

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 10.01.2019****CWP No.23176 of 2014**

Zile Singh

...Petitioner

Vs.

M/s G4S Security Services (India) Private Limited & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. A.D.S.Bal, Advocate, for the petitioner.

Mr. Ravi Kant, Advocate, for respondent No.1.

RAJIV NARAIN RAINA, J.

1. By way of this petition, the petitioner seeks a writ of certiorari to quash impugned Award dated 21.07.2014 made by the Presiding Officer, Industrial Tribunal -cum- Labour Court-II, Gurgaon, whereby the reference has been answered against the petitioner by holding that he was not a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (for short 'the Act') and therefore the reference was not maintainable.

2. Whether the petitioner is a 'workman' is a question which falls for consideration.

3. A few facts may be noticed. The petitioner was appointed as Head Guard on temporary basis on a consolidated salary/stipend of Rs.1400/- per month by appointment order dated 12.06.1995. In due course, he was promoted as Inspector. The petitioner says that in spite of such promotion, he continued to perform the same duties which he was

performing as Head Guard. His services were put to an end on 07.04.2010 without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947. He raised a dispute by serving demand notice dated 21.07.2010 on the management and copies to the Labour Authorities. Upon failure of conciliation proceedings, the dispute was referred to the Industrial Tribunal -cum- Labour Court-II, Gurgaon for adjudication. Pleadings were completed and evidence was led by the respective parties. On a consideration of material on record, the petitioner has been non-suited on a finding that he was performing supervisory duties. The Labour Court has recorded in Para.13 of the award while referring to the testimony of the petitioner that in the company hierarchy, a Supervisor supervises the work of Security Guard and in turn, work of the Supervisor is supervised by the Inspectors of his area of deployment. That may be so, but the question still remains, whether an Inspector having regard to the duties and responsibilities qualifies as a 'workman' on the evidence adduced by the parties.

4. The Labour Court referred to the definition of 'workman' in Section 2(s) of the Act to observe that a person is not a 'workman' who being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem 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. To reach this conclusion, the Labour Court drew strength from the decision in of the Supreme Court in Mukand Limited Vs. Kukand Staff and Officer's Association, 2004 (10) FLR 219.

5. The burden to prove the petitioner was not a 'workman' was placed on the management, as the petitioner had asserted in the demand

notice and in his pleadings that he was a 'workman'. The sole witness of the management is RW-1 Sandeep Shrivastava, Senior Manager. No other documentary or oral evidence was produced by the management. Accordingly, the testimony of RW-1 Sandeep Shrivastava recorded in his cross-examination conducted on 21.04.2014 has material bearing on the jurisdictional issue. Before the Labour Court, he made the following statement in his evidence:

“...Workman did not have any right to appoint or terminate any person from service. He had no right to sign any cheque of the Company. Workman did not have the power to hold disciplinary proceedings. Again said workman could recommend for disciplinary action. Again said he was working on the post of Supervisor.”

6. The Labour Court has placed the burden on the petitioner workman to prove his version before the Court and has observed that there was failure to discharge the onus and to show that he is entitled to benefit under the law or Act.

7. In the reply to the statement of claim (Annex P-4), it has been pleaded by the management in Para.8 that the “employee was enjoying the post of Inspector, who is higher than the Security Supervisor”. Further, he does not fall under the definition of 'workman' as he was supervising others and was responsible for administration amongst supervisors and security guards during duty hours.

8. The factual position is that neither the petitioner nor the management have outlined and described the actual duties and responsibilities of the post except for management making a generalized statement and, therefore, the testimony of RW-1 Sandeep Shrivastava

assumes predominant position. Mere description of a post or designation is not material to the determination. When the quoted part of the testimony in cross examination of RW-1 Sandeep Shrivastava is read, it appears to me rather certain that an Inspector did not pre-dominantly perform duties in supervisory capacity or functions mainly of managerial nature. If the damaging part of the statement of RW-1 is “freak”, as the Labour Court puts it, then it appears to fall in error in even contemplating that such evidence could be excluded from consideration and falling back on the employee in failing to show that he falls under the definition of ‘workman’. Merely because there is a hierarchy of three posts i.e. Guards, Supervisors and Inspectors, then it does not follow automatically that the petitioner by the nomenclature of his post or by discharge of duties falls outside the definition of ‘workman’. It is the cumulative effect of the evidence that the Labour Court should have weighed to see where the balance lay between ‘labour’ or ‘management’ side.

9. The petitioner’s assertion is that he continued to perform the same duties as Inspector that was required of him as a Head Guard. That balance is shifted in favour of the workman by the testimony of the witness of the management itself. After all, the petitioner had no right to appoint or terminate any person. He could not sign any cheque on behalf of the Company. He had no power to hold disciplinary proceedings. Merely labeling the petitioner as a Supervisor does not conclusively prove that he was part of management either in a supervisory capacity or managerial position.

10. If the petitioner falls within the definition of 'workman', then the question of compliance of Section 25-F of the Act would arise, which admittedly had not been done, rendering the termination illegal.

11. As far as gainful employment during the period of litigation is concerned, the onus was on the management to prove by way of positive evidence that after termination, the workman was gainfully employed in any new establishment in an employer- employee relationship in a job akin to one he held in the company. Even assuming that the petitioner was earning something during the period of forced idleness, it was to sustain the family and that amount can be treated as solatium or factored in moulding the relief by making an allowance or cut from award of full back wages on reinstatement which I am inclined to grant.

12. In view of the above discussion and keeping in view the admissions made by RW-1 Sandeep Shrivastava, the Labour Court erred in deciding Issue No.2 and as a result the findings are set aside. Accordingly, the present petition is partly allowed. The impugned award is quashed. The petitioner is ordered to be reinstated to service with 50% back-wages.

10.01.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>