

**228 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**CWP-9128-2014 (O&M)**

M/s Evergreen International Ltd.

..... Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon and

another

..... Respondents

**CWP-27046-2016**

Smt. Kanta Bareja

.....Petitioner

Versus

Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon and

another

..... Respondents

**Date of Decision: 19.09.2022**

**CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present : Mr. Pawan Kumar Mutneja, Senior Advocate, with  
Ms. Suverna Mutneja, Advocate,  
Mr. V.S.Mahal, Advocate,  
Mr. Brijesh Kumar, Advocate, and  
Ms. Ekta Sharma, Advocate,  
for the petitioner (in CWP-9128-2014)  
for respondent No.2 (in CWP-27046-2016)

Mrs. Abha Rathore, Advocate,  
for the petitioner (in CWP-27046-2016)  
for respondent No.2 (in CWP-9128-2014)

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**RAJBIR SEHRAWAT, J. (ORAL)**

These two writ petitions, i.e. CWP-27046-2016 and CWP-9128-  
2014, are being disposed of by a common order as in both the petitions, the

petitioners are challenging the same award, i.e. Award dated 27.01.2014 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Gurgaon. However, for the sake of brevity, the facts are being taken from CWP-9128-2014.

The facts of the case, in nutshell, are that the respondent-employee had asserted that she was working on the post of Accountant from 20.09.2000 on a monthly salary of Rs.12,417/-, however, the petitioner-management had terminated the services of the respondent-employee on 30.09.2004. At the time of appointment, no letter of appointment was given to the respondent-employee. The respondent-employee had completed 240 days of service with the petitioner-management. However, at the time of terminating services of the respondent, the petitioner-management had neither given any notice nor any retrenchment compensation was paid to her. Asserting these facts, the respondent had raised an industrial dispute, which was referred to the Labour Court. The Labour Court answered the said reference in favour of the respondent. Hence, the petitioner-management has filed the present petition.

Since, the Labour Court had ordered the reinstatement of the respondent-employee with full back wages at the rate of last drawn salary, therefore, the respondent-employee has filed the second writ petition, i.e. CWP-27046-2016, claiming therein that instead of last drawn wages, it should be full back wages, which the Labour Court should have granted.

Arguing the case, the learned Senior counsel for the petitioner-

management has submitted that the Labour Court has wrongly held respondent No.2 to be 'workman'. The respondent was appointed as Accounts Officer. Therefore, she was given managerial/supervisory duties, along with overseeing the accounts work. The relevant material was already placed on record before the Labour Court in the form of appointment letter, as well as the documents of performance of managerial/supervisory duties by the respondent-employee. The said documents have wrongly been brushed aside by the Labour Court. The Labour Court has not even recorded the findings qua the documents produced by the petitioner-management showing performance of the supervisory duties by the respondent-employee; as not genuine. Despite that, the said documents have been discarded by the Labour Court. The respondent-employee was, undisputedly, drawing the salary of Rs.12,417/- on the date of termination of her service. Therefore, the respondent-employee is not covered by the definition of 'workman'. Learned Senior counsel has further submitted that even the witnesses examined by the petitioner-management have deposed before the Labour Court that the respondent-employee was having duties to manage/supervise the work of the persons working under her. She was having even the powers to take disciplinary action against the persons working under her. She had the authority to sanction the leave of the persons working under her. All these duties were continuously discharged by the respondent-employee. Therefore, even as per the oral evidence, the respondent-employee, by any means, cannot be held as a 'workman'. Moreover, the Labour Court has not

even recorded the finding that the evidence led on file in the form of documents Exhibit RW1/4 to RW1/14 were not sufficient to show that the respondent-employee was working on managerial/supervisory duty. Learned Senior counsel has relied upon the judgments rendered by Hon'ble the Supreme Court in **S.K.Maini Vs. M/s Carona Sahu Company Limited, (1994) 3 Supreme Court Cases 510** and **H.R.Adyanthaya and others Vs. Sandoz (India) Ltd. and others, (1994) 5 Supreme Court Cases 737**, to buttress his arguments that since the respondent-employee was performing managerial/supervisory duties, therefore, she was not a 'workman'. Relying upon the said judgments, it has been argued by the learned Senior counsel for the petitioner that it was for the respondent-employee to bring herself within the definition of 'workman' by not only showing herself to be within the inclusive part of the definition of 'workman' but also by ruling out applicability to her the exclusionary provisions of the definition of 'workman' as given under Section 2(s) of the Industrial Disputes Act. However, the respondent-employee has not led any evidence on that aspect. Mere designation of a person is not sufficient to draw an inference that the person is a 'workman'. Rather, it is the nature of duties and responsibilities which are material for deciding whether a person is a 'workman' or not. The respondent-employee has not led any evidence to exclude the managerial/supervisory duties from her job profile. On the contrary, the petitioner-management has led sufficient evidence to show that the respondent-employee was carrying out the managerial/supervisory

duties, including the works of the Accounts Officer. Hence, the award deserves to be reversed and the reference deserves to be answered against the respondent-employee.

On the other hand, learned counsel for the respondent-employee has submitted that the respondent was not issued any letter of appointment. However, there are documents placed on record before the Labour Court which show that the respondent was discharging the duties of Accountant and she was being paid the salary of Accountant. Learned counsel for the respondent-employee has referred to the documents Exhibit PW1/1, PW1/3, PX/1, PX/2 and PX/3, in this regard. Still further, the counsel has submitted that since the documents show that the respondent-employee could be Accountant, therefore, the respondent, per se was included under the definition of 'workman'. If the petitioner-management intended to show that the respondent-employee was performing the managerial/supervisory duties then it was upon the petitioner-management to lead evidence on record to show that managerial/supervisory duties, allegedly done by the respondent-employee, were her primary duties. However, no such documents have been placed on record in the form of duties and responsibilities of the respondent-employee. Although, the respondent-employee denies the documents Exhibit RW1/1 to RW1/14, however, even if these are to be taken into consideration, mere fact that the respondent might have sanctioned leave of some employees at some time would not denude the respondent-employee from her basic status as a 'workman'. Learned counsel for the respondent-

employee has relied upon judgment of Hon'ble the Supreme Court rendered in **Civil Appeal No.704 of 1966** titled as '**Ananda Bazar Patrika (Private) Ltd. Vs. Its workmen**' decided on 07.02.1969, to buttress her arguments on this point. It is further submitted by the learned counsel for the respondent-employee that the petitioner-management has not even asserted in the written statement filed before the Labour Court that the respondent-employee was working in managerial/supervisory capacity. Since the plea of the respondent-employee being in supervisory capacity is not mentioned in the written statement filed by the petitioner-management to the claim petition filed by the respondent-employee, therefore, the plea of her supervisory capacity cannot be taken for the first time in the writ petition. Learned counsel has further submitted that the Labour Court has rightly held the letter of appointment led in evidence by the petitioner-management as a fabricated document. Therefore, the said document is irrelevant for the purpose of deciding the status of the respondent as 'workman'.

Having heard the learned counsel for the parties, this Court finds substance in the arguments raised by the learned counsel for the petitioner. The positive case of the petitioner-management has been that the respondent-employee was appointed as an 'Accounts Officer'. Even appointment letter issued to the respondent-employee has been placed on record. The said appointment letter reflects that the respondent-employee was appointed as an 'Accounts Officer'. Not only that, the respondent-employee has not even denied having received the appointment letter. In

that situation, if the appointment letter produced by the petitioner-management was fabricated, as recorded by the Labour Court, then it was incumbent upon the respondent-employee to produce the letter which was issued to her. However, in an attempt to avoid the production of the said letter only, the respondent-employee has started taking a plea that she was never issued any appointment letter. It is not worth believing that the respondent-employee is producing all other documents regarding her service, including the salary slips and the record regarding working of the respondent-employee; but the respondent-employee would have been appointed without issuing any appointment letter. Even the finding of the Labour Court qua the appointment letter being forged is not sustainable. Only reason given by the Labour Court for holding the appointment letter as forged is that the first page of the appointment letter appeared to the Labour Court to have been changed by the petitioner-management so as to show the respondent-employee as an 'Accounts Officer'. This assessment of the Labour Court is based solely on the ground that the telephone numbers, mentioned on the letter-head of the company on which the appointment letter was typed, on the first and second page of the appointment letter were different. However, there can be umpteen number of permutations and combinations of the circumstances which could have resulted into different letter heads of the same company being used for preparing the appointment letter of the respondent-employee. Therefore, mere usage of two different letter heads, though of the same company, for typing an appointment letter

of an employee cannot render the document of appointment letter as non-existent or forged. Moreover, even if the assessment made by the Labour Court is considered as such, still the Labour Court has observed only that the first page of the appointment letter has been changed. There is no infirmity pointed out even by the Labour Court regarding the second page of the appointment letter. Therefore, the assertion of the respondent-employee that she was not issued any appointment letter is belied by the very fact that the part of the appointment letter is not disbelieved even by the Labour Court. In that situation, if the respondent-employee questioned the validity of the appointment letter claimed to have been issued by the petitioner-management, then it was the duty cast upon the respondent-employee to produce the correct appointment letter of which the second page of the appointment letter issued by the petitioner-management formed a part. However, the said document has been withheld by the respondent-employee. Hence, the finding of the Labour Court to that extent is liable to be set aside.

Another aspect; which supports the assertion of the petitioner-management that the respondent-employee was employed as an Accounts Officer is; that the respondent-employee herself had asserted in her application submitted to the petitioner-management that her last employment with the previous employer was as an Accounts Officer on a salary of Rs.7,000/- per month. Therefore, it is in all probabilities that the respondent-employee would be appointed on the same or higher post by the petitioner-management. Hence, the assertion of the petitioner-management

that the respondent-employee was employed as an 'Accounts Officer' on a starting salary of Rs.8,000/- per month is found to be correct, being most probable. Interestingly, when confronted with the application/resume submitted by the respondent-employee while seeking employment with the present petitioner-management, during the cross-examination, she has even disowned the application/resume submitted by her. Therefore, it becomes very difficult to believe the testimony of the respondent-employee that she was not employed by the petitioner-management as an Accounts Officer. The person who has denied his/her own document can hardly be believed qua his/her assertions regarding the documents produced by the other side. To elicit a confidence such a witness has to lead other cogent evidence to establish the assertions made by such a person. However, in the present case, no such effort has been made by the respondent-employee to prove her assertions.

This Court also finds substance in the argument raised by the learned Senior counsel for the petitioner that mere designation, even if presumed in favour of the respondent-employee, would not be a criteria for holding the respondent-employee to be a 'workman' within the definition of the term as given under the Industrial Disputes Act. In this regard, the petitioner-management has led sufficient material to show that the respondent-employee was discharging predominantly the supervisory duties over the staff which was working under her. At least ten documents have been placed on record to show that the respondent-employee had been

working as head of the department and was supervising the working of the Accounts and the Personnel Departments. The documents placed on record as Exhibit RW1/4 to RW1/14 clearly show that the respondent-employee has been recommending the leave of the persons working under her from the Department of Personnel and the Department of Accounts. No document to the contrary has been placed on record by the respondent-employee to establish that her duty did not include the supervisory duties. Repeatedly the respondent-employee has referred to only the salary slip or the documents describing her as an Accountant. However, as observed above, mere mentioned designation may not be a criteria for holding a person to be a 'workman'. The status of an employee as a 'workman' has to be determined with reference to the nature of duties being performed by such an employee. In the present case, while the petitioner-management has placed on record the plethora of documents to show the nature of duties being performed by the respondent-employee and has also examined as witness the immediate junior of the respondent-employee, who was working under her, as well as, the other officer of the company, who have categorically deposed that the respondent-employee was working in a supervisory capacity and that she had been sanctioning leave of the employees working under her, the respondent-employee has not led any evidence of any kind qua her nature of duties which she was performing while on job. Not even a co-employee has been examined by the respondent-employee to prove her assertions. Therefore, as per the material available on record, there is no evidence led

by the respondent on file, except her self-serving statement to establish her assertion that she was not performing the duties of supervisory nature. Needless to say that stand of the petitioner-management right from the beginning has been that the respondent-employee was employed in supervisory capacity and therefore, her service was terminated as per Clause 3 of the appointment letter, yet the respondent-employee had not made any effort to lead any evidence qua her duties and responsibilities in the company. Therefore, the respondent-employee has failed to bring herself within the definition of 'workman' by satisfying the 'inclusive' as well as 'exclusionary' portions of the definition of 'workman' as mentioned in the Industrial Disputes Act. Therefore, the reliance of the learned Senior counsel for the petitioner on the cases of *S.K.Maini* and *H.R.Adyanthaya* (supra) is found to be well placed.

Another aspect which deserves to be noticed is that although the respondent-employee had examined the handwriting expert in her attempt to prove the fact that the documents Exhibit RW1/4 to RW1/14 did not bear her signatures, however, even the petitioner-management did not hesitate to examine a handwriting expert to prove the fact that the signatures on the documents were, in fact, the signatures of the respondent-employee. Although, the reports of both the handwriting experts were in favour of their respective clients, however, the fact remains that even the Labour Court has not recorded any finding to the effect that the documents Exhibit RW1/4 to RW1/14 did not bear the signatures of the respondent-employee. In the

absence of such a categoric finding by the Labour Court, the documents could not have been discarded by the Labour Court; as such. Therefore, the assertion of the petitioner-management that these were the documents duly signed by the respondent-employee comes within the preponderance of probabilities.

Learned counsel for the respondent has also raised the argument that supervisory capacity was not pleaded in the written statement, therefore, the petitioner could not take the said plea in the writ petition for the first time. However, this argument is factually incorrect and legally irrelevant. Both the sides were alive to the aspect of the supervisory capacity of the respondent during the proceedings and evidence before the Labour Court. In fact, the entire emphasis of both the sides has been mainly on this aspect only, either in favour or against it. Therefore, the respondent cannot now take this plea to discard the evidence of the petitioner. Another striking thing is that the Labour Court has confused the administrative function with the supervisory function. The definition of 'workman' as contained in the Industrial Disputes Act mentions the administrative as well as the supervisory capacity as a ground to exclude the employee from the definition of 'workman'. But while the person working in administrative capacity is excluded from the definition of 'workman' irrespective of the quantum of salary drawn by him, however, the person working in supervisory capacity is treated at a little lessor level and therefore, is mandated to be excluded from the definition of 'workman' only in case,

he/she is drawing salary more than the threshold quantum mentioned in the Industrial Disputes Act. Undisputedly, on the date of alleged termination of service, the respondent-employee was getting salary more than the threshold quantum prescribed under the Industrial Disputes Act. The Labour Court has committed an error in not appreciating the distinction between the supervisory and the administrative capacity and has held that the respondent-employee was not working in administrative capacity, therefore, she was a workman. It is obvious that the administrative capacity would entail independent powers to take disciplinary actions against the employees working under such an authority, whereas the supervisory capacity can be restricted only to the supervising the employees working under an employee and restricting the role of such a supervisor to recommendations qua the employees working under him/her or qua taking some ancillary administrative decisions. In the present case, sufficient material has come to suggest in all reasonable probabilities the supervisory duties of the respondent-employee. Therefore, the Labour Court could not have brought the respondent-employee within the definition of 'workman' on the ground that she was not having any administrative powers; as such.

In view of the above, it has to be held that the Labour Court is wrong in law in holding that the respondent-employee was a 'workman' within the definition of 'workman' as given under Section 2(s) of the Industrial Disputes Act.

Once the respondent-employee is held to be not a 'workman',

then the employer had liberty to relieve her from her duty in terms of her appointment letter. Undisputedly, the petitioner-management had served upon the respondent a notice in terms of Clause 3A of the appointment letter before the termination of her service. Accordingly, no fault can be found with the action of the petitioner-management qua termination of service of the respondent-employee.

In view of the above, the award passed by the Labour Court is set aside and the writ petition filed by the petitioner-management is allowed; and the writ petition filed by the respondent-employee is dismissed.

It is further ordered that in case any amount is lying deposited with any court in connection with the pendency of the present writ petition, the same be returned to the petitioner-management under a due receipt.

**(RAJBIR SEHRAWAT)**  
**JUDGE**

**19.09.2022**  
adhikari

Whether speaking/reasoned  
Whether Reportable

Yes/No  
Yes/No