, manual work or supervisory work, technical work or clerical work. Quite obviously, the broad intention is to take in the entire ‘labour force’ and exclude the ‘managerial force’. That, of course, is as it should be.”

18. This wide interpretation of workman in the case ***S.K.Verma’s case*** (supra) was challenged before the constitutional bench and law laid down in ***S.K.Verma’s case*** (supra) has been considered a bad law.

19. Constitutional bench of the Supreme Court in the case of ***H.R.Adyanthaya and Others vs. Sandoz (India) Ltd. and Other*** reported in

(1994) 5 SCC 737 after considering its findings in the cases (i) *May & Baker (India) Ltd. Vs. Workmen* (ii) *Western India Match Co.Ltd. vs. Workmen*, (iii) *Burmah Shell Oil Storage & Distribution Co. of India Ltd. Vs. Burmah Shell Management Staff Assn.*, (iv) *A. Sundarambal vs. Government of Goa, Daman & Diu*, (v) *T.P.Srivastava v. National Tobacco Co. of India Ltd.*, (vi) *S.K.Verma vs. Mahesh Chandra*, (vii) *Workmen vs. Indian Standards Institution*, (viii) *Ved Prakash Gupta vs. Delton Cable India (P) Ltd.* and (ix) *Arkal Govind Raj Rao vs. Ciba Geigy of India Ltd.* has held as under:

“24. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation.”

20. Further in the case of *Mukesh K.Tripathi vs. Sr.Divisional Manager, L.I.C. & Others* reported in V (2004) SLT 607, the Supreme Court has held as under:

“23. It may be true, as has been submitted by Ms.Jaisingh, that S.K.Verma (supra), has not been expressly overruled in *H.R.Adyanthaya* (supra), but once the said decision has been held to have been rendered per incuriam, it cannot be said to have laid down a good law. This court is bound by the decision of the Constitution Bench.”

21. From these findings it is apparent that only a person who is employed to do either manual, unskilled, skilled, technical and operational, clerical or supervisor nature of work, unless excluded under Clause I to IV of Section 2 (s) of I.D.Act, is a workman within the meaning of this definition.

22. It is also well settled principle of law that designation or name of the post is not material while dealing with the question of person being workman. The main duties the employee is performing is the criteria to determine whether he falls within category of workman in the I.D.Act. It has been so held in number of cases including **S.K.Maini**' case (supra) and **Hussan Mithu Mhasvadkar**'s case (surpa) on which the workman has relied.

In **S.K.Maini**' case (supra), the supreme court has held as under:

“9. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it appears to us that whether or not an employee is a workman under Section 2(s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any strait-jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of workman under Section 2(s), there is hardly any difficulty in treating him as a workman under

the appropriate classification but in the complexity of industrial or commercial organisations quite a large number of employees are often required to do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it. ”

23. This question therefore is a question of fact and can be determined only on the basis of evidences on record. The labour court had rightly put the burden upon the workman to prove that he was a workman within the meaning of Section 2 (s) of the I.D.Act.

24. The question of determination before this court, thus is if the findings of labour court is based on evidences on record, if so, there is no scope for this court to interfere with the facts based finding of labour court. Conversely, if the findings are not based on evidences on record, but is based on surmises and conjectures, then this court certainly has jurisdiction to deal with it under Articles 226/227 of the Constitution.

25. The labour court has given its findings as under:

“The definition of workman has been given u/s. 2 (s) of I.D.Act. The workman is a person who is employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and a person is not a workman who is employed mainly in a managerial or administrative capacity and draws wages exceeding Rs.1600/-. It is not in dispute that the applicant was getting wages more than Rs.1600/- but from the

evidence on the file it can be seen that he was not employed mainly in a managerial or administrative capacity. From the evidence of MW1 and MW2 it can be seen that the present applicant was working under direct control and supervision of Deputy Weaving Master and weaving master. It has also come in their evidence that the AWM had no power to appoint any person and if there is any mis-conduct he makes a report to higher authorities but has no power to take disciplinary action against him. This will go to show that he was performing duties which were not of supervisory nature. In the evidence of the applicant has come that he also used to repair machines. The management has not examined or disclose the name of any mechanic employed by it who use to repair machines. This goes to show that he was also performing manual work. I have thus no hesitation in coming to the conclusion that the present applicant is a workman. This issue is thus decided accordingly.”

26. From the perusal it is apparent that though the burden was upon workman yet the labour court has not discussed the evidences led by respondent no.1 in support of his contention that he was a workman. Moreover, the labour court has also quoted the wrong definition of the workman given in Section 2 (s) of the I.D.Act. It has observed that “a person is not workman who is mainly employed in a managerial or administrative capacity and draws wages exceeding Rs.1600/-” while the definition of workman under Section 2 (s) of the I.D.Act excludes person from category of workman if he is employed in a managerial or administrative capacity. This category of employees are excluded from

definition of workman by virtue of clause III of Section 2 (s) of I.D.Act. This clause does not qualify that for exclusion from category of workman a person working in managerial or administrative capacity should be getting wages exceeding Rs.1600/- per month. It stipulates that all the persons engaged and performing duties in managerial or administrative capacity are exempted from definition of workman irrespective of the wages they draw. It is clause IV of Section 2 (S) of the I.D. Act which excludes a person, working in a supervisory capacity but drawing wages exceeding Rs.1600/- from the category of workman under Section 2 (s) of the I.D.Act.

27. The respondent no.1 has contended before the labour court in his petition that he was working as a Assistant Weaving Master but his job was technical job and he was performing those duties which were highly technical in nature yet the labour court has proceeded on the premise whether the workman was employed mainly in managerial or administrative capacity and drawing wages exceeding Rs.1600/- per month. It was also not the contention of the petitioner in written statement before the labour court that respondent no.1 was employed by them in managerial or administrative capacity. The plea of the petitioner before the labour court was that respondent no.1 was employed by them in supervisory capacity and he was

drawing a salary of more than Rs.1600/- per month. It therefore is clear that the labour court has traded the misguided path and discussed the evidence on record with a view to find out if the workman was or was not employed in a managerial or administrative capacity. The evidences on record have not been discussed by the labour court to find out if the workman was employed in a supervisory capacity or not. There is no discussion in the award and no findings on the contentions of petitioner that the respondent no.1 was employed and performing the duties of Supervisory nature. The labour court has thus missed the real point in controversy between the parties which was whether the workman was employed on technical job and was performing the duties of highly technical nature (which was the case of respondent no.1 before the labour court) or he was performing the duties of supervisory nature (as was the case of the petitioner before the labour court).

28. The evidence on record on the other hand categorically points out that the workman was not employed to do any job of technical nature but was performing the job of supervisory nature. The opening sentence of the statement in chief of the respondent no.1 is “My principle duties were basically technical in nature to look after the maintenance of machines and checking the cloth” shows that he was working in a supervisory capacity. In

the cross examination also the workman had admitted the case of the petitioner when he had admitted that

(i) *It is correct that in the Weaving Department, weavers, helper, fitters, turners, mistries, sweepers and mechanics are working vol. There were other categories of workman also. There were at the most 30/40 workers of these categories working with me.*

(ii) *It is correct that in February, 1988 I was working in the night shift.*

(iii) *Two assistant weaving masters are responsible to supervise the work in the shift of weaving department out of the two A.W.M. I used to be one of them.*

(iv) *Whereas the A.W.M. used to see the work in shifts. It is correct to say that A.W.M. was empowered to take decision to employ casual workers in the shifts. It is correct to say that the workmen used to make their grievances in the shift working to the A.W.M.*

(v) *It is correct to say that my work in the shift was of supervisory nature.*

29. The burden to prove that respondent no.1 was a workman within the meaning of Section 2 (s) was upon the workman himself and when in his own testimony he admits the case of the petitioner, there can be no doubt that in such circumstances, the evidence of respondent no.1 itself is sufficient to decide the issue whether he was a workman within the meaning of Section 2 (s) of the I.D.Act or not. The labour court has totally ignored this testimony of the workman while giving its findings to the contrary. It

therefore is clear that the finding of the labour court is also not based on the evidences on record and also it has ignored the material evidences on record.

30. From this testimony of the respondent no.1, it is clear that the main job of respondent no.1 was to check the production and quality in the shifts in which he was deployed. He also had the power to decide the number of casual employees required in a particular shift. He also used to attend the grievances of the persons working in that shift. Thus, his main job was of supervisory nature.

31. The labour court has laid much emphasis on the fact that in the cross-examination the respondent no.1 had stated that he used to repair machines and that the management had not examined or disclosed the name of any mechanic employed by it for repair of the machines. This observation of the learned labour court is totally against the case of the parties. The respondent no.1 has not put any claim to the effect that his main job was of repairing the machines. He has not contended this fact either in his statement of claim or in his rejoinder. Even in his statement in chief on oath before the labour court he has not claimed that he was repairing machines. In his cross examination, he however had volunteered that he was repairing machines. There is nothing on record which could show that the main job of the

respondent no.1 was that of machine repair or that he was working as a machine repairer. The labour court has given much emphasis on passing volunteered statement of respondent no.1 in his cross examination but has ignored the admissions made by respondent no.1 in his cross examination where he has admitted the nature of work he used to do which certainly was of supervisory nature. He admittedly was getting wages more than Rs.1600/- per month.

32. From the above discussion, it is clear that the findings of the labour court are not only based on wrong interpretation of law but are also perverse. There is thus an error apparent on the face of the record which goes to the very root.

33. Accordingly, award dated 25.01.2000 is hereby set aside with no orders as to cost.

**DEEPA SHARMA
(JUDGE)**

FEBRUARY 10, 2015
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