

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

% *Date of decision : November 24, 2015*

+ **WP(C) 36/2004**

M.R. UNIYAL

..... Petitioner

Represented by: Mr. Mahesh Srivastava with
Mr. Vaibhav Manu Srivastava,
Advts.

versus

MGMT. OF CEMENT CORP. OF INDIA & ANR. Respondents

Represented by: Mr. Arun Birbal with Mr.
Sanjay Singh, Advts.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. M.R. Uniyal the petitioner while working as Chief Supervisor (Accounts) with the respondent was transferred from Delhi to Jaipur thus he raised an industrial dispute on which the following reference was sent for adjudication before the learned Industrial Tribunal:-

“Whether the transfer of Sh. M.R. Uniyal from Delhi to Jaipur and/or is justified, if so what directions are necessary in this respect.”

2. In the claim petition, M.R. Uniyal stated that he was Chief Supervisor (Accounts) at Delhi Zonal Office and was also the General Secretary of Cement Corporation Employees Union. The Management had already victimized the President of the Union. Since M.R. Uniyal the General Secretary of the Employees' Union was fighting against the anti-workers policy of management, he was transferred from the Head Office to the Zonal

Office at Darya Ganj and thereafter to another office at Jaipur. He stated that he was performing the duties of miscellaneous clerk and he had nobody under him in the zonal office. He used to obey the orders of superior officers and was not allowed to take independent decisions. The designation was for name sake only and his salary was ₹4500/- per month approximately.

3. The management filed written statement to the claim taking preliminary objection that M.R. Uniyal was not a workman and that under Section 2A Industrial Disputes Act (In short 'the ID Act') since the dispute did not relate to the 'dismissal, 'discharge', 'retrenchment' and 'termination' only a group of workmen or union could raise the dispute. It was stated that M.R. Uniyal was working as Chief Supervisor (Accounts) and was transferred in his existing capacity from Delhi to Jaipur for administrative reasons and in the exigencies of the business of the Corporation. Further the contract between the parties empowered the management to transfer services of M.R. Uniyal from one place to other place however after he was relieved from Delhi, M.R. Uniyal did not join at Jaipur.

4. Learned Industrial Tribunal settled the following issues:-

"1. Whether the present reference is in respect to industrial dispute or individual dispute?"

2. Whether the claimants is/are workmen as defined under the Industrial Dispute Act? If not, its effect."

5. M.R. Uniyal filed his affidavit by way of evidence however he was not cross-examined as none appeared on behalf of the management and thus they were proceeded ex-parte. Statements of WW-1 M.R. Uniyal and WW-2 S.K. Taqi were thus recorded.

6. In his affidavit by way of evidence M.R. Uniyal reiterated his version in the claim petition. However in the written statement the respondent pointed out that M.R. Uniyal was initially appointed as LDC on November 22, 1973 and thereafter he had received promotions as Junior Accounts Assistant, Accounts Assistant, Accountant and then Chief Supervisor (Accounts). This fact was not denied in the rejoinder affidavit by M.R. Uniyal and would be thus deemed to be admitted. Based on the promotions granted as tabulated below, the learned Industrial Tribunal came to the conclusion that in view of the admitted position, M.R. Uniyal had attained promotions and thus his claim that he was working simply as Miscellaneous Clerk with no staff under him and was not performing supervision was incorrect.

S.No.	Promotion of the post of	Scale	Date of Effectiveness
1.	Lower Division Clerk	₹110-180	22.11.1973
2.	Jr. Accounts Asstt.	₹330-560	04.07.1978
3.	Accounts Assistant	₹425-800	16.04.1982
4.	Accountant	₹650-1160	31.12.1985
5.	Chief Supervisor (Accounts)	₹700-1300 (pre-revised)	01.04.1990

7. The version of M.R. Uniyal was not substantiated in view of his deemed admission in the rejoinder affidavit and thus he was held to be not a workman and reference was decided accordingly.

8. Before this Court, learned counsel for the petitioner urges that in para 3 of the claim petition, the petitioner has stated that though designated as

Chief Supervisor (Accounts) he had no control over any one which fact is not denied and thus he would be a “workman” in terms of the ID Act. He contends that by simply designating the petitioner as Chief Supervisor (Accounts) he would not be taken out of the ambit of “workman” and thus denied the benefit of the ID Act. Reliance is placed on (1983) 3 SCR 799 S.K. Verma Vs. Mahesh Chander & Anr.

9. In S.K. Verma (supra) the Court was dealing with the terms and conditions of a Development Officer in the Life Insurance Corporation. On the facts of the present case, even if the respondent was ex-parte, M.R. Uniyal was still required to prove his case. No doubt the nomenclature of a post would not matter, however in the present case in view of the fact that the petitioner had 5 promotions at various levels of accountants would show that a complete hierarchy was maintained by the respondent and in the said hierarchy, Chief Supervisor (Accounts) was on the top and thus he was required to supervise the work of all the accountants below him.

10. Finding no merit in the writ petition, the same is dismissed.

(MUKTA GUPTA)
JUDGE

NOVEMBER 24, 2015
‘v mittal’