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W.P.No.12600 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.08.2023

DELIVERED ON : 13.09.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.12600 of 2010

and

M.P.Nos.1 of 2010 and 1, 2 of 2014

The Management of Computer Graphics Ltd.,
represented by its Managing Director,
31-A, 9 & 10, SIDCO Industrial Estate,
North Phase, Ambattur,
Chennai-600 098.

... Petitioner

-Vs-

1. F.Ebanezer Jabakumar

2. The Presiding Officer,
III Additional Labour Court,
High Court Buildings,
Chennai-600 104.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, calling for the records pertaining to the award dated 22.01.2010 passed in ID No.316 of 2008 passed by the second respondent, the III Additional Labour Court, Chennai and quash the said award.



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For Petitioner : Mr.Manishankar, Senior Counsel
for Mr.S.Suresh Kumar

For R1 : Mr.V.Prakash, Senior Counsel
for Mrs.S.Kala
R2 : Labour Court

ORDER

This Writ Petition has been filed as against the award passed by the second respondent in ID No.316 of 2008 dated 22.01.2010, thereby directed the petitioner to reinstate the first respondent with continuity of service, backwages and other attendant benefits.

2. The petitioner Management is (hereinafter called as 'Management') and the first respondent is (hereinafter called as 'Workman'). The Management is a distributor of Konica Minolta brand colour film, colour paper, graphic art film and medical X Ray film. Those items are imported, converted in the Management factory and are marketed through their offices all over India. Because of the change in technology and due to introduction of digital camera, which does not require any photographic film, the demand for colour film had declined. Therefore, they stopped production in the month of March 2007 and completely closed in the month of September 2007. As a result, the workers, staffs and entire unit have become surplus. As a policy decision, the Management had to abolish the post of Supervisors and had to offer voluntary



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retirement to the workers. They had opted for the voluntary retirement scheme and left the service.

3. By the letter dated 27.12.2007, the Workman was intimated that his services were no longer required as a Supervisor. The copy of the said letter dated 27.12.2007 along with salary for the month of December 2007 and salary in lieu of notice for the month of January 2008 was handed over to the Workman. However, the Workman issued a notice dated 02.01.2008 challenging the dispensation of his services, on the ground that the said dispensation would amount to illegal retrenchment and called upon the Management to reinstate into service. The Management had sent a reply dated 23.01.2008 denying the claim made by the Workman and informed that they were not in a position to reinstate him. Therefore, the Workman raised an Industrial Dispute before the Conciliation Officer and on failure report dated 06.08.2008, raised an Industrial Dispute before the second respondent. After enquiry, the Labour Court passed an award to reinstate the Workman together with backwages, service continuity and other attendant benefits. Challenging the said award, the present writ petition is filed.



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4. Mr.Manishankar, the learned Senior Counsel appearing for the petitioner submitted that in spite of ample evidence produced by the Management to show that the Workman was designated as a Supervisor, the Labour Court concluded that the Workman is not a Supervisor. The undertaking and the understanding enumerated in Ex.W1 dated 20.03.1997, the Workman took charge as a Supervisor. Therefore, he would not be covered under the Industrial Disputes Act. The responsibility of the Supervisor is to improve output, quality, training, safety and maintenance of discipline etc. The Workman had never involved in any operational and technical functions after designating him as Supervisor. The Workman was drawing wages exceeding Rs.1600/- per mensem and he was employed in an administrative capacity as specified under Section 2(s) of the Industrial Disputes Act, 1947. The last drawn wage of the Workman is Rs.14,680/- per month from the date of designating him as a Supervisor by an order dated 20.03.1997. It was categorically admitted by the Workman. Therefore, it could not be said that there was no evidence to show that there were workers working under the Supervisors. The Workman, along with other workmen, were duly served with the notices before the closure of Management. Therefore, the findings of the Labour Court that no notice or wages in lieu of notice was given to the Workman is an error apparent on the face of the record and contrary to the facts



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and the contents of Ex.W4. The Workman was designated as a Supervisor and was mainly doing Supervisory work ever since 1997 and as such the Workman falls within the definition of Supervisor. If the principal duties are of a supervisory nature and the manual work done by the employee personally is only incidental and since the employee drew wages exceeding the amount specified under Section 2(s) of the Industrial Disputes Act, the Workman must be held not to be a workman under exception IV of the Industrial Disputes Act.

5. He further submitted that out of 7 Supervisors, one of the Supervisors i.e, Workman in W.P.No.12599 of 2010, one S.Pandian was fully settled. However, W.P.No.12599 of 2010 has been de-linked by this Court. The first respondent in W.P.Nos.12596, 12598, 12601 and 12602 of 2010 had attained the age of superannuation and they were paid salaries till their attainment of superannuation. The first respondents in W.P.Nos.12597 and 12600 of 2010 is receiving salary under Section 17(B) of the Industrial Disputes Act, till now.

6. In support of his contention he relied upon the Judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.1581 of 1994*** in the case of ***S.K.Maini Vs. M/s. Carona Sahu Co.Ltd and Others***, in which the Hon'ble Supreme Court of India held that he is not a workman though he is incidentally



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doing some clerical work. Not necessary that he should be vested with power to appoint or discharge employees under him in order to prove Section 2(s) of the Industrial Disputes Act.

7. He also relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2016 LLR 225** in the case of ***The Management of Narendra and Company Private Limited Vs The Workmen of Narendra and Company,*** in which the Hon'ble Supreme Court of India held that when an industry had become non-functional, awarding retrenchment compensation with consequential benefits is appropriate in lieu of reinstatement.

8. He further states that if the principal function is of supervisory in nature, the employee concerned will not be workman only if he draws a particular quantum of salary at the relevant time as indicated in Section 2(s) of the Industrial Disputes Act.

9. Mr.V.Prakash, learned Senior Counsel appearing for the first respondent submitted that in the Ambattur factory, there are 109 Operators who are categorized as Grade V, IV, III, II and Senior Grade Operators and also three Stores Assistants and two Time-Keepers, who are doing Clerical work.



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The Management has also employed five others who are designated as Supervisors. The Factory in Ambattur is an industrial establishment within the meaning of V-B of the Industrial Disputes Act, to which the provisions of the Section 25N of the Industrial Disputes Act are attracted. Initially, the Workman was appointed as an Operator-Trainee on 16.02.1987 and confirmed in service on 01.01.1988 as an Operator. He was issued with an order dated 20.03.1997 by the Management re-designating the Workman as Supervisor. Thereafter, he was terminated on 27.12.2007 together with a payment of one month salary for the month of December, 2007 and one month salary in lieu of notice period. The reasons stated in the order of termination are false, because the Workman was working in all other operations of the factory. The cheque annexed with the termination order was returned to the Management. The order of termination would amount to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act. Therefore, the Management has to adhere to the provisions of the Section 25N of the Industrial Disputes Act prior to effecting the termination. Therefore, the order of termination is void ab initio. If the Management intended to abolish the post of 'Supervisors' as a policy, the Management ought to have employed the Workman by reverting him to the post of 'Operator'. The abolition of the post of 'Supervisor' in name but really that of a Workman within the meaning of Section 2(s) of Industrial Disputes Act would



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necessarily attract the provisions of Section 9A of the Industrial Disputes Act, which mandates prior notice in respect of the change of any condition in service, which is enumerated in Schedule IV of the Industrial Disputes Act. Further he submitted that the designation does not decide the legal status of the Workman and what decides the legal status of the Workman is his main duties and the responsibilities. The main duties and responsibilities of the Workman are technical in nature and normal work from 8.30 a.m to 5.00 p.m. The Workman had no supervisory duties or powers. Therefore, the Labour Court had rightly directed the Management to reinstate the Workman into service with backwages and other attendant benefits.

10. In support of his contention, he relied upon the Judgment of the Hon'ble Supreme Court of India reported in **1988 (Supp) SCC 82** in the case of ***National Engineering Industries Ltd Vs Shri Kishan Bhageria and others.***

11. Heard the learned counsel for the petitioner and the learned counsel for the first respondent and perused the materials available on record.

12. Admittedly, the Workman was appointed as an Operator on



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16.02.1987 and his service was confirmed on 01.01.1988 as an Operator.

Subsequently, by an order dated 20.03.1997, he was re-designated as a Supervisor. A perusal of the letter dated 20.03.1997 stating as follows:-

“ The Workman will be re-designated as Supervisor in accordance with his request to consider the nature of his duties which includes operational, supervisory and training functions. His elevation to the supervisory grade places a great deal of additional responsibility by way of improving output, quality, training others, safety of men and machines, maintaining discipline and so on”.

Therefore, the Workman was never promoted to the post of Supervisor from Operator. The cadre of Operator was re-designated as Supervisor. In fact, it includes operations by way of improving output, quality etc.

13. A perusal of the letter dated 27.12.2007 revealed that it was informed to the Workman, who was a Supervisor, that his service were no longer required. In view of the development, the operations in their factory at Ambattur and Athipet which converts medical x-ray film, graphic art film and colour negative film had to be stopped due to non-availability of raw materials. The workers and staffs in the Athipet and Ambattur Units have become surplus. Therefore, the policy decision was taken to abolish the post of Supervisors and the Management had to offer voluntary retirement to the workers. It shows that the first respondent was treated as an Operator. There were 109 Operators who



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are categorized as Grade V, IV, III, II and Senior Grade Operators and also

three Stores Assistants and two Time-Keepers. The Workman was employed and designated as Supervisor. The Workman is a C.T.I certificate holder in the trade of Fitter. He had worked in the X-Ray Film Unit of the Management and it was also placed on record. That apart, the first respondent had no supervisory powers or responsibilities/duties. Therefore, the order of termination dated 27.12.2007 would amount to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act. In fact, the factory of the Management in which the Workman was employed consists of more than 100 workers and it is an industrial establishment as defined in Chapter V-B of the Industrial Disputes Act. Therefore, the Management ought to have adhere to the provisions of Section 25N of the Industrial Disputes Act prior to effecting the termination.

14. As rightly pointed out by the learned Senior Counsel appearing for the first respondent the designation does not decide the legal status of the petitioner and what decides the legal status of the Workman is his main duties and responsibilities. The main duties and responsibilities of the Workman are technical in nature and he was not allotted any supervisory duties. Even on perusal of the daily routine work of the first respondent revealed that he was engaged in operational works. Supervisor means that a person has to supervise



other persons. However, the Management failed to prove the same.

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15. In this regard, the learned Senior Counsel for the first respondent relied upon the Judgment of the Hon'ble Supreme Court of India reported in **1988 (Supp) SCC 82** in the case of **National Engineering Industries Ltd Vs Shri Kishan Bhageria and others**, in which the Hon'ble Supreme Court of India held as follows:-

"5. Bearing in mind the aforesaid indication, it would be necessary to discuss some decisions of this Court. In All India Reserve Bank Employees Association v. Reserve Bank of India, [1966] 1 S.C.R. 25, this Court dealing with certain types of employees observed "These employees distribute work, detect faults, report for penalty, make arrangements for filling vacancies, to mention only a few of the duties which are supervisory and not merely clerical." At page 46 of the report Hidayatullah, J. as the learned Chief Justice then was observed that the work in a Bank involved layer upon layer of checkers and checking is hardly supervision but where there is a power of assigning duties and distribution of work there is supervision, (emphasis supplied). There the Court referred to a previous decision in Llyods Bank Ltd. v. Pannalal Gupta, [1961] 1 L.L.J. 18, where the finding of the Labour Appellate Tribunal was reversed because the legal inference from proved facts was wrongly drawn and it was reiterated that before a clerk could claim a special allowance payable to a supervisor, he must prove that he supervises the work of some others who are in a sense below him. It was pointed out by Hidayatullah, J. that mere checking of the work of others is not enough because this checking was a part of accounting and not of supervision and the work done in the audit department of a bank was not supervision. (emphasis supplied).

6. In Burmah Shell Oil Storage & Distribution Co. Of India. v. Burmah Shell Management Staff Association & Ors., [1971] 2 S.C.R.



758, this Court observed that a workman must be held to be employed to do that work which is the main work he is required to do, even though he may be incidentally doing other types of work. Therefore, in determining which of the employees in the various categories are covered by the definition of 'workman' one has to see what is the main or substantial work which he is employed to do. In *The Punjab Co-operative Bank Ltd. v. R.S. Bhatia (dead) through Lrs.*, [1975] 4 S.C.C. 696 it was held that the accountant was supposed to sign the salary bills of the staff even while performing the duties of a clerk. That did not make the respondent employed in a managerial or administrative capacity. The workman was, therefore, in that context rightly held as a clerk.

7. In *P. Maheshwari v. Delhi Administration & Ors.*, [1983] 3 S.C.R. 949 the question whether a person was performing supervisory or managerial work was the question of fact to be decided bearing in mind the correct principle. The principle therefore is, one must look into the main work and that must be found out from the main duties. A supervisor was one who could bind the company to take some kind of decision on behalf of the company. One who was reporting merely as to the affairs of the company and making assessment for the purpose of reporting was not a supervisor. See in this connection *Black's Law Dictionary, Special Deluxe, Fifth Edition*. At page 1290, "Supervisor" has been described, *inter alia*, as follows:

"In a broad sense, one having authority over others, to superintend and direct.

The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." "

16. Thus, it is clear that the duties of the Workman was mainly reporting and checking up on behalf of the management. A reporter or a checking clerk is not a Supervisor. Therefore, the duties of the Workman do not appear to be



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doing any kind of supervisory work. As per the routine of his work, he was undoubtedly checking up on behalf of the Management but he had no independent right or authority to take decision and his decision did not bind the company. Therefore, the Labour Court had rightly concluded that the first respondent is a Workman and not a Supervisor.

17. In view of the above, this Court finds no infirmity or illegality in the Award passed by the second respondent in ID No.316 of 2008, dated 22.01.2010 and this writ petition is devoid of merits and is liable to be dismissed. Accordingly, this Writ petition stands dismissed. Consequently, connected Miscellaneous petitions are closed. No costs.

13.09.2023
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Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

The Presiding Officer,
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