

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.19227 of 2018
Date of decision : 04.07.2019

M/s Jayanti Films India Pvt. Ltd.

....Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-
Labour Court-II, Gurugam and another

....Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr.Vaibhav Jain, Advocate
for the petitioner.

B.S. Walia, J.,

1. Prayer in the writ petition is for the issuance of a writ of Certiorari for quashing award, Annexure P-4 dated 09.01.2018 passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court II, Gurguram (hereinafter referred to as 'the Tribunal) reinstating respondent No.2 with continuity of service and full back wages.
2. Learned counsel contended that the impugned award is legally unsustainable since the Tribunal failed to take into account that respondent No.2 was not a workman as per definition of 'Workman' under Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act').
3. Brief facts of the case as set up by respondent No.2 are that he was appointed as Manager with the petitioner on 01.07.1984 while his services were illegally terminated on 03.04.2012, that at the time of termination of his services, he was drawing salary of ₹7500/- per month, termination of his services was without complying with the mandatory provisions of the Act, no notice, notice pay or retrenchment compensation was given and despite demand notice having been served on the Management, the same was not

proceedings. Management, on the other hand, took up the plea that respondent No.2 had as per his own sweet wish and will taken his full and final payment from the Management, therefore, there existed no relationship of employer and employee between the parties, besides, respondent No.2 did not fall within the definition of 'workman' as per Section 2(s) of the Act as admittedly, he was appointed as Manager. In his evidence, respondent No.2 stated that although he had been appointed as Manager on 01.07.1984, he was not having any administrative powers. Management, on the other hand, examined MW-1 Om Parkash, who besides tendering his affidavit Ex.MW1/A proved documents including extracts of inspection book, intimation of management to D.E.T. Commissioner (West) Gurugram about closure of Jai Cinema as also of having been granted permission to convert the same into Multiplex vide letter No.31191 dated 19.07.2005, Employees Register, ESIC Annual Statement of contributions for the period 01.04.2002 to March 2003.

4. On the basis of the pleadings and evidence, the Tribunal answered the reference in favour of the workman and held him entitled to relief as referred to in paragraph No. 1 above.

5. Learned counsel contended that the award was unsustainable and liable to be set aside as the respondent was not a workman, besides there existed no relationship of employer and employee with respondent No. 2 as he had left service of his own.

6. I have heard learned counsel. Admittedly, respondent No.2 was working with the petitioner as Manager against last drawn salary of ₹7500/- per month at the time of termination i.e. 03.04.2012 . Apart from taking up the plea in the written statement to the claim statement that respondent No.2 was not a workman as per definition of 'workman' given under Section 2(s) of the Act on

were highlighted to show that he was doing work primarily managerial in nature. The only evidence led by the Management was that the Cinema was checked by the A.E.T.O-Cum-Entertainment Tax Officer, Gurugram on 10.06.2002 and 15.06.2002. Mere mention of the word 'Manager' in the Inspection Book would not suffice to hold that respondent No.2 was working with the Management in a Supervisory/Managerial capacity and was discharging functions exclusively in a Managerial capacity. Besides, as has been noted by the Tribunal, Jai Cinema, Gurugram was closed with effect from 17.02.2006 and was converted into a multiplex. The Management failed to produce on record any evidence to show that respondent No.2 was exercising supervisory functions or was having any power to bind the Management with his decision. In the absence of there being any evidence on record to discharge the onus of the issue which was on the Management, the issue being "whether the present reference is not maintainable? OPM, the learned Tribunal rightly held that there was nothing on the record to show that respondent No.2 was having any administrative or supervisory powers and accordingly, held respondent No.2 to be falling within the definition of workman. As regard the plea of the Management that the workman had of his own accord taken full and final payment, the Tribunal held that no proof in respect thereto had been led by the Management except oral averment. Though MW-1 in his cross-examination had stated that the workman had submitted his resignation and the same had been accepted by the Management, however, when MW-1 was questioned in respect of the said stand, he stated that neither he had copy of the resignation letter of the workman nor copy of the intimation of acceptance of the resignation letter. In the circumstances, mere oral statement by MW-1 on behalf of the Management would not suffice to prove that the workman left the job on his own and took full and final payment.

7. The question “whether designation alone is determinative of whether an employee is a workman or not” was considered by Hon’ble the Delhi High Court in **M/s Kirloskar Electric Company Limited versus Government of N.C.T. of Delhi and others 2009 (8) SCT 1** and it was held that mere designation either as Accounts Officer or Assistant Manager was not suggestive of the workman discharging any supervisory or managerial duties so as to exclude him from the purview of the definition of ‘workman’ given under Section 2(s) of the Act. Relevant extract of the aforementioned decision is reproduced as under :

“8. In the present case, the Court below taking note of the nature of duties performed by respondent No. 3 in the course of his employment with the petitioner company, has rightly reached to a conclusion that his designation either as Accounts Officer or as Assistant Manager, was only a misnomer and does not suggest that he was discharging either supervisory or managerial duties so as to exclude him from the purview of the definition of 'workman' given in [Section 2\(s\)](#) of the Industrial Disputes Act, 1947. It shall be significant to mention that though the petitioner company had filed its written statement before the Labour Court but despite opportunity given to it, neither it cross-examined the witnesses of the workman nor did it produce any evidence to prove its contention that the respondent No. 3 was discharging supervisory or managerial functions. In the facts and circumstances of the case, I do not find any perversity or illegality in the finding of the Court below that respondent No. 3 is covered by the definition of 'workman' within the meaning of [Section 2\(s\)](#) of the Industrial Disputes Act, 1947.”

8. Similarly, Hon’ble the Supreme Court in **Anand Bazar Patrika (P) Ltd. Vs. The workmen (1970) 8 SCC 248** held as under:

“The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also

does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity.”

9. Likewise, Hon’ble the Supreme Court in *S.K. Maini v. Carona Sahu Co. Ltd.*, (1994) 3 SCC 510 in paragraph 9 of the decision held as under:

“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 ...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 [Section 2\(s\)](#) of the Industrial Disputes Act.”

10. Section 2(s) of the Act which is relevant is reproduced as under :

“Section 2(s) defines workman as any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work, for hire or reward, terms of employment be express or implied and includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment had led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial capacity or administrative capacity; or
- (iv) 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.”

A perusal of Section 2(s) (iv) reveals that a person employed in a supervisory capacity drawing wages exceeding ₹10,000/- per mensem is not included in the definition of the term ‘workman’. Likewise, a person, either by nature of the duties attached to his office or by reason of the power vested in him if exercise functions mainly of managerial nature, is not included in the definition of ‘workman’. However, not only was respondent No.2 drawing less than ₹10,000/- but no evidence whatsoever has been led by the Management to show that he was exercising either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of managerial capacity. In the absence of any such evidence having

been brought on record, the plea that respondent No.2 did not fall within the definition of 'workman' is without any basis.

11. It is relevant to mention here that MW-1 in his evidence admitted that the petitioner joined services of the Management w.e.f. 01.12.1994. Although it is the stand of the Management that the workman's services were not terminated on 03.04.2012 and he left services on his own, no evidence was led of the workman having resigned nor was any evidence led of the Management having issued any notice or of having given retrenchment compensation. Consequentially, the award holding the termination of services of respondent No.2 without compliance with the provisions of Section 25F of the Act as illegal does not warrant any interference.

12. Even otherwise it is settled law that the High Court in exercise of its powers under Article 226 of the Constitution of India would not interfere in a finding of fact unless the finding which is challenged is based on no evidence or is perverse. In the light of the position as noted above, the writ petition is bereft of merit and is accordingly dismissed in limine.

July 04, 2019

ps

(B.S. Walia)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No