IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 12.07.2017
Judgment Pronounced On: 01.05.2019

W.P.(C) 8280/2014

TRILOKI NATH CHAUDHARY ..... Petitioner

Through: Mr. Sarfaraz Khan and Mr. Mirza Amir Baig, Advocates.

Versus

SHRI HARI OVERSEAS (P) LTD. ..... Respondent

Through: Mr. Yogesh Swaroop & Mr. Prashant Kumar Mittal, Advocate.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

J U D G M E N T

ANU MALHOTRA, J.

1. The petitioner vide the present petition assails the impugned award dated 02.08.2014 of the Presiding Officer, Labour Court-IX in ID No.13/2013 vide which it was held that the petitioner/claimant having failed to prove that he was a '*workman*' within the definition of Section 2(s) of the Industrial Disputes Act, 1947, was thus, not entitled to any relief against the management of M/s Hari Overseas (P) Ltd. i.e. the respondent herein.

2. According to the petitioner, he was appointed as a Senior Accountant with the respondent from 06.06.2011 with his last drawn salary being

Rs.24,000/- per month and his services were terminated on 16.06.2012, which the petitioner contended were illegally and unjustifiably terminated without any notice and without the petitioner having been paid the salary for the month of June 2012, bonus and other service benefits to the workman for which the petitioner is indicated to have served a legal notice to the management on 22.06.2012 calling upon the management to pay the salary for the month of June 2012 with bonus and service benefits, to which a reply dated 27.06.2012 was sent on behalf of the respondent. It was stated by the respondent that it was the petitioner who was not coming to the office from 16.06.2012 and had not even informed his superiors nor the HR Department and reliance was placed by the respondent on clause 11 of the appointment letter issued by it to the petitioner on 09.06.2011 wherein it had been stated to the effect:-

> ***"That absence for a continuous period of 7 days without leave (including the case when leave though applied for is not granted by the company) and if there is over stay by 8 days, it will be taken as you have left the service. If you, by presenting on ninth day satisfied the management, then management has right to take you back on work. But if you will not present on work on even ninth day then nothing will be considered if you are ill"***

3. The respondent also stated through its reply that the petitioner had been called several times but did not respond to the same and that a show cause notice has also been issued to the petitioner to resume his duties within 48 hours. The petitioner is thus, indicated to have raised a dispute before the Conciliation Officer but no conciliation having been arrived at, a failure report was submitted by the Conciliation Officer and thereafter the petitioner filed the claim before the learned Labour Court for adjudication seeking that he be reinstated with full back wages and all other consequential reliefs in as much

as he had not been able to claim any employment after the illegal termination of his services by the respondent. The respondent/ management filed its written statement and contended that the petitioner did not fall within the definition of '*workman*' under Section 2(s) of the Industrial Disputes Act, 1947 in as much as he was a Senior Accountant and had been discharging mainly managerial and administrative functions and had been reporting directly to the In-charge of the Finance and Accounts department of the company and the petitioner was drawing a salary of Rs.24,000/- per month and could not be held to be a *'workman'* under the Industrial Disputes Act, 1947 and that the predominant nature of his duties were administrative or managerial and to some extent supervisory in nature. The respondent/ management further contended that whether or not an employee fall within the definition of Section 2(s) of the Industrial Disputes Act, 1947 was required to be determined with reference to the principal nature of duties and functions of the employee and such question was required to be determined with reference to the facts and circumstances of the case and materials on record and it was not possible to lay down any strait-jacket formula which could decide the dispute as to the real nature of duties and functions being performed by an employee and that the determinative factor was the main duties of the employee concerned and not some works incidentally done and that in substance, the work which the petitioner was employed to do was that, that had to be looked into and thus, as the petitioner was mainly doing supervisory work but incidentally or for a fraction of time also did some manual or clerical work, he could not be held to be not doing supervisory work.

4. The respondent further submitted that the petitioner was maintaining proper books of accounts of the company as per the requirement of the various

statutes and that he was fully conversant with all the regulations in force with regard to consolidation of accounts for the purpose of statutory audit, filing returns for direct taxes, indirect taxes and local taxes and all these functions were administrative and managerial and that the principal function of the petitioner was of administrative and managerial nature invested with the power of supervision in contrast to the stereotypical work of a clerk and that the petitioner occupied a position of command or decision and was authorized to act in certain matters within the limits of his authority.

5. It was the contention thus of the respondent/ management that the petitioner having failed to resume his duties despite the letter dated 02.07.2012, which was sent to the petitioner and also to his lawyer who served the legal notice to the management, it is apparent that the petitioner had no intention to resume his duties but only wanted to extract money from the management and that the petitioner had in fact voluntarily abandoned his services and his claim was liable to be rejected. The respondent however, did not deny the date of appointment of the petitioner nor his designation nor his salary but denied that the services of the petitioner had been illegally terminated.

6. The petitioner through his rejoinder to the reply of the respondent before the learned Labour Court-IX reiterated the contents of the petition whilst refuting the contents of the written statement of the respondent.

7. Issues were framed on 21.03.2013 by the learned Labour Court to the effect:-

> ***"1. Whether the claimant is a 'workman' within the definition of section 2(s) of the I.D.Act? OPW***

2. Whether the workman has remained absent and abandoned the job of his own? OPM.

3. Whether the services of the workman have been terminated by the management illegally and/or unjustifiably? OPW.

4. Relief."

8. The petitioner examined himself as WW-1 and that the respondent produced Ms. Poorva, Executive-HR of the management/ respondent as MW-1.

9. The learned Labour Court-IX vide paragraph 12 of the impugned award observes to the effect:-

> ***"12. The workman was cross-examined by Ld. AR for management and in cross- examination he deposed 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. he was also asked to prepare details of sales tax, again said details of the sales. He further deposed that he was not primarily entrusted with the job like preparation of tax details of the management lime services tax, VAT or sales tax and he was reporting regarding my duties to the Accounts Manager. He further deposed that no subordinate was provided to him for assisting him in his work. He denied to the suggestion that he was reporting his duties to Ms. Sonal Gupta, C.E.O."***

10. The management through MW-1 and her affidavit Ex.MW1/A testified to the effect that the petitioner had been appointed to the post of Senior Accountant and used to discharge managerial and administrative functions and

had been directly reporting to the In-charge of the finance and accounts department in the company with the monthly salary of Rs.24,000/- and was not a '*workman*' in terms of Section 2(s) of the Industrial Disputes Act, 1947. To similar effect was the testimony of MW-1 on cross-examination conducted on behalf of the petitioner.

11. Through the written submissions submitted before the learned Labour Court-IX, the petitioner submitted that he was working as a workman and was not discharging managerial, administrative and supervisory powers and rather MW-1 had admitted that she herself used to mark his attendance and thus, it was evident that he was not discharging managerial and administrative work and that no evidence had been produced by the respondent to show the managerial and administrative work discharged by the petitioner.

12. The respondent reiterated before the learned Labour Court-IX that the principal function of the petitioner was administrative and managerial and that he did not fall within the definition of a *'workman'* as per Section 2(s) of the Industrial Disputes Act, 1947. The learned Labour Court vide para 17 of the impugned award observed to the effect:-

> ***"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."

and thus, concluded that the petitioner did not fall within the category of a workman under Section 2(s) of the Industrial Disputes Act, 1947, in as much as the functions performed by him appeared to be administrative and managerial in nature.

13. Issue no.2, was however, decided by the learned Labour Court-IX against the management, having held that the management had failed to prove that the petitioner had abandoned the job of his own observing to the effect that MW-1 had admitted in cross-examination that the management had not issued any notice of the petitioner regarding his absence from duty which had been sent only after receiving the demand notice from the petitioner and thus it was observed by the learned Labour Court-IX that if the petitioner had abandoned the job of his own and it was incumbent on the management to initiate some action against the petitioner so as to give him an opportunity following the principles of natural justice to call him back on duty but no such inquiry was conducted.

14. However, in as much as, the issue no.1 had been decided against the petitioner herein, it was held qua issue no.3 that the services of the petitioner had not been terminated in violation of Section 25F of the Industrial Disputes Act, 1947. The claimant i.e. the petitioner herein thus, vide the impugned award was held not entitled to any relief against the management.

15. The petitioner through the present petition places reliance on the appointment letter dated 09.06.2011 issued by the respondent to him, the contents of which read to the effect:-

"Subject: Appointment letter for the post of Sr. Accountant

Dear Sir,

1. This appointment is with effect from 09.06.2011 subject to confirmation of your joining report and signed copy of appointment letter.

2. That you will be paid an Annual CTC of Rs.240.000 (Two Lacs Forty Thousand Only) consolidated.

3. That your probation period will be for 3 months after three months by the recommendation of your HOD & Management, you will become a permanent employee of the company.

4. That you will be eligible for leaves and other benefits as per the service rule of the Company as in vogue or altered from time to time. The company has right to amend the rules, which shall be applicable to you.

5. That you will observe strict secrecy in respect of information, formula and working of Office & Plant in particular and procedure practices adopted by the Company. You will not divulge any information to anyone.

6. That during the tenure of your employment, you are expected to devote whole heatedly for work of the company and will not take-up any other employment, allocation, trade, business or self-employment in your own name or in the name of your family members without seeking prior written permission from the employer. Violation of this clause will render you for swear disciplinary action. It is further clarified that you cannot engage yourself even without enumeration. This

is strictly for the reason so that the work of company may not suffer.

7. That you will carry out such duties as assigned to you from time to time and you will not refuse to carry out any such duty. The management has inherent right to charge your designation without notice but while doing so your remuneration cannot be adversely affected.

8. That your head quarter for present is at New Delhi but it can be changed to such other place that may be decided by the organization and communicated to you. Thus, your headquarter is likely to be changed.

9. That your can be transferred to one section from other section from one department to other and from one shift to another keeping in view the exigency of the work without any notice. You will not refuse to carry out such orders.

10. That company is competent to transfer you anywhere in India as the company has the broad base and branches all over India. You cannot refuse to carry out the order of transfer and after transfer you will become the employee of the place where you stand transferred. The company has right to transfer you without affecting any change in remuneration, allowances or other benefits.

11. That absence for a continuous period of 7 days without leave (including the case when leave though applied for is not granted by the company) and if there is over-stay by 8 days, it will be taken as you have left the service. If you, by presenting on ninth day satisfied the Management then Management has right to take you on work. But if you will not present on work on even ninth day then nothing will be considered if you are ill.

12. In case of gross negligence insubordination, fraud, disobedience of order, misbehavior with your seniors or any misconduct alleged against you or breach of any terms and conditions of this agreement, you will be liable *for suspension pending any enquiry for which no wages shall be paid to you. If you are found guilty your services will be terminated forthwith and you shall not be entitled to any notice or Compensation.*

13. Notwithstanding the condition in paragraph 18 above, if at any time in our opinion, which will be final in the matter, you are found indulging in any conduct considered by us detrimental to our interest or of violation of one or more terms and conditions of the letter, you services can be terminated without notice and compensation.

14. If at any time the company finds that the information supplied by you at the time of appointment or later on is false, it would entail automatic termination of your service without notice or compensation.

15. The written notice of termination of this contract of employment for Permanent employee will be One (1) months by either party or One months' gross salary in lieu of notice period. In case you (permanent employee) leave your employment without giving requisite notice, no relieving order will be issued and settlement of dues will be at the discretion of the Management. The Management reserves the right to deduct, as liquidated damages, an amount equal to One months' gross salary from any amount that may be due to you and if the same is not available or is insufficient then the Management shall have the right to recover such amount as found due from you in any manner deemed fit.

16. At the time of leaving the company, you have to return the all documents/articles/Any Assets (like Laptop, Data Card, Mobile Phones etc) or ay other things of the company.

17. You will not do any act publically, which affects the image of the company and other employees.

> ***18. You will not take your grievances, disputes or anything else related with company publically or to any lawful authority and will not do any? act which will hamper the work of company in any kind before taking them to the machinery appointed by company for the settlement of disputes and grievances or anything else, you also have to give reasonable time to company.***
>
> ***19. Company can take you performance test periodically. In case you fail in these tests, management can take action against you what it feel deem fit.***
>
> ***20. Your conviction by any criminal court for offence which involves moral status will make an end your employment with us.***
>
> ***21. Kindly sign the duplicate copy of this letter and return the same to us as token of your acceptance of the appointment on the above terms and conditions.***
>
> ***22. All the Legal Cases related to employment will be settled in Delhi jurisdiction."***

16. The petitioner further submits that he served the respondent with sincerity and honesty but on 16.06.2012 when he reached the office of the respondent to resume his duty, he was not allowed to do so and was orally told not to come again, on hearing which the petitioner was shocked and had sent a claim vide a notice dated 27.06.2012 vide his legal notice to the respondent which was not replied by the respondent and thereafter the reply dated 27.06.2012 was received from the respondent.

17. The petitioner has submitted that the impugned award was liable to be set aside as the learned Labour Court-IX had failed to appreciate that the petitioner was not discharging any duty as a Manager, Administrator or Supervisor and rather he was working as a Clerk with the respondent and fell within the definition of a '*workman*' under Section 2(s) of the Industrial

Disputes Act, 1947. The petitioner further submits that it is not the designation which is material but rather the nature of duties that the petitioner performed which had essentially to be considered by the learned Labour Court-IX and also submitted that the duties performed by the petitioner of up keep of books of accounts, re-conciliation of accounts, data entry in books of accounts, reconciliation of accounts related to inter branch ledger account, creditors account, debtors account and details necessary for preparation of sale tax return cannot be said to be administrative, managerial nor supervisory in nature. *Inter alia* the petitioner submitted that the forged and fabricated letters/notices dated 27.06.2012 and 02.07.2012 had been placed on record by the respondent and an adverse inference was necessarily to be drawn against the respondent.

18. Through the counter affidavit of Mr. Pankaj Chaudhary, Manager Accounts working with the respondent vide the affidavit dated 25.03.2015, which was duly notarized, it was submitted that there was no error or illegality in the award of the learned Labour Court-IX and it was reiterated that the petitioner had been working as a Senior Accountant with the respondent and that his services fell within the managerial and administrative functions and that he was reporting directly to the In-charge of the Finance and Accounts department of the respondent company and did not fall within the definition of Section 2(s) of the Industrial Disputes Act, 1947. It was also reiterated by the respondent that the petitioner had himself unauthorizedly remained absent from duty from 16.06.2012 and he did not join his duties despite a reply dated 27.06.2012 calling upon the petitioner to resume his duties and despite a letter dated 02.07.2012 and the petitioner having not resumed his duties, the services of the petitioner were terminated in terms of clause 11 of the terms and

conditions of the contract of service applicable to his job and thus, he could not be reinstated nor could he claim any back wages.

19. The petitioner through his rejoinder affidavit, reiterated the contents of the petition.

20. Written submissions were submitted on behalf of either side reiterating their submissions made before the learned Labour Court-IX and as in the pleadings in the present petition.

21. Through the written submissions of the petitioner, reliance was placed on a catena of verdicts in ***"Anand Regional Co.Op Oil S. Union Vs. Shailesh Kumar Harshadbhai Shah" [2006] (6) SCC 548, "Ananda Bazar Patrika (P) Ltd. V. Workmen"[(1970) 3 SCC 248], "National Engineering Industries Ltd. Vs Shri Kishan Bhageria & Ors." AIR 1988 SC 329,*** to contend that where there is a power of assigning duties and distribution of work, there is supervision but that where the employee was working as an Internal Auditor in a Company, he was not doing supervisory work but also checking up on behalf of the employer having no independent right or authority take decisions, thus the employee was held to be a *'workman'* within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

22. Reliance was also placed on behalf of the petitioner on the verdict of this Court in ***"Muralidharan K. Vs. The Management of M/s Circle Freught Intl (India) P. Ltd."[ILR (2007) II Delhi 312],*** to contend that nomenclature of a post does not determine whether a person is covered under the definition of workman or not, and that instead the nature of duties performed is to be considered.

23. Reliance was also placed on behalf of the petitioner on the verdict of this Court in ***"K.H. Pandhi Vs. The Presiding Officer, Addl. Labour Court***

& Anr.” [110 (2004) Delhi Law Times 101], to submit that the term “*Industry*”, “*workman*” and *“industrial dispute”* are not to be interpreted so as to whittle down the object of the enactment.

24. Through the written submissions of the respondent, it was submitted that the petitioner was working with the respondent as a Senior Accountant and his services fell within the managerial and administrative functions and that he did not fall within the definition of Section 2(s) of the Industrial Disputes Act, 1947. Reliance was placed on behalf of the respondent on the verdict of the Hon’ble High Court of Gujarat in ***“Umakant S. Deshpande Vs. Gujarat Electricity Board” 2001 GLH (3) 36,*** wherein it was held to the effect that the nature of the duties of the Accounts Officers in that case where there was sub-ordinate staff strength of 15-16 Superintending Accountants, Deputy Superintending Accountants, Senior Clerks and Junior Clerks and the Accounts Officer supervised their work and filled in the confidential reports of all the employees working under him and though, he did not have final power to grant or reject leave or the power to take disciplinary action against his subordinates, because such powers were of managerial nature and it was held that the petitioner clearly did not fall within the ambit of a *‘workman’* in terms of Section 2(s) of the Industrial Disputes Act, 1947, and that the post of an Accounts Officer, it was held was such that it was clear that if it was not a supervisory post and it was thus, held that an Accounts Officer could not be held to be a *‘workman’*.

25. Reliance was also placed on behalf of the respondent on the verdict of the Hon’ble Division Bench of the High Court of Calcutta in ***“Narayan Chandra Paul Vs. Union of India and Ors.” [2013 (137) FLR820],*** which relates to the aspect of ‘unauthorized absence’ qua which, however, the

learned Labour Court has already decided the issue against the respondent which has not been challenged by any cross counter petition filed by the respondent herein and is thus, been held to have been admitted to the extent of termination of the services of the petitioner illegally.

26. The respondent also relied upon the verdict of the Hon'ble Division of this Court in ***"Amarjeet Singh Vs. Management of National Thermal Power Corporation Ltd." 2012 LawSuit (Del) 3205,*** which also relates to the aspect of unauthorized absence from duty. Reliance was also placed on behalf of the respondent on the verdict of this Court in ***"Parshuram Shah Vs. Govt. of NCT of Delhi and Anr"*** in Writ Petition (C) No.5986/2007 decided on 03.09.2007, which also relates to the aspect of the respondent having left the services of the petitioner of his own accord. Reliance was also placed on behalf of the respondent on the verdict of the Hon'ble Supreme Court in ***"Jaswinder Singh Vs. The Regional Manager, Punjab National Bank and Anr.",*** which also relates to the aspect of unauthorized absence from duty.

27. It is essential to advert to the testimony of the petitioner examined as WW-1 who has tendered his affidavit as Ex.WW1/A. Through his cross-examination, the petitioner had stated that he had upload his bio-data on Naukri.com for the post of a **Senior Accountant** and the management had given him a ring on his telephone telling him that they were in need of the services of an accountant and that the management had also contacted him through some consultant. The petitioner further stated that after he received the call from the management, he was called for an interview and was interviewed by Madam Sonal Gupta, CEO, one Ms. Sunita Gupta whose designation he does not know and by one Mr. Ashish, Manager of the HR Department at that time. He further stated that his profile in 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 re-conciliation, branch re-conciliation and he was even sent sometimes to banks and he was also asked to prepare details of sales but he stated that he was not entrusted primarily with the job of preparation of tax details of the management like service tax, VAT or sales tax for which there was a Chartered Accountant to deal with the tax matters. He stated that he was reporting in relation to his duties to the Accounts Manager and no sub-ordinate was provided to him for assisting him in his work. He denied that he was reporting for his duties to Ms. Sonal Gupta CEO. MW-1, Ms. Poorva, Executive, HR with the respondent who was examined on behalf of the respondent, stated that the petitioner was appointed on the post of the Senior Accountant and was doing managerial works and administrative works. Though, she stated that she did not have any documentary evidence to prove that the petitioner was doing managerial and administrative work but volunteered that it was obvious that since his post was of a Senior Accountant, he would have doing managerial and administrative work.

28. On a consideration of the rival submissions, it is essential to observe that the petition is one under Article 226 of the Constitution of India. As laid down by the Hon'ble Supreme Court in ***"Syed Yakoob Vs. K.S. Radhakrishnan and Ors." AIR 1964 SC 477,*** though a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals, these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions, a writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly,

as for instance, it decides questions without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. However, as observed by the Hon'ble Supreme Court in the said verdict vide para 7 thereof, though, a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court and this limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings and an error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be and that in regard to a finding of fact recorded by the Tribunal, a writ of *certiorari* can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding and similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of *certiorari* and that a Court must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings by a writ of *certiorari* on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding and the adequacy or sufficiency of evidence led on a point and the inferences of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court and that it is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

29. It was further observed by the Hon'ble Supreme Court vide para 8 of the said verdict, which reads to the effect:-

> ***"8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manliest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly rounded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases. the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon***

the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.”

30. The verdict of this Court in ***“Parshuram Shah Vs. Govt. of NCT of Delhi and Anr”*** (supra) also likewise observes to the effect:-

> ***“7. The arguments advanced on behalf of the petitioner workman, if entertained, would amount to interfering with the findings of facts as arrived at by the Labour Court after due appreciation of evidence. Law is well settled in this respect that the Labour Court is the final court of facts and it is not appropriate for this Court, while exercising jurisdiction under Article 226 of the Constitution, to reappreciate evidence or to interfere with the findings of facts as arrived at by the Labour Court. The jurisdiction exercised by the writ court under Article 226 is supervisory and not appellate in nature. Reappraisal of evidence without sufficient reason in law, to arrive at a finding of fact contrary to those arrived at by the Subordinate Court, is not the intent of exercising the powers of judicial review. Reliance in this regard can be placed on the following judgments of the Supreme Court:***
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> ***(i) Harbans Lal v. Jagmohan Saran***
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> ***(ii) B.C. Chaturvedi v. Union of India***
>
> ***(iii) Indian Overseas Bank v. I.O.B. Staff Canteen Workers? Union AIR 2000 SC 1508***
>
> ***(iv) P.G.I. of Medical Education and Research Chandigarh v. Rajkumar (2001) 2 SCC 54.***
>
> ***(v) Municipal Corporation of Delhi v. Asha Ram and Anr.”***

and thus, in that case where it was observed that that findings of the Labour Court were based on an appreciation of the material placed on the record which findings were neither perverse nor arbitrary nor capricious, it was held that it did not warrant any interference.

31. The avowed contention raised on behalf of the petitioner herein whilst placing reliance on the verdict of this Court in ***"K.H. Pandhi Vs. The Presiding Officer, Addl. Labour Court & Anr."*** (supra) is to the effect that as observed vide para 22 of the said verdict the question whether an employee is a workman or not is a mixed question of fact and law and if the very jurisdiction of the Labour Court is in question, it can certainly be looked into by the High Court under Articles 226 & 227 of the Constitution.

32. In view of the said submission and in view of the observations in para 22 of the verdict relied upon on behalf of the petitioner, and the other verdicts relied upon on behalf of the petitioner, it has been considered essential to consider the aspect whether the learned Labour Court-IX had exercised jurisdiction in accordance with law in relation to the aspect of determination of as to whether the petitioner herein fell within the definition of a *'workman'* under Section 2(s) of the Industrial Disputes Act, 1947.

33. The petitioner places reliance on the verdict of this Court in ***"K.H. Pandhi Vs. The Presiding Officer, Addl. Labour Court & Anr."*** (supra) also in relation to the observations in Para 19 thereof, which read to the effect:-

> ***"19. Viewed in this background of the legal position, it is necessary to determine whether the Petitioner performed duties of a clerical nature as contended by his learned counsel or not. A perusal of the duties performed by the Petitioner, as stated by him in response to a Court question suggests that his duties were only, if not primarily, clerical in nature. He was required to write accounts and prepare related statements of accounts. He was also required to make entries of the vouchers in the***

> ***account books. While he was performing accountancy work in Delhi, it was only on the basis of and according to the guidelines issued by the Chief Accountant and the Chartered Accountant who used to come from Patna. The activities that the Petitioner performed in relation to cash, that is, to deposit cash in the bank or to withdraw it, were under the supervision of the Technical Director. The daily accounts of the cash in hand prepared by the Petitioner were checked and signed by the Technical Director. It was only after the Technical Director authorised the issue of vouchers for payments that they were entertained by the Petitioner. In other words, there was little work that the Petitioner could do on his own. Most of the accounting work was done by him on the basis of guidelines issued by the Chief Accountant or the Chartered Accountant. The day-to-day work in relation to cash or cheques was done by the Petitioner under the supervision of the Technical Director. Quite clearly, the work done by the Petitioner fell in the category of clerical work and nothing more.",***

to submit that the facts and circumstances of the said case relied upon are in *pari materia* with the facts and circumstances of the instant case. The petitioner also similarly places reliance on the verdicts ***"Anand Regional Co.Op Oil S. Union Vs. Shailesh Kumar Harshadbhai Shah" [2006] (6) SCC 548, "Ananda Bazar Patrika (P) Ltd. V. Workmen"[(1970) 3 SCC 248], "National Engineering Industries Ltd. Vs Shri Kishan Bhageria & Ors." AIR 1988 SC 329, "Muralidharan K. Vs. The Management of M/s Circle Freught Intl (India) P. Ltd."[ILR (2007) II Delhi 312], K.H. Pandhi Vs. The Presiding Officer, Addl. Labour Court & Anr." [110 (2004) Delhi Law Times 101].***

34. On a consideration of the submissions made on behalf of either side, it is essential to observe that the petitioner herein in his testimony dated 05.04.2013 recorded before the learned Labour Court-IX, relied upon his appointment letter Ex.WW1/1, the contents of which have already been reproduced elsewhere hereinabove.

35. Significantly, the said letter dated 09.06.2011 clearly brings out that the petitioner was appointed as a Senior Accountant through his affidavit tendered in evidence all that the petitioner sought to assert was that he did not discharge managerial, administrative and supervisory powers during the tenure of his service. Not a whisper of an averment in relation to the nature of duties performed and the manner in which the duties were performed by the petitioner are depicted in the affidavit of the petitioner. During cross-examination as already observed elsewhere hereinabove, the petitioner had stated that he had uploaded his biodata on Naukri.com for the post of a Senior Accountant and has thus had been contacted by the management through a consultant and that the management had initiated the process of his appointment and that he had been interviewed by the CEO and one Ms. Sunita Gupta and the management's HR at that time and 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 re-conciliation, ***<u>branch re-conciliation</u>*** and that he was also sent to banks and had to prepare the details of sales, though, he stated that he had not been primarily entrusted into the job like preparation of tax, details of management like service tax, VAT and sales tax and that the Chartered Accountant of the management used to deal in tax

matters. He had stated however, that there was no subordinate provided to him for assisting him in his work.

36. The witness produced by the management/respondent as MW-1 Ms. Poorva, Executive HR through her affidavit vide Para 3 had stated to the effect:-

> ***"3. 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 24,000 per 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."***

37. In the cross-examination of MW-1, there is not an *iota* of cross-examination in relation to the assertions in para-3 of the said affidavit of MW-1. Undoubtedly, MW-1 has stated that she did not have any documentary evidence to prove that the workman was doing managerial and administrative work and stated that it was obvious that since his post was of a Senior Accountant, he would have been doing the managerial and administrative work. It is equally true that mere a nomenclature and an appellation of a post as laid down vide the catena of verdicts relied upon on behalf of the petitioner would not suffice to bring forth the nature of duties performed by an employee with the management.

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.MW1/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.

39. In the circumstances, it is held that there is no infirmity in the impugned award of the learned Labour Court-IX and the petition and the accompanying application are thus, declined.

ANU MALHOTRA, J.

MAY 1st, 2019/NC