

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.3396 of 2011
Decided on : 11.10.2018**

Palvinder Singh

... Petitioner

Versus

Presiding Officer, Labour Court-I, Gurgaon & another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr.Deepak Sonak, Advocate, for the petitioner.

Mr.Sudhir Aggarwal, Advocate, for respondent No.2.

G.S. Sandhawalia, J.

Challenge in the present writ petition, filed under Articles 226/227 of the Constitution of India, is to the order dated 07.05.2010 (Annexure P-1), whereby the reference of the petitioner was dismissed by the Labour Court-I, Gurugram, on the ground that the petitioner was involved in the selection process and doing supervisory work, on account of his signatures at point-A, regarding the selection of one Vijay Kumar Saraswat and Man Singh Sharma, Electricians.

2. It was held that the petitioner failed to prove that he was covered under the definition of 'workman', onus of which was upon him and the Management had been able to prove the same by leading oral as well as documentary evidence. Resultantly, it was held that he was doing supervisory and managerial work and getting salary of more than Rs.1600/- per month and he had admitted that he was not having any evidence that he used to do manual work and was, therefore, not covered under the definition of workman. It was further held that it was a case of

abandonment from service by the workman as he had failed to depose as to who had stopped him from performing his duties since 13.10.2003 and he had made the complaint only on 18.02.2004 and therefore, it was held that his services were not terminated in illegal manner and reference made to the judgment passed in *S.N.Goswami Vs. Presiding Officer, Labour court-II & another 2009 (4) SCT 28.*

3. Counsel for the petitioner has submitted that the burden would be on the person claiming that he was a workman and the evidence that he would adduce. Similarly, reliance has been placed upon *Harish Kumar Gupta Vs. Presiding Officer, Industrial Tribunal, Haryana, Faridabad & another 2004 (3) RSJ 659*, that in the absence of any issuance of material by the Management that he was issuing gate passes and recommending for leaves, the onus would be upon the Management and merely because he was the team-leader, as such, would not go on to show that he was performing supervisory duties and the gloss had to be removed to see the reality.

4. Counsel for the Management, on the other hand, submitted that the order passed by the Labour Court was well justified and the same is liable to be upheld as the petitioner's letter of appointment would go on to show that his work was managerial and supervisory in nature and he had not to give out to anyone, by word of mouth or otherwise, any particulars or details of the manufacturing process etc.

5. A perusal of the record of the Tribunal would go on to show that it was the case of the petitioner that he had worked with the

respondent-Company on the post of Electrical Maintenance from 18.05.1999 till 12.10.2003 and was drawing salary of Rs.10,544/- per month. The Management had not made payment of LTA, Medical Allowance and monthly increment as well as the salary for the month of November, 2002 till 12.10.2003. He, resultantly, claimed amount of Rs.1,19,893/- and that his services were terminated without issuing any show cause notice and without issuing any order.

6. The stand taken by the Management was that he was working in the managerial and supervisory cadre and drawing a salary of more than Rs.1600/- per month and was not a workman and therefore, had no right to make a claim under the Industrial Disputes Act, 1947 and the jurisdiction of the Court was, thus, challenged. It was further held out that it was the case of not reporting for the work by the applicant inspite of various letters issued to him in this regard. On the issue of workman, it was held that he was a Electrical Enginner and doing supervisory work and not a workman nor he was doing any manual or clerical work. He was working in a supervisory capacity and was the in-charge in the maintenance wing as on 18.05.1999. The claim of Rs.1,19,893/- was stated to be wrong and it was the case of the Management that the applicant worked till October, 2003 and thereafter, started absenting from duty on his own. Even the unit had become sick and was registered with the BIFR and the claim for increment or LTA by a senior supervisory staff was neither appropriate nor justified and was not due to him. His services had not been terminated and he had been repeatedly advised to

report for work and also to give explanation for his absence. Even in conciliation, he had been advised to report for work but he never came up to report for work and therefore, no unfair labour practice was resorted to.

7. The following issues were framed by the Labour Court:

- i) Whether the services of the petitioner have been terminated illegally? OPW
- ii) Whether the petitioner is not a workman under Section 2(s) of the Industrial Disputes Act, 1947? OPM
- iii) Whether the reference is bad in law? OPM
- iv) Whether the reference is without jurisdiction? OPM
- v) Whether the petitioner is gainfully employed? If so, its effect? OPM
- vi) Relief?

8. While examining the statement of the workman as Ext. WW-1, the Identity Card shows that his department was of Electrical Maintenance and similar was the certificate dated 03.10.2000 (Ext. WW-2) that he was working in the Electrical Department. Ext. WW-3 would go on to show that his basic salary was Rs.5550/- whereas after benefit of allowances, it was Rs.10,999/-. Ext. WW-8 would show that it was written not to allow Palvinder Singh gate entry on 11.09.2003 and a demand notice had also been served in this regard on 18.03.2004 (Ext. WW-5), which had been replied by the Management on 10.05.2004 (Ext. WW-6). Ext. WW-10 to Ext. WW-14 would show the Employees Providents Fund list and the petitioner being at Sr.No.96 and the amount

deducted, as such.

9. A perusal of the statement of MW-1 would go on to show that he was working in the Executive Account and was not in personnel department. It was stated that 27 employees were employed and there were 3 electricians working and all the electricians were working in the Engineering Department. The electricians were being paid wages under the Minimum Wages Act and the applicant was drawing salary of more than Rs.1600/- per month and was stated not to be a workman. The electricians were appointed by the applicant by issuance of letter of appointment and he had interviewed 2 persons, mentioned above. Ext.M-2 and Ext.M-3 bore the signatures of the applicant at point-A. It was stated that the unit had become sick and was registered with the BIFR and the services of the petitioner had never been terminated.

10. A perusal of Exts. M-2 & M-3, the bio-data, as such, of Vijay Kumar Saraswat and Man Singh Sharma would go on to show that petitioner's signatures do figure upon the same but it was only a receipt of the bio-data and not any appointment letter which was sent on 26.08.2002 and 27.05.2005. The application (Ext.R-1) would show that he had applied for the post of Electrical In-charge and the letter of appointment also was dated 18.05.1999 (Ext.R-2) only holding out his salary and the fact that he was on probation. Clauses 10 & 11 further only debarred him from giving out any particulars or details of the manufacturing process and maintenance, safe custody of books etc which were issued to him but did not talk about any managerial capacity, as such, on the basis of which

he had to select persons or supervise who would be in his control. The said clauses read as under:

“1. (a) You shall be paid a basic salary of Rs.5400/- per month.

(b) You shall be paid a House Rent Allowance of Rs.1890/- 35% of your basic salary per month.

(c) You shall be paid Rs.2000/- per month towards conveyance expenses.

(d) You shall be entitled to Leave Travel Assistance subject of a maximum of your one month's basic salary in every completed year of service.

(e) You shall be entitled to reimbursement of Medical expenses subject to a maximum of 5% of your basic salary.

(f) You shall be entitled to a Book Allowance of Rs. Nil per month.

xxxx xxxx xxxx

10. You will not give out to anyone, by word of mouth or otherwise any particulars or details of our manufacturing process, technical, know-how, security arrangements, administrative and/or organizational matters, whether confidential, secret or otherwise, either during the employment with us or afterwards, which you acquire during the course of your employment.

11. You shall maintain and keep in your safe custody such books, documents and other papers as may be issued to you or may come in your possession and shall return the same when required.”

11. In **Arkal Govind Raj Rao vs. Ciba Geigy of India Ltd. 1985**

(3) SCC 371, the Labour Court had decided against the workman who was employed as Stenographer-cum-Accountant and thereafter, as Assistant. It was, accordingly, held that merely being a group leader along with 2 others employees would not lead to the inference that the

duty, as such, was clerical or supervisory in nature, to make him come out of the definition of workman. It was, accordingly, held that the test which had to be employed is whether the duties assigned were basic and primary in nature and relevant to determine the status. Resultantly, the appeal was allowed and the matter was remanded for disposal on merits, since the preliminary issue was decided in favour of the Management. Relevant portions read as under:

“14. Having examined in meticulous details the award of the Labour Court we are satisfied that the Tribunal after rightly holding that primarily the duties of the appellant are of a clerical nature misled itself into an erroneous conclusion by drawing an impermissible inference and recorded a finding which we regret to style as perverse. In fact, the Labour Court ignored the correct perspective in evaluating the evidence viz., that when primary or basic duties of a person are shown to be clerical but some stray assignments are made to create confusion, the gloss has to be removed to pursue the reality and that is all what we have done. The appellant was undoubtedly a workman with the meaning of the expression of the Act.

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17. The test that one must employ in such a case is what was the primary, basic or dominant nature of duties for which the person whose status is under enquiry was employed. A few extra duties would hardly be relevant to determine his status. The words like managerial or supervisory have to be understood in their proper connotation and their mere use should not detract from the truth.”

12. The Apex Court in *S.K.Maini Vs. M/s Carona Sahu Company Limited & others 1994 (3) PLR 492*, examined the aspect

whether the duties which were performed by the workman were managerial, supervisory or administrative work and came to the conclusion that if the employee was doing some supervisory work but incidently or for a fraction of time, doing some manual or clerical work, it would not mean that he would not come within the purview of workman, as defined under Section 2(s) of the Industrial Disputes Act, 1947.

Relevant portion reads 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 straitjacket 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. In this connection, reference may be made to the decision of this Court in [Burmah Shell Oil Storage and Distribution Co. of India Ltd. v. Burmah Shell Management Staff Assn.](#)⁵ In [All India Reserve Bank Employees' Assn. v.](#)

[Reserve Bank of India](#)⁶ it has been held by this Court that the word 'supervise' and its derivatives are not words of precise import and must often be construed in the light of context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with the power of inspection and superintendence of the manual work of others. It has been rightly contended by both the learned counsel that the designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The determinative factor is the main duties of the employee concerned and not some works incidentally done. In other words, what is, in substance, the work which employee does or what in substance he is employed to do. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or for a fraction of time also does some manual or clerical work, the employee should be held to be doing supervisory works. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of 'workman' as defined in [Section 2 \(s\)](#) of the Industrial Disputes Act.”

13. In similar circumstances, a Co-ordinate Bench of this Court in **Harish Kumar Gupta** (supra), has held that the dominant nature of duties is to be seen and few extra duties would hardly be relevant to determine the status.

14. Similarly, in **Ansal Properties & Industries Limited Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurgaon & another 2013 (1) SCT 314**, the award in favour of the workman was

upheld and the claim, as such, of the Management that the workman who is working as Supervisor (Civil) would not mean that the designation of his post, as such, would determine that he was working in a managerial capacity. It was held that the Management had to produce evidence to show what was the duties assigned and merely reliance upon the statement of the workman that he was to supervise the supply of construction material to the contractor, would not exclude him from the definition of a workman.

15. It is, thus, apparent that the Labour Court, as such, was in error by accepting the defence of the Management, especially once the onus had also been placed upon the Management, under issue No.2. Credible evidence had to be led and the assignment of duties had to be brought on record to show that the nature of work assigned to the workman was, as such, that he was working in an administrative capacity or in managerial capacity or in supervisory capacity, which had to be proved by the nature of duties attached by the office or by the reason of the powers vested in him which has to be mainly managerial in nature. The appointment letter also, thus, does not show any such responsibilities which were vested upon the workman.

16. Similarly, the finding that was recorded that the petitioner had abandoned the job also is without any basis, in as much as Ext.WW-8 would show that the Management had asked the Security that Palvinder Singh should not be allowed gate entry in September, 2003 and therefore, it is apparent that the claim, as such, of the workman that he was not

being allowed to join duties after around 12/13.10.2003, is well justified. On account of not doing so, he served a demand notice on 18.03.2004 and the defence of the Management on 10.05.2004 had been to the extent that he was not a workman and that he was asked in writing to report for work and to explain for his behaviour. Nothing was brought on record to show that he was asked to report for work by addressing any such communication to him.

17. Similarly, even the amounts of salary paid and deducted under the Employees Provident Fund Scheme, 1992, do not show any such designation of the petitioner at a higher level or that he was getting a salary more than his counterparts, to show that he was working in a managerial capacity. Resultantly, this Court is of the opinion that the impugned award dated 07.05.2010 (Annexure P-1) is not justified and the same needs to be reversed.

18. The fact, however, remains that the workman has been out of service since 2003 and a period of more than 15 years has gone by and at this stage, he cannot be asked to join duty and be reinstated in the same capacity, as much water has flown over the decade and a half. Even otherwise, as noticed that the factory has shut-down, which was also the defence as it was facing financial hardship and had been registered with BIFR at that point of time.

19. Resultantly, this Court is of the opinion that in lieu of the order of reinstatement, the petitioner is liable to be paid compensation, in view of the principles as settled by the Apex Court in Ashok Kumar

Sharma Vs. Oberoi Flight Services 2010 (1) SCC 142, Assistant Engineer, Rajasthan Development Corporation Vs. Gitam Singh 2013 (5) SCC 136 and Bhavnagar Municipal Corporation & others Vs. Jadeja Govubha Chhanubha & another 2016 (14) SCC 130, wherein Rs.2,50,000/- was awarded as compensation.

20. It is to be noticed that the petitioner was in service from 18.05.1991 to 13.10.2003 and in such circumstances, this Court is of the opinion that keeping in view the length of service and the fact that he had been out of service since the last 15 years, a sum of Rs.2,50,000/- would be an appropriate amount of sum to compensate for the illegal retrenchment which had been done by the Management.

21. Accordingly, the present writ petition is allowed, the award dated 07.05.2010 (Annexure P-1) is set aside and the Management is directed to pay the petitioner as sum of Rs.2,50,000/-, within a period of 3 months from the receipt of certified copy of this order. In case the amount is not paid, the said principal amount will carry additional interest element till recovery @ 7% per annum, from the date of the award.

October 11th, 2018
sailesh

(G.S.SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes