

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

CWP No. 4255 of 2023

Date of decision : 21.03.2023

Jagdish Prasad Sharma

...Petitioner

Vs.

**Presiding Officer, Industrial Tribunal-cum-
Labour Court-1, Gurugram and another**

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Ajay Bhardwaj, Advocate
for the petitioner.

MANOJ BAJAJ, J.

Petitioner has approached this Court under Article 226 Constitution of India seeking a writ in the nature of Certiorari to challenge the award dated 14.10.2022 passed by Industrial Tribunal-cum-Labour Court-I, Gurugram, whereby his claim raised under Section 2-A(2) of Industrial Disputes Act, 1947, challenging the termination of services was decided against him.

Briefly the facts leading to the writ petition are that petitioner joined the respondent No.2-Company, namely, M/s Chetak Logistics Limited as Superintendent Grade-II, pursuant to the letter of appointment dated 01.04.2004 (Ex.PW1/1) and he continued to discharge his duties sincerely till 01.06.2020, when he was removed from the service. The petitioner visited the office of respondent No.2-Company on various occasions with a request to allow him to join the services, but his request was not considered favourably, therefore, he served a demand notice dated 08.06.2020 (Annexure P-2) and

subsequent to it vide letter dated 11.06.2020 (Ex. PW-1/4), his services were terminated illegally on the ground of his absence for the last two months. As per averments, the conciliation proceedings before the Labour Commissioner did not materialize and the matter reached before the Labour Court through reference bearing No. PR/211/21. The notice was issued to respondent No.2-Management, but despite service none appeared on its behalf, therefore, respondent No.2 was proceeded against *ex parte* vide order dated 30.09.2021. Thereafter, the petitioner adduced his evidence and considering the same, the Labour Court, Gurugram dismissed his claim through impugned order dated 14.10.2022. Hence this writ petition.

Learned counsel for the petitioner has argued that the claim by workman was not contested by the management despite effective service and the petitioner had adduced sufficient documentary evidence to prove his illegal removal from service in violation of the mandatory provision of Industrial Disputes Act, 1947 but ignoring the said evidence, the Labour Court decided the reference against him. He submits that the petitioner worked for a long period with the respondent No.2-Company w.e.f April, 2004 till June, 2020 and his nature of work as well as length of service is proved. According to him, the impugned award is against the law and evidence on the record, therefore, the interference is warranted by this Court by exercise of its jurisdiction under Article 226 Constitution of India.

During the course of hearing, it is not disputed by learned counsel that subsequent to his appointment on the post of Superintendent Grade-II in the year 2004, the petitioner was promoted and when his services were terminated, he was holding the post of Operation Manager with a monthly

salary of Rs.40,500/-. To a pointed query by the Court relating to the status of the petitioner as workman in terms of the Industrial Disputes Act, 1947, learned counsel submitted that the definition contained in Section 2(s) Industrial Disputes Act is wide enough and would include the petitioner in the said definition. He submitted that merely designation of petitioner alone would not be sufficient to exclude him from definition of workman, as the nature of duties and work performed by the petitioner would be relevant for ascertaining the status as a workman. In support of his submission, learned counsel has relied upon the decision of Hon'ble Supreme Court in '**S.K. Maini Vs. M/s. Carona Sahu Company Limited and others**' 1994(3) SCT 312. He submits that as Labour Court has committed an error of law in holding that the petitioner is not a workman and refused to adjudicate the industrial dispute on merits. He prays for issuance of an appropriate writ.

After hearing learned counsel and consideration his submissions, it transpires that in the *ex parte* evidence in support of his claim, the petitioner tendered affidavit Ex.PW1/A in evidence and a perusal of the same shows that it is no where mentioned by the petitioner that he by the nature of his duties and work is a workman. Further, it is categorically mentioned therein that he joined the respondent-Company as Superintendent Grade-II, who was later on confirmed as an Operation Manager and worked till 01.06.2020. The petitioner revealed his last drawn wages as Rs.40,500/- per month. A perusal of the impugned award shows that the Labour Court has carefully examined the evidence on record including his affidavit Ex.PW-1/A, while holding that he failed to lead any evidence that he is a workman and dismissed his claim. In the given facts this Court does not find any merit in the argument that petitioner

would fall within the definition of workman defined in Section 2(s) Industrial Disputes Act, 1947. Further, the decision in **S.K. Maini's** case (supra) relied upon by learned counsel for the petitioner also does not lend any help to the petitioner's case, wherein, it was held that whether an employee is a workman or not is required to be determined with reference to the nature of duties and functions. The relevant observations read as under:-

“After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it appears to us that whether or not an employee is a workman under Section 2(s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any strait-jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of workman under Section 2(s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the complexity of industrial or commercial organizations quite a large number of employees are often required to do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it.”

The Hon'ble Supreme Court while rejecting the case of appellant

on merits also analyzed the nature and work of the appellant therein and upheld

the findings of the High Court that he being Manager/In-charge of the shop was not a workman under Section 2(s) Industrial Disputes Act, 1947.

Thus, considering the facts, evidence on record and other attending circumstances particularly, petitioner's promotion and salary, this Court has no hesitation in holding that the findings delivered by the Labour Court on the labour dispute are in accordance with law and do not warrant any interference.

Resultantly, no case is made out for judicial review.

Dismissed.

(MANOJ BAJAJ)
JUDGE

21.03.2023
neeraj

<i>Whether speaking/reasoned :</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable :</i>	<i>Yes</i>	<i>No</i>