



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	23.07.2021
DELIVERED ON	21.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.38907 of 2004

Neslin Joseph Prim

... Petitioner

vs.

1. The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court,
Chennai 600 034.

2. The Manager (Personal & Administration),
Triveni Engineering and Industries Ltd.,
(Oil & Gas Division),
Formerly Triveni Oil Field Service Ltd.,
Jeevan Tara Building,
Gate No.4, I Floor,
No.5, Parliament Street,
New Delhi - 110 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records on the file of the 1st Respondent pertaining to his order in I.D.No.101 of 2001, dated 24.03.2004 and quash the same for a consequential direction, directing the 2nd Respondent to reinstate the Petitioner in service with continuity of service, full backwages and all other attendant benefits.

For Petitioner : Mr.R.Viduthalai, Senior Counsel
for Mrs.A.V.Bharathi

For 2nd Respondent : Mr.Varun Srinivasan,
for M.S.Associates



O R D E R

Petitioner has come up with this Writ Petition, seeking to quash the order dated 24.03.2004 passed by the 1st Respondent in I.D.No.101 of 2001 and for a consequential direction to the 2nd Respondent to reinstate him in service with continuity of service, full backwages and all other attendant benefits.

2. According to the Petitioner, he joined the services of the 2nd Respondent/Management as an Assistant Driller on 29.04.1989 and after probation period of six months, his service was confirmed. Thereafter, he was promoted as Driller with the pay scale of Rs.4,500/-. It is the case of the Petitioner that, he has been discharging his duties for more than 12 hours a day, as per the instructions of his Superior Officer. Subsequently, the Petitioner was terminated from service and challenging the same, he raised an Industrial Dispute. The Labour Court rendered a finding against the Petitioner holding that, he was not a 'workman' in terms of the Industrial Disputes Act, 1947.

3. Before the Labour Court, the 2nd Respondent/Management contended that, the Petitioner was a Management staff in terms of the contract of employment and he does not fall within the ambit of the definition 'workman' and therefore, the provisions of the Industrial Disputes Act, 1947 will not apply to his case. It was further contended by the Management that, the nature of work, duties and responsibilities of the Petitioner have been mentioned in his Appointment Order itself. It was clearly stated by the Management that, though the Petitioner was designated as a 'Driller', his nature of work was purely supervisory in nature.

4. Before the Labour Court, both the Management and the workman have tendered evidence in support of their respective stand. The Labour Court, after analyzing the evidence on record, rendered a categorical finding that, though the Petitioner is called a Driller and that, the said nomenclature gives an impression that, he is a 'workman', the duty carried on by him is only supervisory in nature. For better appreciation, relevant portion of the Award passed by the Labour Court is extracted hereunder:

"11. On consideration of the entire



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evidence in this case and also on perusal of documents in this case, I am of the opinion that though the Petitioner is called as a Driller which nomenclature gives impression as a workman, when the duties mentioned for him is only in a supervisory capacity and it is clearly mentioned that he has to supervise the work of employees working under him and guide them independently in efficient discharge of duties and he has also given power to take disciplinary action against the erring employees. Under such circumstances, I find he was appointed only in supervisory cadre and not as a workman. Further, his salary is also above the amount mentioned in the exemption. Under such circumstances, I find the Petitioner is not a workman entitled to the benefits under Industrial Disputes Act, 1947."

5. Heard the learned counsel on either side and perused the material documents available on record.

6. In the case on hand, the Petitioner has admitted that, he is responsible for allotment/distribution/supervision of work. The nature of work of the Petitioner is clearly stated in clause 12 of the Terms and Conditions of Appointment in Annexure 'A', dated 05.05.1989. Relevant clause is extracted hereunder:

"12. Your duties will include responsibility for efficient, satisfactory and economical operation in the area of responsibility that may be assigned to you time to time. As a responsible Officer of the Company, you will maintain a high standard of discipline, loyalty, efficiency, integrity and secrecy and will dialize between the Company and the employees working under your supervision and control and will be responsible for execution of the decision taken by the Management from time to time. You will assign and supervise the work of the employees working under you and guide them independently in efficient discharge of your duties. You will ensure discipline on



the part of your subordinates and will be competent to take necessary steps in taking disciplinary action against erring employees working under you."

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7. The above clause itself may not be a decisive factor, but, it is the actual work carried on by the employee, that matters. In the present case, the Petitioner has admitted his nature of actual work and substantial work carried on by him does not come under the category of 'workman'.

8. The Apex Court, in a number of cases, has held that, mere designation is not enough to decide as to whether a person is a 'workman' or not and it is the nature of work that decides the status of a workman. To be precise, nomenclature does not matter. Section 2(s) of the Industrial Disputes Act, 1947 not only defines as to who is a 'workman', but also states as to who is not a 'workman'. For better appreciation, the said provision is extracted below:

[(s) "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 express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, 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 has 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 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 is being employed in a



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supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by nature of duties attached to office or by reason of powers vested in him, functions mainly of a managerial nature.]

9. In view of the above, the decision of the Apex Court in the case of Ananda Bazar Patrika (P) Ltd. vs. Employees reported in (1969) 2 LLJ 670 is against the Petitioner. Ultimately, it is the nature of work that has to be taken note of, in order to decide the status of a workman, so as to arrive at a definite conclusion as to whether he comes under the purview of Section 2(s) of the Industrial Disputes Act, 1947. The Labour Court ought not to have answered Issue Nos.2 and 3, when it has held that, the Petitioner is not a workman.

10. That being the case, when the Petitioner is not a 'workman', he is not entitled to the relief sought for and he cannot claim any relief under the provisions of the Industrial Disputes Act, 1947. As the Award of the Labour Court is a finding of fact, this Court finds no perversity in it.

11. Monetary benefits, if any, due to the Petitioner is expected to be settled by the employer within a period of two months from the date of receipt of a copy of this order. The dismissal of this Writ Petition holding that, the Petitioner is not a 'workman' will not preclude the Petitioner from approaching any other forum claiming relief and the 2nd Respondent/Management is entitled to take factual and legal defence available to them. The period during which the Writ Petition was pending has to be excluded for the purpose of counting the delay.

Accordingly, the Writ Petition fails and stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

(aeb)



To:

The Presiding Officer,
Central Government Industrial Tribunal cum Labour Court,
Chennai 600 034.

+1cc to Mr.N.V.S & Associates, Advocate, S.R.No.48409

+1cc to M/s.A.V.Bharathi, Advocate, S.R.No.48661

W.P.No.38907 of 2004

MG(CO)
SB(29/09/2021)