

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.9830 of 2017

Date of Decision: 9.05.2017

Attar Singh

... Petitioner

Versus

M/s S & S Technocrafts Pvt. Ltd. & anr.

... Respondents

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

Present: Mr. Vishal Garg Narwana, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.(Oral)

The onus was on the employee to prove the necessary ingredients required to demonstrate that he fell in the definition of 'workman' under Section 2(s) of the Industrial Disputes Act, 1947.

The facts run like this. The petitioner was appointed as a Project Manager in 2011 with the respondent-Company. He drew salary at the rate of ₹55,000/- per month. His services were terminated on 4.1.2012. He claimed it was wrongful and illegal. On termination he approached the Labour Court under Section 33-C(2) of the Act claiming past unpaid monetary benefits in a sum of ₹60500/- as due and payable and existing. The application has been turned down by the Presiding Officer of the Labour Court vide order dated 6.1.2017. The Labour Court has held that the petitioner is not a 'workman' and therefore, the provisions of the ID Act are of no avail to him and the claim application is not maintainable. On cross-examination, while appearing as his own witness he admitted that he was a diploma holder in Civil Engineering and 10 employees had worked under him. He was concerned Officer of

those employees. He was over all Incharge of the labour work being carried out at site by the management. There were even some Engineers, Supervisors and Foreman who worked under his supervision and he said that he used to manage all the affairs of the site regarding labour work. Obviously, it seems to me from the deposition, the petitioner was proud of his accomplishments and thought himself a person in authority who could not swallow being labelled a workman. The prior admissions in the recorded testimony clearly disqualified him on his own showing to fall in the definition of Section 2 (s) and at the same time qualified him in the exclusionary clause of the definition.

In the deferred cross examination, the Labour Court recorded on the basis of evidence that the petitioner tried to deviate from his admissions by deposing that he was not possessed of supervisory duties of a managerial nature, but in view of the earlier deposition the Labour Court found that his retraction is no more than a clever move to bring his case within the domain of the special Court. He had become wiser.

I have no misgivings on the sound appreciation of evidence of the Labour Court in demolishing the case of the petitioner on his own cross-examination concluding that he was not a 'workman' by definition. The petitioner had failed to discharge his burden of proof and could not fall back on the weaknesses of the case of the respondent. Rather, it is argued before me by the learned counsel that the management led no evidence to prove that he was not a 'workman'. This logic is against the rules of evidence and is wholly misdirected on burden and onus, the first remaining static, the other shifting. If the burden was not discharged by the ex-employee the onus had not shifted on the ex-management Since

the Labour Court has dismissed the application on maintainability of the application and jurisdiction, obviously there was no occasion for it to go into the merits of the case. Neither would I go into the merits of the claim as no occasion arises to venture that far.

Accordingly, the petition is dismissed.

9.05.2017
monika

(RAJIV NARAIN RAINA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>