

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

CWP-653-2016 (O&M)

Date of Decision:16.02.2018

Mahinder Pal Bhatia

... Petitioner

Vs.

Presiding Officer and another

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Ms. Abha Rathore, Advocate for the petitioner.

Mr. S.S. Saini, Advocate for respondent No.2.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has challenged the award passed by the Labour Court dated 25.05.2015 (Annexure P-15).

2. Petitioner was appointed as a Chemist on 12.03.1992. In the order of appointment, one of the condition stipulated is that for the purpose of disciplinary action certified standing orders are applicable. He was promoted to the post of Sr. Chemist on 10.09.1999. His services were terminated on 15.7.2006. He raised a demand notice on 26.7.2006. Preliminary issue was decided in favour of the petitioner. Labour Court passed award stating that petitioner was discharging the duties of the Supervisory post in the respondent-company, therefore, he do not fall under the definition of workman. Feeling aggrieved by the award passed by the Labour Court. Hence, the present petition.

3. Learned counsel for the petitioner submitted that for the purpose of termination, the respondents have taken note of the conditions imposed in the order of appointment as a Chemist. Therefore, petitioner is continued to be a workman. It was also submitted that merely discharging some duties of the post of Supervisory in nature that does not change the

nature of the appointment of the petitioner, even though, he was promoted as a Sr. Chemist. He was continued to discharge the post of Chemist. Thus, having regard to the nature of the duties and responsibilities assigned cannot be said that petitioner do not fall under the definition of workman. Learned counsel for the petitioner relied on the decision of the Supreme Court in the case of *S.K. Maini v. M/s Carona Sahu Company Limited and others*; AIR 1994 SC 1824 (see Para-9) to the extent that each case is required to be examined with reference to the nature of duties held by the employee for the purpose of determination whether is he workman or not? In the present case, petitioner was discharging the duties of labourer while holding the post of Sr. Chemist. Therefore, he would fall under the definition of workman. Thus, Labour Court has erred in holding that petitioner is not a workman.

4. Per contra, learned counsel for respondent No.2 while resisting the petitioner's claim submitted that in the order of termination, even though, wrongly cited the condition stipulated in the order of appointment as a Chemist that does not change the duties of the petitioner as Supervisory in nature. He was discharging the duties of the Supervisory post. It was further submitted that petitioner was entrusted with the work of store indent, shifting of workers from 1st shift to 2nd shift, power of taking disciplinary action against workers, assigned the duties of issuance of gate pass. He was not allowed certain benefits which were extended to the workers with reference to the settlement. On the other hand, petitioner was extended certain special benefits which were admissible only to the post of Supervisors and not to the workers. In support of the aforesaid submission, nearly 250 documents have been placed before the Labour Court. Requisition slips of materials which are Ex. as M-221 to M-231; shifting of

workers are Ex.M-149 to M-220; taking disciplinary action are Ex. M-232 to M-243; settlements are Ex. as M-244 to M-245; special benefits which were given to the petitioner are Ex. as M-246 to M-250. These materials show that he was not a workman. Therefore, rightly the labour Court has passed the award against the petitioner.

5. Heard learned counsel for the parties.

6. Core issue involved in the present petition is whether petitioner is workman or not?

7. From 12.03.1992 to 10.9.1999, petitioner was working as a Chemist. During the aforesaid period, he was working with reference to the condition imposed in para-5 that certified standing orders are applicable for the purpose of disciplinary action. In the order of promotion dated 10.9.1999 to the post of Sr. Chemist, no conditions were imposed. If the respondents have quoted the condition in the order of appointment that does not change the status of the petitioner from the Supervisor to that of workman as is evident from the supervisory work entrusted to the petitioner like submission of store materials; shifting of workers; disciplinary action to be taken against workers; special benefits were alone extended to the petitioner and only the benefits which were extended to the workers. Therefore, it is evident that he was not a workman. He was performing supervisory work. Therefore, decision cited supra by the petitioner is concerned that Court has to examine with reference to the nature of appointment as well as discharging the duties of the post. In the present case as is evident from number of exhibits that petitioner has been entrusted with the supervisory work. Therefore, he cannot be treated as a workman. Even petitioner did not agitate his right to give certain benefits under the

settlement between the management and union workers so as to contend that he is a workman. On the other hand, he was performing supervisor work and he had accepted the special benefits which were earmarked to other than workman.

8. In view of the above facts and circumstances, petitioner has not made out a case so as to interfere with the award passed by the Labour Court.

9. Accordingly, petition stands dismissed.

16.02.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**