

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CWP No.18835 of 2011 (O&M)
Date of Decision: 31.01.2017**

L.M.L. Limited and others

... Petitioners

Versus

Man Kamal Deep Singh Ahuja and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Sandeep Bansal, Advocate,
for the petitioners.

Mr. Amrinder Preet, Advocate,
for respondent No.1.

RAJIV NARAIN RAINA, J.

1. On notice served, the petitioner LML appeared in the Court of the Presiding Officer, Labour Court, Patiala in response to application No.602 of 2005 filed under Section 33 C (2) of the Industrial Disputes Act, 1947 ("1947 Act"). They filed a written statement to contest the claim application demanding unpaid salary and other dues for the period September 01, 2004 to January 19, 2005 for which period the respondent worked with the company as Area Sales Manager appointed at Chandigarh. The respondent was transferred to Patiala on December 28, 2004 to work there with his base in Chandigarh office of the petitioner-Company.

2. The defence of the company in its written statement was that the respondent belonged to senior supervisory management staff cadre and was thus not covered under the definition of 'workman' as defined in Section 2 (s) of 1947 Act. The company pleaded that the application be dismissed for

lack of jurisdiction. Having put in their appearance and having filed written statement they were proceeded against ex parte by order dated August 18, 2008 when the management failed to appear. Accordingly, the applicant led his evidence both oral and documentary, got himself examined as his own witness by tendering his affidavit by way of examination-in-chief, and testified to the facts pleaded in the application and claimed the amount due in a sum of ₹ 1,48,307/- as an existing right.

3. The learned Labour Court examined the issue from the standpoint of the evidence on record and took into consideration the pleadings of the management and observed that there was nothing on record to prove that the claimant employee was not working under the control and supervision of the company. The management failed to produce any document to establish that the respondent was working in the supervisory or managerial cadre although he admitted his monthly salary was to the tune of ₹ 21,650/-. The Labour Court relied on the testimony of the applicant asserting that he was not working in the managerial or supervisory capacity. His basic salary was ₹ 12,500/-. The special allowances and conveyance allowances were part of the perquisites admissible to him. In the first instance, the respondent claimed vide Ex.W9 i.e. letter dated March 29, 2005 served on the management requesting them to pay salary for the claimed period from September to December 2004. The Labour Court also found that applicant did not make a request for salary for January 2005 and restricted the payable salary as money due from September to December 2004 which comes to ₹ 86,600/-. Other sundry benefits were added to this amount which are detailed in the order and need no repetition. The Labour Court determined

the money due and arrived at a figure of ₹1,17,129/- as the amount payable.

The application was allowed with interest @6% per annum from the date of passing of the order till realization. The order was announced on August 11, 2009.

4. The ex parte award has been challenged by L.M.L. in this petition. On October 05, 2011 the learned Single Judge directed L.M.L. to bring on record a list of moveable and immovable properties owned by the Chairman-cum-Managing Director, Directors and their family members of LML by adjourning the case to November 15, 2011. Though these facts are not necessary to the decision-making but are incorporated in this order to complete the narration of facts. L.M.L. feeling aggrieved by the interim order filed LPA No.2020 of 2011. The same was dismissed for non-prosecution after passing a speaking order. It was observed that when the case was at the stage of evidence before the Labour Court, the management was proceeded against ex parte which gave birth to the award. After receiving notice of the execution petition filed against non-implementation of the award, L.M.L. filed a writ petition challenging the ex parte award. Subsequently, vide order dated August 24, 2012 the application filed by L.M.L. for recalling of the said order was also dismissed. The Letters Patent Bench while dismissing the petition for non-prosecution returned the following findings on merits:-

“When the said direction was not complied with, the workman was compelled to file execution petition. After receiving notice of the execution petition, the Management filed the aforesaid writ petition challenging the ex-parte Award on the ground that they were illegally and arbitrarily proceeded against ex-parte. From a perusal of the Award, it is clear that the

Management was having full knowledge of the proceedings. They not only appeared before the Labour Court, but also filed written statement and issues were framed in their presence, and subsequently they were proceeded against ex-parte. In these facts, prime facie we do not find any illegality in proceeding ex-parte against the appellants. Thus, the interim order passed by the learned Single Judge is legal and valid.

Today even on second call, no body is present on behalf of the appellants.

Dismissed for non prosecution.”

5. Against the judgment of the Appellate Bench, L.M.L. carried Special Leave Petition (Civil) No.31747-748 of 2012. Before the Supreme Court it was pleaded in the alternative that L.M.L. was ready and willing to deposit the entire awarded amount inclusive of the interest before the High Court which would, the Supreme Court observed, make it unnecessary for the High Court to insist upon the filing of the list of properties of the Chairman and the Directors of the company. L.M.L. urged that the petition can be disposed of with liberty to make such a deposit and to apply to the High Court for recall of the order directing the filing of the list of properties. The Supreme Court felt that in view of the alternative prayer, there was no justification left for the High Court to insist on filing list of properties of Managing Director and other Directors. When the matter came back to the Appellate Bench of this Court it set aside that part of the order found unmerited vide its order dated December 07, 2012. Consequently, the earlier orders dated August 03, 2012 and August 24, 2012 were recalled. L.M.L. was permitted to pay the balance amount of ₹ 80,000/- inclusive of interest in terms of the order of the Supreme Court dated November 19, 2012. The Registrar of this Court was directed to disburse the balance

amount of ₹ 80,000/- and the amount of ₹ 59,869/- already deposited by L.M.L. in compliance with the Court's orders (totalling ₹ 1,39,869/-) to the respondent-workman, subject to the decision of the writ petition and of further furnishing security.

6. This is how the matter has come up for final arguments today before me. Heard the learned counsel and perused the record with their assistance.

7. In view of the orders passed by the Supreme Court on November 19, 2012 and in the face of the order of the Appellate Bench dismissing the case for non-prosecution but with observations on merits against L.M.L. and in favour of the respondent I find hardly any scope left for intervention. The only limited question left open is as to whether the jurisdictional fact that the respondent was a workman is or is not satisfied in this case. Since the order dated August 24, 2012 passed by the Appellate Bench gave liberty to raise the question of applicability of the Sick Industrial Companies (Special Provisions) Act, 1985 before the learned Single Judge has been recalled in the final order dated December 07, 2012 passed in LPA No.2020 of 2011, the liberty is foreclosed. When pressed before me it would make little of itself as to whether the company is sick or is not and if the award is legally sustainable then proceedings under SICA pending, if any, will not nullify the award but possibly delay implementation. In essence, the award stands satisfied since the entire payment has been made to the respondent under the award though subject to final result of this petition.

8. I have heard Mr. Bansal on the question whether the Labour Court, Patiala has jurisdiction to pass the order and whether respondent did

not qualify as a 'workman' by definition. On the first question it would deserve to examine the appointment letter Ex.W-2 (P-8); the confirmation order Ex.W-3 (P-9) and the memo sent on December 28, 2004 by mail to the respondent which is on the record as Ex.W-5 dealing with the subject of shifting the working base of the respondent. That document can be seen at Annex P-11. It reads "as per your approval today, Mr. Man Kamaldeep Singh Ahuja (T-2018041) will be shifting his working base to Patiala w.e.f. 28th December, 2004". If the base of the respondent's work place has shifted to Patiala then I would find it hard to hold that the Labour Court, Patiala did not have territorial jurisdiction to entertain the application under Section 33 C (2) of the 1947 Act provided of course the respondent qualified as a workman. No amount of oral evidence can be led to dislodge the contents of the document or to explain them when the respondent was re-located to Patiala though he may have commuted to and fro from Patiala to Chandigarh to report on his work. The appointment letter Ex.W/2 (P-8) does not disclose in the terms of employment the nature of the work except to suggest that the appointment is as an Area Sales Manager [high sounding appellation for a workman in fact] in the cadre of Assistant Manager. It is well settled that the nomenclature of a post is inconsequential in determination of the question whether the workman falls under Section 2(s) of the 1947 Act.

9. Mr. Bansal refers to the objections filed by the management before the Labour Court before it was proceeded against ex parte. Mr. Bansal draws attention to Para.1 (b) & (c) wherein it is pleaded as follows:-

"b) That as the designation of Shri Maan Kamal Deep Singh Ahuja (being Area Sales Manager) signifies that he

was essentially performing the duties of managerial in nature. Sh. Mann Kamal Deep Singh Ahuja was exercising full administrative control over the staff working under him in the Sales Department.

c) That the applicant Sh. Mann Kamal Deep Singh Ahuja, while in employment of the answering opp. Party was performing the following nature of duties as "Area Sales Manager"-

i) That the applicant was visiting the Dealers for promoting the sales of the company's two-wheelers.

ii) That while making tours for the said purpose, he used to submit his Tour Report to the management indicating the efforts made by him for promotion of sales of the company's product.

iii) That the applicant used to survey different market to ascertain sales potential of the company's produce.

iv) That the applicant used to contact the dealers engaged in the business of similar products."

v) That the applicant used to convince the Dealers about the quality and reasonable price of the company's product.

vi) That the applicant used to assess the business of the competitors and to find reasons for the popularity of their products.

vii) That the applicant used to suggest ways and means for improving sales of the company's product."

10. A bare reading of the nature of duties assigned in para.(c) above, no definite opinion can be given whether the respondent fell on the management side or the labour side. To fall in exception (iii) and (iv) of Section 2 (s) person should be employed merely on a managerial and administrative capacity. The post of managerial or administrative capacity is

not conclusively demonstrated or established by the seven duties enumerated in the objections. The tests of managerial or administrative functions have been culled out by Courts and pictorially dealt with by the Supreme Court in leading case in Burmah Shell Oil Storage & Distribution Company of India Ltd. v. Burmah Shell Management Staff Association, AIR 1971 SC 992. Tests have been culled out by Courts in grappling with the definition of workman and its exceptions. A manager or an administrator must be empowered by management to grant relief to an employee, to order suspension; to control and supervise work of subordinates, to grant leave, to take disciplinary action and to dictate the manner in which the work is to be done; to have power to dismiss; to pass an adverse order against the employee, to issue show cause notice etc. When the Courts have to decide whether an employee falls in the definition of workman it has to see what is the main and substantial work which the employee is engaged to do. The substantial nature test has to be applied.

11. I do not see how the respondent falls in exception (iii) of Section 2 (s). To fall in exception (iv) of Section 2 (s) it has to be manifestly shown that the employee is employed in a supervisory capacity, draws wages exceeding ₹ 1600/- per mensem (amended to read ₹10,000/- by Act 24 of 2010) or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. The economic test the respondent satisfies but still he had no power vested involving functions mainly of a managerial nature. Visiting dealers for promoting sales of company's two wheelers, submitting tour reports, indicating efforts made by him for sales promotion, scouring different

markets to ascertain sales potential of company's product, contact dealers engaged in business of similar products, convincing dealers about the quality and reasonable price of company's product, assessing business of competitors to find reasons for popularity of their products and suggesting ways and means for improving sales of company's products is mostly rubbing shoe leather work but is not a management function of controlling others and calling for reports and assessing markets to shape company policy. The respondent would only be seen as a person who was to give inputs and suggestions to the managers of LML. He was certainly not a decision-maker.

12. I have gone into this issue only to avoid a miscarriage of justice and to satisfy Mr. Bansal that he could not successfully plead a case falling in the exceptions in Section 2 (s) and especially when LML was ex parte before the Labour Court at the stage of evidence and thereafter vanished into thin air.

13. I asked Mr. Bansal that what is pleaded in the objections was part of documented evidence or part of the appointment letter. He answers in the negative. Therefore, the oral pleas taken for the sake of defence cannot be accepted as substantive evidence on the nature of duties of the respondent to accept the plea of LML that the respondent was not a workman.

14. Moreover, satisfactory explanation has not been given in the petition explaining non-appearance before the Labour Court at the crucial stage of evidence. I would, therefore, not set aside the ex parte award.

15. The Labour Court is empowered to proceed ex parte under Rule 22 of the Industrial Disputes (Central) Rules 1957 if party fails to attend or

to be represented, as if the party has duly attended and had been represented.

16. The averments made in the objections dated December 06, 2005 filed by the management before the Labour Court cannot be taken cognizance of since the pleadings are not verified or presented on affidavit as suggested by the paper-book placed by the management in the hands of the Court. See page 30 of the paper-book.

17. Consequently, the petition is found devoid of merit and is ordered to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

31.01.2017
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Whether speaking/reasoned *Yes*

Whether reportable *No*