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

LPA-519-2023

Date of Decision:01.05.2023

Jagdish Prasad Sharma

. . . . Petitioner

Vs.

Presiding Officer, Industrial Tribunal-cum-Labour Court & Another

. . . . Respondents

**CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS JUSTICE SUKHVINDER KAUR**

Present Mr. Ajay Bhardwaj, Advocate
for the appellant.

M.S. RAMACHANDRA RAO, J. (Oral)

1. This Letters Patent Appeal is preferred challenging the order dt.21.03.2023 passed by the learned Single Judge in *CWP-4255-2023*.
2. The said Writ Petition was filed by the appellant (herein) challenging Annexure P-6 Award dt.14.10.2022 passed by the Industrial Tribunal-cum-Labour Court, Gurugram (for short the 'Tribunal').
3. Before the said Tribunal, the appellant had challenged his termination on 01.06.2020 and he sought reinstatement with continuity of service and full back wages.
4. He stated that he joined respondent No.2/company on 25.03.2004 as 'S2' and was later confirmed as Operational Manager, and he was drawing wages at Rs.40,500/- per month, at the time of termination of his services.

5. Respondent No.2 remained therein *ex parte*.
6. The appellant filed an affidavit merely stating that he was a permanent workman without giving any details of the nature of his duties.
7. The Tribunal dismissed the claim vide order dt.14.10.2022 holding that the appellant admitted that he was working as Operational Manager and his perks exceeded Rs.40,000/- per month, and he had not disclosed in his affidavit, the nature of his duties. It further held that the appellant had not contended that despite his designation, he was functioning and discharging duties only as a “workman”, and since designation is immaterial, the claimant before the Tribunal had to lead positive evidence that he was a workman, notwithstanding his designation. It held that since the said burden was not discharged by the appellant, he is not entitled to any relief.
8. The appellant challenged the said order in this Court by way of Writ Petition bearing No.CWP-4255-2023.
9. The learned Single Judge dismissed the Writ Petition confirming the finding of the Tribunal.
10. Challenging the same, this LPA is filed.
11. We have carefully gone through the order of the Industrial Tribunal as well as that of the learned Single Judge.
12. We agree with the reasons contained in the orders passed by both of them that the appellant is not a “workman” falling under section 2(s) of the Industrial Disputes Act, 1947.
13. Admittedly, the designation which the appellant was holding on the date of his termination was ‘Operational Manager’, and his remuneration was more than Rs.40,000/- per month, and both these

circumstances *prima facie* suggest that he may be discharging only managerial duties and not that of a workman.

- 14. Failure of the appellant to speak about the nature of his duties and substantiate his plea that he is a “workman” were rightly taken into account by the Tribunal as well as by the learned Single Judge for declining the relief.
- 15. We, therefore, find no merit in the Appeal.
- 16. This LPA stands dismissed *in limine*.
- 17. Pending application(s), if any, also stands disposed of accordingly.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

May 01, 2023
Mohit goyal

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |