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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Judgment: 20th August, 2019

+ **LPA 528/2019**

TRILOKI NATH CHAUDHARY

..... Appellant

Through: Mr. Sarfaraz Khan, Advocate.

versus

HARI OVERSEAS (P) LTD

..... Respondent

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

C.M. Appl. No. 36843/2019 (for delay)

1. This is an application seeking condonation of delay of 64 days in filing the appeal.
2. For the reasons stated in the application, the same is allowed and the delay is condoned.

C.M. stands disposed of.

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3. The present appeal is directed against the order dated 1.5.2019 passed by the learned Single Judge of this Court. Some facts required to be noticed for deciding this appeal are that the appellant was appointed to

the post of Senior Accountant with the respondent/Company on 9.6.2011. His last drawn salary was Rs.24,000/- per month. The services of the appellant were terminated by the respondent on 16.6.2012, without any notice or inquiry and even the salary for the month of June, 2012 was not paid. It is also the case of the appellant that the termination was oral in nature. A Legal Notice was issued on 22.6.2012 by the appellant, seeking salary for the month of June, 2012 and bonus as well as other service benefits from the respondent. Pursuant to conciliation proceedings having failed, a failure report was sent by the Labour Department of Government of National Capital Territory of Delhi on 7.11.2012 and the appellant was advised to file his claim raising an industrial dispute before the appropriate Labour Court. Industrial dispute was raised by the appellant on 17.1.2012 and award was passed on 2.8.2014, wherein it was held that the appellant had failed to prove that he was a 'workman' within the definition of Section 2(s) of the Industrial Disputes Act, 1947 and thus was not entitled to any relief. This award was assailed before the learned Single Judge of this Court by filing a writ petition being W.P.(C) 8280/2014. Upon completion of pleadings and after hearing, the learned Single Judge dismissed the writ petition and upheld the findings of the Labour Court.

4. Mr. Sarfaraz Khan, learned counsel for the appellant, submits that the Labour Court as also the learned Single Judge has erred in not taking into consideration the evidence by which the appellant had proved that he would be covered under the definition of 'workman' under Section 2(s) of the Industrial Disputes Act, 1947. Learned counsel contends

that the nature of duties performed by the appellant were that of a workman and they were not managerial or administrative in nature. Attention of the Court is drawn to the evidence, more particularly, para 17 of the award, wherein there is reference to the evidence led and which we reproduce below:

“17. The workman in his cross-examination admitted that his job profile in the management was voucher entry, voucher making, accounting on tele base system on computer, entry of sale and purchase bills in books of accounts, balance outstanding of various customers, bank reconciliation, branch reconciliation and he was even sent sometimes to the banks and he was also asked to prepare details of sales. The functions being performed by the workman itself appears to be of administrative and managerial in nature. In view of evidence of the workman and definition of section 2(s) of I.D. Act, the court is of the opinion that the claimant is not a ‘workman’ within the definition of section 2(s) of the Industrial Disputes Act and as such it is held that the workman has failed to prove this issue. Issue no. 1 is decided against the workman.”

5. The learned Single Judge has placed strong reliance on the evidence of Ms. Poorva, Executive-HR, Management as MW-1, who has deposed in her affidavit as under:-

"5. The Deponent on oath deposes that the applicant was appointed to the post of senior accountant and used to discharge managerial and administrative functions and had been reporting directly to the In-Charge of the Finance and Accounts department of the Company, the Applicant was drawing a salary of 24,000per Month and the predominant duties of the applicant were managerial in nature. The applicant was always part of the strategic team responsible for

the framing of corporate strategy of the Company. The Applicant was required to keep and maintain proper books of accounts of the Company as per the requirement of the various statutes. The Applicant was required to keep himself fully conversant with all the regulations in force which may come into force from time to time with regard to, consolidation of Accounts for the purposes of statutory audit, filing returns for Direct Taxes, Indirect Taxes, and Local Taxes and/or for complying the requirement of any other local regulation applicable to the Management. Further the Applicant had the responsibility to co-ordinate with the Bankers of the Company and to safeguard the interest of the Company against levy of any fine/penalty imposed and/or prosecution launched against the Company. The principal function of the appellant was of administrative and managerial nature invested with the power of supervision in contradistinction to the stereotype work of a clerk and was occupying a position of command or decision and was authorized to act in certain matters within the limits of his authority. Therefore, the application shall be dismissed with cost."

6. Learned Single Judge also took into account that there was no cross-examination at all with respect to the assertions made in para 3 of the affidavit of MW-1. The Court has also taken note of the fact that the post of the appellant was that of a Senior Accountant, and accordingly he was performing managerial and administrative work, although the Court was conscious of the fact that merely because of the nomenclature, it will not be sufficient to decide as to whether the appellant was a workman or was performing managerial and/or administrative work. We also deem it appropriate to reproduce para 38 of the judgment of the learned Single Judge:

“38. However, in the instant case the lack of cross-examination on behalf of the petitioner of the assertions made by MW-1 through her testimony in her affidavit Ex.MWL/A vide para 3 reproduced hereinabove, which inter alia included the aspect of the petitioner being required to keep himself fully conversant with all regulations in force which could come into force from time to time with regard to consolidation of accounts for the purpose of statutory audit, filing returns of direct taxes, indirect taxes and local taxes and/or for complying with requirements of any other local regulation applicable to the management, with the responsibility on the petitioner to co-ordinate with the managers of the company and to safeguard the interest of the company against levy of any fine/ penalty imposed and/ prosecution launched against the company, makes it apparent that the petitioner who was drawing a salary of Rs.24,000/- per month did not fall within the ambit" of definition of a 'workman' as described under Section 2(s) of the Industrial Disputes Act, 1947.”

7. The learned Single Judge has also taken into consideration that there was no cross-examination on her affidavit of the management witness wherein she had testified that the appellant was required to keep himself fully conversant with all Regulations in force, with regard to consolidation of accounts for the purpose of statutory audit, filing returns of direct taxes, indirect taxes and local taxes and/or for complying with requirements of any other local Regulation/s applicable to the management, with the responsibility on the petitioner to co-ordinate with the managers of the Company and to safeguard the interest of the Company, against levy of any fine/penalty imposed and/prosecution launched against the Company. Salary offered to the

appellant of Rs.24,000/- was also taken into account while reaching the conclusion, that the appellant was not a 'workman'.

8. Resultantly, we find no merit in the present appeal and the same is hereby dismissed.
9. Liberty, as prayed, is granted to the appellant to seek such other remedy as may be available to him, in accordance with law.
10. At this stage, learned counsel for the appellant submits that he would make an application under Section 14 of the Limitation Act. We have no hesitation in saying that in case any such remedy is resorted to by the appellant, the concerned Court will consider the issue of limitation sympathetically and in accordance with the law and provisions of Section 14 of the Limitation Act.

G.S.SISTANI, J

JYOTI SINGH, J

AUGUST 20, 2019

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