



CWP-18444-1997

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

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CWP-18444-1997

Date of Decision: 19.11.2024

S.S. Walha

...Petitioner

Versus

Presiding Officer, Labour Court-II, Faridabad and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. R.K. Sharma, Advocate for the petitioner

Mr. Lokesh Sinhal, Advocate (*through video conferencing*) and
Mr. Sukhandeep Singh, Advocate for the respondent No.2

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of award dated 27.04.1995 (Annexure P-4) whereby Labour Court has answered the reference against him.

2. The petitioner joined respondent on 02.09.1972 and was terminated on 11.06.1986. He approached the Labour Court which has rejected his claim on the ground that he does not fall within the definition of 'workman' as per Section 2(s) of Industrial Disputes Act, 1947 (for short '**ID Act**'). The findings recorded by the Labour Court are reproduced as below: -

“13. In order to appreciate the rival contention firstly it appears necessary to discuss the position contained in the decisions referred to



be above. In Burmah Shell Oil storage and Distribution Co. of India Ltd. and Burmah Shell Management staff Association and another 1970(2) LLJ 590 the Hon'ble Supreme Court of India observed that a person must be held to be employed to do even though he may be incidentally doing other types of work. Therefore, in determining which of the employees in various categories are covered by the definition of the workman one has to see what is the main of substantial work which he is employed to do so. It was held by the Hon'ble Supreme Court of India in the case of Arkal Govind Raj Rao v/s. Ciba Geigy of India Ltd., Bombay 1985 (II) LLJ 401 that whether a particular employee is a workman within the meaning of the expression 'workman' as defined in section 2(s) of the Act or a person is employed in supervisor capacity the test one must employ in such a case what was the primary basic or dominant nature of duties for which the person whose status is under enquiry was employed. A few extra duties would hardly be relevant to determine his status. The words like managerial or supervisory have to be understood in their proper connotation and their more use should not be direct from the truth. The definition of expression 'workman' clearly shows that the person concerned would not cease to be a workman if he performed some supervisory duties but he must be a person who must be engaged in a supervisory capacity, it was held in the case between Gwalior Investment Co. Pvt. Ltd, and K.M. Desai member, Industrial Court & others 1993 (1) LLJ 127 that a person would not cease to be a workman if he performs some supervisory duties. It was held in the case between Ved Parkash Gupta and Messrs Delton Cable India (P) Ltd., 1984 (I) LLJ 546 that the substantial duty of the appellant was only that of a security Inspector at the gate of the factory premises and that it was neither managerial nor supervisory in nature in the sense which those terms are understood in industrial law. It was held in the case between Mathur Aviation and Ltd. Governor, Delhi and others 1978 (36) FLR 7 that the managerial or administrative functions require a position to control the work of others. A person cannot be said to be working in a supervisory capacity merely because he has to supervise persons who help him in doing the work he subsequent at



himself has to perform. A person employed as the bank was held to be a workman in the case between Madan Gopal and Hindustan Commercial Bank Ltd.. Kanpur 1956 (1) LLJ 414. In the case between National Engineering Industries Ltd. and Sh. Kishan Bhagaria and others 1988 (1) LLJ 363. It was held that the internal Auditor has no independent right or authority to take decision and his decision did not bind the company and so the internal auditor is a workman and not a supervisor.

14. In the instant case the claimant did not indicate the nature of his duties in his claim statement. The management in its written statement indicated that the claimant was employed as a Assistant Superintendent Machine Shop and was the department incharge. The duty performed by him amongst others included to ensure that the production is completed in the respective shift. He was the overall the incharge and used to sanction leave, sign gate passes and issue requisition slip for the material. The claimant in his rejoinder did not specify that his nature of work was that of an engineer i.e. setting the machines and thereafter handing over to the operators and to operate machine himself in the absence of any of the operators. The management led evidence referred to above. No question was put to the witnesses examined by the management in their cross examination that such was nature of duty of the claimant. In other words, the statement made by the claimant in this regard is beyond pleadings and that the management had no opportunity whatsoever to rebut it. Consequently, it has to be taken that the claimant has not been working mainly as an Engineer i.e. setting the machines. The status of the claimant has thus, to be determined from the other duties as enumerated in the evidence led by both the sides.

15. It has been admitted by the claimant in his cross examination that he used to sanction the requisition slip for material as contained in Ex.MW-1/30 to Ex.MW-1/37 and no other authority senior to him further used to sanction these requisitions slips. He also admitted that he used to sanction leave to the workers subject to further sanction by the personal department. In this regard his statement that the personal department only use to verify the title of leave of the employees clearly



shows that the claimant had the final authority to sanction leave to the workers subject to their entitlement. The claimant admitted his signatures on the gate passes Ex.MW-1/38 to Ex.MW-1/45 issued by him to the workers. He also admitted his signatures on clearance certificate slips issued by him to the workman Ex.MW-1/48. He also admitted his signatures on clearance certificate slips issued by him to the workman Ex.MW-1/48. He also admitted his signatures on the recommendation made on a resignation Ex.MW-1/49 and complaint regarding disciplinary action Ex.MW-1/50 and Ex.MW-1/51 recommending and others documents Ex.MW-1/52 and Ex.MW-1/53 and form Ex.MW-1/55 to Ex.MW- 1/62. It is clearly established from this position that the claimant had been an overall incharge of machine shop in the respective shifts and the duties assigned to him were of supervisory nature. Consequently he can not be taken to be workman as defined in section 2 of the Act. Issue No.1 is thus, decided in favour of the management and against the claimant.”

3. Mr. R.K. Sharma, Advocate submits that the petitioner may not fall within the definition of ‘workman’, however, he deserves compensation especially in view of the fact that he had worked with respondent No.2 for 14 years. He was terminated without conducting inquiry and following the procedure prescribed under certified standing orders.

4. Mr. R.K. Sharma, Advocate could not controvert findings recorded by the Labour Court to the effect that petitioner does not fall within the definition of ‘workman’.

5. The protection under Section 25B read with 25F of ID Act is available to a person who falls within the definition of ‘workman’ as defined under Section 2(s) of ID Act. A person holding supervisory or managerial position is not entitled to protection of Section 25F of ID Act. The Labour



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Court has recorded categoric findings to the effect that petitioner was holding supervisory position, thus, he does not fall within definition of ‘workman’. Indubitably, the petitioner had worked for 14 years with the respondent No.2, however, he cannot claim benefit of ID Act or certified standing orders because protection under Section 25F is available to workman and certified standing orders are also applicable to ‘workman’ as defined under Section 2(s) of ID Act.

6. In the wake of above discussion and findings, this Court is of the considered opinion that present petition being bereft of merit deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

19.11.2024
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No