

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

CWP-15894-2023 (O&M)
Date of Decision: 26.07.2023

BALDEV SINGH

...Petitioner

Versus

INDUSTRIAL TRIBUNAL, PATIALA THROUGH ITS
PRESIDING OFFICER AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Vikas Singh, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

1. Petitioner (Baldev Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking quashing of Award dated 01.12.2021 (Annexure P-1) passed by learned Industrial Tribunal, Patiala. A further prayer has been made for issuance of direction to the respondents to reinstate the petitioner in service with continuity and full back wages.

2. Briefly, the petitioner-workman raised an industrial dispute by serving demand notice dated 02.04.2016 and since the conciliation proceedings failed; accordingly, the matter was referred to the Industrial Tribunal, Patiala for adjudication.

3. In the claim petition, the petitioner-workman stated that he was appointed by respondent No.2-Management as Supervisor on 11.12.1995 and was thereafter promoted as Assistant Engineer w.e.f. 01.01.1998. It is next submitted by the petitioner that he was promoted to Senior Mechanical Engineer w.e.f. 01.01.2004 and then to Mechanical Engineer w.e.f. 01.01.2007. As per the petitioner, he worked to the satisfaction of his superiors. Petitioner claimed that his duties were highly skilled and

technical and he never performed any managerial or administrative or supervisory duties. Accordingly, he claimed that he was covered under the definition of 'workman' under Section 2(s) of the Industrial Disputes Act, 1947 (here-in-after referred to as 'the Act, 1947'). It was stated that the petitioner was drawing salary/wages of Rs.33,956/- per month and he was in continuous service from 11.12.1995 to 31.03.2016 when his services were terminated without any charge sheet, enquiry, compensation etc., which is stated to be in violation of the provisions of the Act, 1947.

4. The afore-said claim of the petitioner was contested by the respondent-Management, *inter alia*, on the plea that the petitioner was appointed as a Supervisor w.e.f. 11.12.1995 and later on, he was promoted as Assistant Engineer and then as Mechanical Engineer and thereafter, as Senior Mechanical Engineer w.e.f. 01.01.2007 and was holding the managerial and supervisory capacity and was drawing salary/wages more than the limit prescribed under Section 2(s) of the Act, 1947. Hence, the petitioner was not a workman within the meaning of Section 2(c) of the Act, 1947. Accordingly, it was contended that the Industrial Tribunal below had no jurisdiction to entertain the reference.

5. As regards the contention of the petitioner that his services were terminated, the same was denied by the respondent-Management. It was the stand of the respondent-Management that the petitioner himself had abandoned the job after absenting from duty w.e.f. 01.04.2016 and did not resume duty. As per the respondent-Management, it wrote a registered letter dated 04.04.2016 to the petitioner for resumption of duty but he did not receive the letter and the same was returned. It is stated that the demand notice served by the petitioner was received by the respondent-Management after the issuance of letter dated 04.04.2016.

6. On the basis of the pleadings of the parties, the issues were framed by the Tribunal below and the parties led their respective evidence.
7. In support of his claim, the petitioner himself appeared in the witness box as WW1 and tendered the following document in his evidence :-

<i>Document</i>	<i>Detail</i>
<i>Ex.W1</i>	<i>Affidavit</i>
<i>Ex.W2</i>	<i>Demand Notice</i>
<i>Ex.W3</i>	<i>Statement of claim</i>
<i>Ex.W4</i>	<i>Replication</i>
<i>Ex.M1</i>	<i>Photocopy of personal Data Form of Claimant</i>
<i>Ex.M2</i>	<i>Photocopy of Appointment Letter</i>
<i>Ex.M3</i>	<i>Photocopy of joining Report</i>
<i>Ex.M4</i>	<i>Photocopy of Leave Application of Jang Din</i>
<i>Ex.M5</i>	<i>Photocopy of Leave Application of Mela Khan Dt. 10-3-16</i>
<i>Ex.M6</i>	<i>Photocopy of Leave Application of MelaKhanDt. 27-03-16</i>
<i>Ex.M7</i>	<i>Photocopy of Instruction to workers</i>
<i>Ex.M8</i> to <i>Ex.M14</i>	<i>Photocopy of record regarding allocation to workers</i>
<i>Ex.M15</i> to <i>Ex.M18</i>	<i>Photocopies of the different Bills</i>
<i>Ex.M19</i>	<i>Photocopy of service job card</i>

8. On the other hand, the respondent-Management examined one Malvinder Singh, working as Senior Manager with them as MW1 and tendered the following documents :-

<i>Document</i>	<i>Detail</i>
<i>Ex.W5</i>	<i>Copy of reply of the postal authorities</i>
<i>Ex.M27</i>	<i>Affidavit</i>
<i>Ex.M20</i>	<i>Letter of Authority</i>
<i>Ex.M21</i>	<i>Photocopy of letter dt. 04-04-2016 regarding absence from duty</i>
<i>Ex.M22</i>	<i>Envelope of letter Ex.M21</i>
<i>Ex.M23</i>	<i>Photocopy of Postal Receipt of Ex.M21</i>
<i>Ex.M24,</i> <i>Ex.M25</i>	<i>Photocopy of attendance register</i>
<i>Ex.M26</i>	<i>Photocopy of Standing Orders of the Respondent</i>

9. After considering the case of respective parties and upon evaluating the evidence/material placed on record, the learned Tribunal below answered the reference against the petitioner-claimant by holding that since the petitioner-claimant was working on a post higher in hierarchy to the Supervisor and was drawing salary of more than Rs.10,000/- p.m., accordingly, the reference was not maintainable.

10. In the afore-mentioned circumstances, the petitioner has filed the instant writ petition.

11. Learned counsel for the petitioner contends that the impugned Award suffers from patent illegality and the observations made by the Tribunal that the petitioner is not a 'workman', is contrary to the provisions of Section 2(s) of the Act, 1947. It is submitted that there is no evidence on record that the petitioner was doing any managerial/administrative job. Learned counsel for the petitioner contends that the findings of the Tribunal that the petitioner was holding a Supervisory post, is contrary to law. It is next contended that the respondent-Management had failed to substantiate its case that the petitioner had abandoned the work whereas, no evidence to that effect was brought on record. It is also contended that the learned Tribunal has failed to appreciate the evidence available on the record and has wrongly rejected the claim of the petitioner. Accordingly, it is submitted that the impugned Award be set aside and a direction be issued to respondent-Management to reinstate the petitioner with continuity of service and full back wages.

12. I have heard learned counsel for the petitioner and perused the paper book with his able assistance.

13. In the instant case, the Industrial Tribunal, Patiala has answered the reference against the petitioner-workman by holding that since the petitioner was working on a post higher in hierarchy to the Supervisor and was drawing salary of more than Rs.10,000/- p.m., accordingly, the reference was not maintainable.

14. Here, it would be apposite to refer to the judgment of Bombay High Court in *Union Carbide (India) Ltd. vs D. Samuel and Ors. (W.P. No.2596 of 1994*, decided on *18.07.1998*), whereby, in para Nos.34, 35 and 36, it has been held as under :-

“34. In so far as the Apex Court is concerned, some of the tests laid down are:

(1) Designation is not material but what is important is the nature of work.

(2) Find out the dominant purpose of employment and not any additional duties the employee may be performing.

(3) Can he bind the Company/employer to some kind of decisions on behalf of the Company/employer.

(4) Has the employee power to direct or oversee the work of his subordinates.

(5) Has the power to sanction leave or recommend it; and

(6) Has he the power to appoint, terminate or take disciplinary action against workmen.

35. From the Judgments of this Court and the other High Courts some of the tests apart from what the Apex Court has stated are :

(a) Whether the employee can examine the quality of work and whether such work is performed in satisfactory manner or not;

(b) Does the employee have powers of assigning duties and distribution of work;

- (c) *Can he indent material and distribute the same amongst the workmen;*
- (d) *Even though he has no authority to grant leave does he have power to recommend leave;*
- (e) *Are there persons working under him;*
- (f) *Has he the power to supervise the work of men and not merely machines;*
- (g) *Does he mark the attendance of other employees;*
- (h) *Does he write the confidential reports of his subordinates.*

36. These tests are not the only tests. There can be a situation where there may be other tests to indicate whether the person is doing supervisory work or not. However, what is material is to note is that a supervisor must be in a position to bind his employer in respect of the decisions that he has taken or in exercise of such power have control on them...”

15. In the instant case, the learned Presiding Officer, Industrial Tribunal, Patiala has observed as under :-

“5. The second contention on behalf of the respondent is that the claimant was working in the supervisory capacity and was drawing salary of Rs.33,956/- p.m. and hence would not fall under the definition of “workman” under the provisions of the I.D. Act, 1947. On behalf of the claimant while referring to Ex.M4 wherein leave of two days has been sanctioned to one Jangdin, it has been argued that the same was only recommended by the claimant as official of the management whereas the leave has been sanctioned by Labour Officer. Similar arguments have been raised with regard to Ex.M5 and Ex.M6. Further while referring to Ex.M7 to Ex.M19 it has been argued that same does not prove that the claimant was performing the duty in supervisory capacity, cross examination of MW1 has also been referred wherein these documents have been put to

the witness and MW1 has deposed that “I am not in possession of any document to prove that any managerial powers given to workman Baldev Singh. Volunteered said that no such letter is issued to any other officer/employees of the management.” On the other hand, it has been argued on behalf of the respondent that initial appointment was as Supervisor and thereafter, in 1998 the claimant was promoted as Assistant Engineer and later on in the year 2004 as Mechanical Engineer and on 01.01.2007 as Senior Mechanical Engineer. While referring to documents Ex.M4 to Ex.M19, it has been further argued that same are sufficient to prove that claimant was working in supervisory capacity.

The argument raised on behalf of the claimant that since the claimant was promoted from his Supervisory duty, hence documents Ex.M4 to Ex.M19 are not sufficient to prove that claimant was working in Supervisory capacity is not sustainable.

Exclusion Clause of Section-2(s)(iv) of the I.D. Act, 1947 is with the purpose to include certain category persons with supervisory capacity having salary less than Rs.10,000/- P.M. Apparently intent of the legislature is that any person above salary of Rs.10,000/- and working in supervisory capacity would not be considered as “workman” under the I.D. Act, 1947. Admittedly the claimant has been promoted in 1998. The claimant was promoted as Assistant Engineer, in the year 2004 as Mechanical Engineer and on 01.01.2007 as Senior Mechanical Engineer. Promotions in itself means that the claimant was working above the supervisors and in hierarchy was promoted from Supervisor to Assistant Engineer, from Assistant Engineer to Mechanical Engineer and from Mechanical Engineer to Senior Mechanical Engineer. In such circumstances, the specific order by the respondent/management with regard to performing duty in managerial capacity is not required,

since promotions in itself impliedly prove the fact that claimant was working on job which was higher in hierarchy to the Supervisor and any post higher in hierarchy to Supervisor would not be included in the definition under Section 2(s) of the I.D. Act, 1947.

Further Ex.M4 leave sanctioned has been signed by the claimant, on behalf of the management as Personal Manager. Ex.M5 addressed to Labour Officer has been signed by the claimant, has also been recommended on behalf of the management by the claimant. The signature on behalf of the management only proves the fact that the claimant was sanctioning authority on behalf of the management. Ex.M6 dt. 27.03.2016 is the letter addressed to the Manager of respondent management and the same has been signed and sanctioned by the claimant on the same date. Ex.M7 to Ex.M9 are the duties assigned for the shifts under the orders of the claimant. Ex.M10 to Ex.M14 are the duties attended by the Foreman which have been signed by the claimant as Engineer. Ex.M15 & Ex.M17 are the bill register vide which bills have been sanctioned by the claimant. Ex.M19 is the Service Job Card which has been attended on behalf of the respondent management by the claimant. This material on record and the discussion above is sufficient to prove that the claimant was working on the job which was of supervisory nature and the designation of the claimant was well above supervisor in hierarchy of the management and the last drawn salary was admittedly Rs.33,956/-.

In the statement of claim in Para 1, it has been pleaded that “That services of the workman have been wrongly, illegally malafidely, arbitrarily, unjustly terminated by respondent on 31.03.2016 at about 11:00 A.M. without any charge-sheet, enquiry, compensation and opportunity to give defense and therefore, claimant should be reinstated with continuity of service and full back wages without any change in his service conditions.

Whereas while deposing as WW1 in affidavit Ex.W1 in Para-2, it has been stated that “That the services of the workman have been wrongly, illegally, malafidely, arbitrarily, unjustly terminated by the management verbally on 31.03.2016 at about 11:00 A.M. without any charge-sheet, enquiry, compensation and opportunity to give defense. I was drawing Rs.33,956/- P.M. approximately including all allowances and have put in continuous services from 11.12.1995 to 31.03.2016 up to 11:00 A.M. The action of the management is without jurisdiction and against the principal of natural justice.”

In the affidavit as discussed above, there is no improvement to the extent that services were terminated ‘verbally’. Perusal of evidence on record reveals that workman had joined the services on 11.12.1995 and thereafter, it has been claimed that on 31.03.2016 services have abruptly come to an end. Neither in the claim nor in the affidavit any reasons thereof have been stated. The management has placed on record attendance register Ex.M24 wherein the attendance has been marked till 31.03.2016 and Ex.M25 wherein the name of the claimant is reflected, however, no attendance has been marked. These documents have not been confronted by the claimant during cross examination of MW1. Non-mentioning of any fact or reasons of termination on behalf of the claimant further tilts the preponderance of probability in favour of the respondent. Ex.M26 is standing Order wherein in Chapter-XV Grievance Procedure has been given. Clause-A of the same provides as under :-

B) “Appeal to the Management

Any workman aggrieved by the order of punishment of management may prefer an appeal to the M.D. or any person nominated in this respect within 30 days of the receipt of such order. No workman shall be entitled to take up such grievance

before any authority, court or tribunal unless an appeal has been preferred and decided upon.

The decision of the appellant authority, shall, as far as possible be conveyed within one month of the receipt of the appeal against the order of punishment. Award against decision passed by a person other than M.D. shall lie to the Board of Director.”

However, no such appeal was preferred by the claimant and the demand notice has been raised within two days of the claimed termination.”

16. When the above extracted findings are considered in the light of legal position indicated above, it would manifest that the petitioner was indeed working in the Supervisory capacity and since he was drawing the salary of Rs.33,956/- p.m., accordingly, he did not fall within the definition of 'workman' as provided under the Act, 1947. Therefore, I do not find any illegality or perversity in the impugned Award dated 01.12.2021 passed by learned Presiding Officer, Industrial Tribunal, Patiala and hence, the instant writ petition is accordingly dismissed.

17. All pending application/s, if any, shall also stand closed.

July 26th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No