IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 12.07.2017
Judgment Pronounced On: 01.05.2019

W.P.(C) 8291/2014

AMRESH KUMAR ..... 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.12/2013 vide which the statement of claim filed by the petitioner herein directly under the provisions of Industrial Disputes Act, 1947 against the management of M/s Hari Overseas (P) Limited vide which it was held that the petitioner herein was not entitled to any relief in as much as he was not a *'workman'* within the ambit of Section 2(s) of the Industrial Disputes Act, 1947 and it was also held vide the impugned award that the petitioner had also abandoned the services

of the respondent of his own and that the services of the respondent had not been terminated by the management illegally.

2. The contentions raised by the petitioner through his claim before the learned Labour Court-IX were to the effect that he was appointed as Senior Executive Accounts with the management from 12.12.2011 and had been working sincerely and honestly and his last drawn salary was Rs.23,000/- per month and that the services of the *'workman'* were illegally and unjustifiably terminated by the management on 15.06.2012 without any notice and that the management also did not pay the salary of the month of June 2012, bonus and other service benefits to the *'workman*. The petitioner had also stated that after his illegal termination, he had served a legal notice to the management on 22.06.2012 through speed post and courier but the respondent did not comply with the said notice and rather replied falsely vide a reply dated 27.06.2012. As per the said reply of the respondent, it was stated that the petitioner had been continuously absent for a period of seven days without leave and thus, in terms of Clause 11 of his appointment letter, his services were terminated. Clause 11 of the appointment letter dated 12.12.2011 was stated through the reply dated 27.06.2012 of the respondent which read to the effect:-

> ***"That absence for a continuous period of 7 days without leave (including the case when leave through 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. During the course of conciliation proceedings, no settlement having been arrived at, a failure report was submitted whereafter the petitioner filed

the claim directly in Court seeking adjudication submitting to the effect that despite best efforts he was unemployed and that the respondent be directed to be reinstated with full back wages.

4. The respondent through its written statement submitted before the learned Labour Court-IX contended that the petitioner was not a *'workman'* within the definition of Section 2(s) of the Industrial Disputes Act, 1947 and was rather a Senior Executive- Accounts 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 applicant was drawing a salary of Rs.23,000/- 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. It was also contended on behalf of the respondent that whether or not a person falls within the definition of Section 2(s) of the Industrial Disputes Act, 1947 was required to be determined with reference to his principal nature of duties and functions 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 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, it could not be held that he was not doing supervisory work.

5. The respondent further submitted that the petitioner was the Executive Manager, In-charge of the Accounts Department and was made responsible for the maintenance of the accounts of the Company as per the requirement of the various statutes and he was required to be 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 or/ any other regulation applicable to the management 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 contradiction 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.

6. It was contended on behalf of the respondent that the petitioner being the Principal Accounts Officer had the responsibility to co-ordinate with the Statutory Audit of the Company.

7. *Inter alia* the respondent had further contended before the learned Labour Court-IX that the petitioner had been unauthorizedly absent from the duty of his own accord w.e.f. 12.06.2012 and instead of joining his duties he sent a legal notice dated 22.06.2012 to the management claiming advance salary for the month of June 2012 within seven days from the receipt of notice to which the management/respondent had responded vide a reply dated 27.06.2012 through the speed post advising the petitioner to join the duty immediately within 48 hours from the receipt of the said notice and the management also sent a reply dated 27.06.2012 to the legal notice sent by the advocate of the applicant and that the management again vide its letter dated 02.07.2012 addressed to the applicant and also sent to the lawyer of the

applicant who served legal notice upon the management while giving reference to the show cause notice dated 27.06.2012, called upon the applicant to give explanation for his unauthorized absence from the duty and advised the petitioner to immediately report to his reporting officer/head of HR, failing which appropriate action would be taken against him and since he had remained unauthorizedly absent for continuous period of more than 7 days since 12.06.2012 and that his engagement with the company stood terminated as provided under clause 11 of the terms and conditions of the contract of service applicable to his case, he was not entitled to any reinstatement or back wages. It was further submitted on behalf of the respondent that the petitioner did not resume his duties and had no intention to resume his duty but to extract money from the management and that the petitioner voluntarily abandoned his duties and is not entitled to any relief.

8. The petitioner herein filed a rejoinder to the reply of the respondent before the learned Labour Court-IX reiterating the contents of the petition and refuting the contents of the written statement.

9. 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."***

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

11. The learned Labour Court-IX, vide paragraph 17 of the impugned award observed to the effect:-

> ***"17. The workman in his cross-examination admitted that his job profile in the company was relating to up-keeping of books of account, reconciliation of the accounts, date entry in books of accounts, reconciliation of books of account relating to inter branch ledger account, creditors account, debtors account and details necessary for preparation of sales tax return etc. The functions being performed by the workman itself appears to be of administrative and managerial in nature. In view of the 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 held that the petitioner did not fall within the ambit of Section 2(s) of the Industrial Disputes Act, 1947, which reads as under:-

> ***" 'Workman' means 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, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:_***

(i) Who is subject to Air Force, 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 mainly in the police service or as an officer or other employee of a prison; or

(iii) Who is employed mainly in a managerial 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."

12. Qua issues no.2 & 3, it was observed vide para 21 & 22 by the learned Labour Court-IX to the effect:-

"21. In order to prove issue no.2 the management has relied upon documents Ex.MWl/2, Ex.MWl/5 and Ex.MWl/6 which are letters written by the management to the workman thereby intimating to the workman regarding absence from duty without any approval/show cause notice/termination of services. The workman in cross examination deposed that he had not received show cause notice dt. 02.07.12 as sent by the management but he admitted that he had received the copy of reply of the management to his statement of claim filed before the conciliation officer. He also admitted that the management in that reply has offered, him to join the management.

22. The management has also relied upon Ex.MW1/4 and Ex.MW1/7 which are envelops having endorsement 'refused' from the postal department. I have perused the same. On perusal of these documents, it is revealed that the address of the workman is same as mentioned by the workman in his statement of claim and evidence by way of affidavit. Hence, the court is of the view that these letters definitely would have been received by the workman but he willfully. did not complied the same. It shows that the

workman was not interested to join the management. Therefore, issue no.2 and 3 are decided by holding that the workman has abandonment the job of his own and his services have not been terminated by the management illegally. Issue no.2 and3 are decided against the workman."

13. Issue nos. 2 & 3 were thus, decided against the petitioner with it having been held that he had abandoned the job of his own and that the services had not been terminated illegally by the management.

14. Issue no.4 being relief, it was held by the learned Labour Court-IX that the petitioner was not entitled to any relief against the management.

15. Through the present petition, the petitioner reiterates the submissions made before the learned Labour Court-IX and reiterates that he falls within the ambit of Section 2(s) of the Industrial Disputes Act, 1947 and also contended that the learned Labour Court had erred in concluding that the petitioner had abandoned the services of the respondent of his own and rather contended that his services had been terminated illegally. It was also submitted on behalf of the petitioner that the letters that were produced by the respondent were forged and fabricated and that the refusal endorsement from the postal authorities and the envelopes sent to the petitioner was erroneous in as much as none had come from the postal department to prove that the endorsement of refusal had been ratified by anyone from the postal department and that the learned Labour Court-IX had erred in presuming that once there is a correct address of the petitioner mentioned on the envelopes, the same would have certainly been received by the petitioner herein and that the same indicated that the petitioner was not interested in resuming his duties.

16. *Inter alia* the petitioner submitted that the burden lay on the respondent to establish that the petitioner was not a *'workman'* within the definition of Section 2(s) of the Industrial Disputes Act, 1947.

17. 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, the respondent reiterated its contentions as raised before the learned Labour Court-IX contending to the effect that the petitioner did not fall within the ambit of Section 2(s) of the Industrial Disputes Act, 1947 and that the services of the petitioner were managerial and administrative in nature and he had been reporting directly to In-charge of the Finance and Accounts department and that the petitioner was drawing a salary of Rs.23,000/- per month.

18. Through his rejoinder, the petitioner reiterated the contents of the petition and refuted the submissions made on behalf of the respondent.

19. Through the evidence led as WW-1, Mr. Amresh Kumar stated in his cross-examination to the effect:-

> ***"I was appointed in the management on 12.12.11. I had posted my biodata on Naukri.com. I received call from the consultant of Naukri.com that my CV has been shortlisted for the post of accountant. I was appointed as a Sr. Accountant. I was interviewed for the post of Sr. Accountant. I was interviewed by interviewing penal consists of Madam Sonal Gupta. CEO of the company, Madam Sunita Gupta and HR manager of the company. My job profile in the company was relating to the upkeeping of books of account, reconciliation of the accounts, data entry in the books of account, reconciliation of books of account relating to inter branch ledger account, creditors account, debtors account, and details necessary for preparation of sales***

tax return. My profile also involves visit to bank for deposit of cheques. I was reporting to accounts manager. I was posted at head office. It is incorrect to suggest that I have deposed incompletely before the court or that I have not told the complete facts to the court in my statement of claim or in my affidavit. It is incorrect to suggest that my job in the management was managerial and supervisory in nature. It is incorrect to suggest that my job profile also included that I had to assist the auditors of the management for the finalization of accounts, for maintenance of the entire accounts of the management for the purpose of taxation and for managing the financial aspects of the management.

…………"

20. The petitioner in his cross-examination further stated to the effect that he had come to know subsequently that his counsel had received the reply and again said that no reply to my demand notice was received by him and his counsel.

21. The respondent produced Ms.Poorva, Executive, HR of the respondent as MW-1 who tendered her affidavit Ex.MW1/A and stated *inter alia* to the effect:-

> ***"The workman was appointed on the post of Sr. Executive-Accounts. He was doing managerial works and various other persons were working under him. I do not have any documentary evidence to prove that the workman was doing managerial work. Vol. it is obvious that since his post is of Accounts Manager (Executive Accounts), he would have been doing managerial work."***

22. On 12.07.2017, it was submitted on behalf of the petitioner that the written synopsis filed in W.P.(C)8280/2014 relied by the petitioner therein be taken up for consideration in the present case. Through the said written

submissions, it has been submitted by the petitioner before the learned Labour Court-IX, 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.

23. The respondent through its written submissions reiterated the submissions made before the learned Labour Court-IX and through its counter affidavit to the effect that the petitioner was working as a Senior Executive Accounts and that his services fell within the managerial and administrative functions and that he was reporting directly to the in-charge of finance and accounts department and was drawing a salary of Rs.23,000/- per month and was not a *'workman'* within the ambit of Section 2(s) of the Industrial Disputes Act, 1947 and that the petition had been filed only to harass the respondent to extract money from the respondent. The respondent further stated that it had never terminated the services of the petitioner who has absented unauthorizedly from 12.06.2012 onwards and failed to join the duties of the respondent despite the reminders and despite a legal notice dated 27.06.2012 sent on behalf of the respondent.

24. 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 and 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.

25. 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.

26. 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.

27. Through the written submissions of the respondent, it was submitted that the petitioner was working with the respondent as a Senior Executive (Accounts) 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, 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'*.

28. 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.

29. 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.

30. 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 and that he received the call from the consultant of Naukri.com that his CV had been shortlisted for the post of accountant. 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 of the company, Madam Sunita Gupta, the HR Manager of the Company at that time and that he was appointed as a Senior Accountant and was interviewed for the post of a Senior Accountant. He further stated that his job profile in company was relating to the upkeeping of books of accounts, data entry in the books of accounts, reconciliation of the accounts, creditors account, debtors account, and details necessary for preparation of sales tax return 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. 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 Executive (Accounts) 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 an Accounts Manager (**Executive**), he would have doing managerial and administrative work.

31. 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.

32. 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."

33. 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:

(i) Harbans Lal v. Jagmohan Saran

(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.

34. 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.

35. 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.

36. 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].***

37. 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 22.04.2013 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.

38. 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 being the Senior Executive Accounts had been discharging mainly managerial and administrative functions and as per record duly maintained with the management had been appointed to head and supervise the Finance and Accounts department of the Management at its Head Office, with other employees subordinate to him for his assistance. The applicant was Executive Manager, In-charge of the Accounts Department and was made responsible for the maintenance of the Accounts of the Management. The Applicant was required to***

keep and maintain proper accounts as approved by the Company. 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, Direct Taxes, Indirect Taxes, and Local Taxes and/or for other local regulation applicable to the Management. Further the Applicant being Principle Accounts Office had the responsibility to co-ordinate with the Statutory Auditor of the Company for the purposes of statutory compliances and to safeguard the interest of the Company against levy of any fine/penalty imposed and/or prosecution launched against the Company. I further deposed that the contents of the preliminary submission-A (i to ii) contain true facts and nothing false has been stated in the said paragraph."

39. Significantly, this witness also stated that the petitioner was appointed for the post of a Senior Executive Accounts and had been discharging mainly managerial and administrative functions and as per record duty **entrusted with the** management ***and other persons*** were also working under him, though MW-1 stated that she did not have any documentary evidence to prove that the *'workman'* was doing the managerial work and stated that since his post was of an Accounts Manager, Executive Accounts he would have been doing managerial 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.

40. 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 account for the purpose of statutory audit, filing returns of direct taxes, indirect taxes and local taxes and/or for complying requirement 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.23,000/- 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.

41. 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