

221 **RA-CW-230-2015 (O&M)**
In CWP-2672-2003

ONKAR SINGH AND ORS VS STATE OF HARYANA AND ORS

Present:

Mr. Karan Singla, Advocate for
Mr. Rujhan Dhawan, Advocate
for the petitioners.

Mr. Pritam Singh Saini, Addl. AG Haryana.

This review application has been filed after delay of over 8 years without showing sufficient cause for the delay and laches and on this ground the application is liable to be dismissed.

That apart, the main order, as far as petitioner Nos. 1 & 2 are concerned, was a consent order. Therefore not open to review.

The request for withdrawing the consent made by Mr. Narendra Hooda in the review application is not supported by his affidavit. This is the first and foremost reason why the application deserves to be declined.

The finding of the Labour Court in an application filed under Section 33-C(2) of the Industrial Disputes Act, 1947 in LCA No. 80 of 2007 in case titled 'Suresh Massey Vs. Haryana State Minor Irrigation & Tube Wells Corporation Limited' is a decree passed in execution proceedings to compute money due and payable to the workman. The finding of the Labour Court, Union Territory, Chandigarh dismissing the case holding the applicant therein not a

workman does not appear to be proper finding in view of the deposition of MW1 R.C. Roy. The statement in cross examination of this management witness as reproduced in relevant part of the order dated 16.3.2011 regarding issue whether Circle Head Draftsman is not a 'workman' within the meaning of Section 2 (s) of the Act has not been correctly appreciated by the Labour Court since on evidence, it appears that the petitioner does not to fall on the management side to be taken in the exception (iv) of Section 2(s) of the Act, 1947. The Tribunal does not appear to have appreciated the statement of the management witness in the right perspective when he deposed as follows:

“The said corporation was closed on 30.07.2002. It is correct that lastly Sh. Suresh Massey was working in planning section of the Corporation in the Head Office at Chandigarh. It is correct that the head of the said section/wing was financial advisor. I cannot tell the job of the Suresh Massey in the said section was making progress report, budget planning, annual planning and making five year planning etc. I cannot tell in the said section there was only four employees Financial Advisor, PA, Suresh massey and one peon. It is wrong to suggest that Suresh Massey was not working any supervisory capacity. Suresh Massey has no authority to sanction the casual leave of any employee. It is correct that he cannot write the ACR of any employee. It is wrong to suggest that he cannot write any letter or make any correspondence with any office. Before his posting in planning section he was posted in monitoring section. The overall incharge of the said section was executive

engineer/Deputy Director. It is wrong to suggest that he was also not working #mutki58rin supervisory capacity in the said section. It is wrong to suggest that he never worked in supervisory capacity till his termination.”

An application under Section 33-C (2) is to be decided on facts and findings recorded in someone else's case are not binding on the petitioners No. 1 & 2. For this reason as well, the review application is liable to be dismissed.

However; the question whether a Circle Head Draftsman is a 'workman' by definition or not is left open. But that will not affect the rights of the petitioners who are entitled to money due under the decree of the labor court.

Accordingly, the petitioners No. 1 & 2 shall be paid their pending dues within two months from the date of receipt of certified copy of the order. Proof of payment shall be produced in the Registry to be placed on the file of this case. On payment being made, the petitioners' counsel assures court that the pending contempt petition filed by them shall be withdrawn.

Pending application/s, if any, shall stand disposed of.

(RAJIV NARAIN RAINA)
JUDGE

14.08.2018
kv