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

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Decided on : 13.03.2024

M/s Allengers Medical System Ltd.

. . . Petitioner(s)

Versus

Presiding Officer, Industrial Tribunal & Labour Court,
Union Territory, Chandigarh and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Avinit Avasthi, Advocate
for the petitioner(s).

SANJAY VASHISTH, J. (Oral)

1. By way of present writ petition, petitioner – Management has challenged the award dated 01.08.2023 (P-1), passed by respondent No.1 – the learned Industrial Tribunal & Labour Court, Union Territory, Chandigarh (for brevity, ‘learned Tribunal’), whereby, Reference No.16/2019, has been answered in favour of respondent No.2 – Rajni. Learned Tribunal has observed that respondent No.2 – Workman is entitled for reinstatement with continuity in service along with 50% back-wages and all other consequential benefits.

2. Counsel for the petitioner – Management argues that respondent No.2 – workman, is not covered under the definition of workman, as defined under Section 2(s) of the Industrial Disputes Act, 1947 (in short, ‘ID Act’), because, certain duties were assigned to him, which were either of managerial nature or of supervisory nature.

3. To substantiate his submissions, counsel for the petitioner refers to the appointment letter dated 19.08.2008 (P-2), and submits that the

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appointment letter itself denotes that respondent No.2 was appointed as 'Dy. Executive-Service (Grade E-2).

Furthermore, referring to clause 3 of the appointment letter, submits that there is no dispute in the appointment letter itself, as it has been clearly mentioned that his services could be terminated without assigning any reason by giving one month's notice or one month's basic salary in lieu thereof.

4. Counsel for the petitioner also refers to the document of job responsibilities (P-3) and submits that as per the assignment of the job defined under the charge, it should have been termed as the working in the nature of managerial as well as supervisory.

5. This Court has examined the appointment letter (P-2), document of job responsibilities (P-3) referred by the petitioner – Management and the termination order dated 21.01.2019 (P-4).

The document of job assignments/responsibilities, nowhere suggests that there was any power to take any action or to make any kind of inquiry against any subordinate under him. Thus, the argument that respondent No.2 was working on certain managerial or supervisory duties, appears to be misconceived. Moreover, no other evidence has been placed before this Court or before the learned Tribunal, whereby, it could be assessed that particular kind of working, which is assigned to respondent No.2, has been done by him and such working has to be inferred as managerial or supervisory in nature.

6. Moreover, the appointment letter clearly suggests that there is a condition for terminating the workman requiring either to issue one month's notice or one month basic salary in lieu of the notice. Admittedly, no such compliance has been made by the petitioner – Management, though it could have been done by it.

7. The order of termination also makes it clear that termination order

(P-4) has been passed without assigning any reason, and thus, can be said that the termination order (P-4) in itself is arbitrary in nature. Besides, no substance has been brought on record that the work of respondent No.2 does not fall within the purview of the ID Act. Therefore, this Court is fully convinced with the findings recorded by the learned Tribunal.

However, for convenience, observations made in paragraph Nos. 13, 14 & 17 of the impugned award (P-1), passed by the learned Tribunal, are reproduced here-below:

“ 13. From the oral as well documentary evidence led by the parties, it comes out that the facts remained undisputed between the parties that workman Rajni was appointed as Deputy Senior Service Grade E-2 vide letter dated 19.08.2008 / Exhibit WI/1' by the management; the workman was on probation for a period of six months on fixed wages of ₹5,000/- per month. There is no dispute that the workman was allotted employee code No.1106; the services of the workman were confirmed w.e.f. 19.02.2009; the workman was given a raise of ₹750/- per month and her total wages comes to ₹5,787/- per month; the workman was promoted as Executive Service Admin. in Grade E-3 w.e.f. 01.04.2011 and that the workman was given a rise of ₹1,885/- w.e.f. 01.04.2011 and the workman started getting monthly salary of ₹8,167/- per month. Further, there is no dispute between the parties with regard to the fact that the services of the workman were terminated by the management vide letter of termination dated 21.01.2019 / Exhibit 'WI/10'.

14. Learned Representative for the management contended that the workman does not fall within the definition of the 'workman' as defined in Section 2(s) of the ID Act because the workman was discharging, managerial, administrative as well as supervisory duties, which falls in exception to Section 2(s) of the ID Act. On the other hand, Learned Representative for the workman argued that the nature of the performance of duties is not to be determined from the designation itself but from the actual nature of duty / work performed by a worker In the present case, the

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workman was not authorized to sanction leave, to take any disciplinary action, to grant promotion or demotion to any employee of the management, thus the workman was discharging clerical work and is covered in the definition of Section 2(s) of the ID Act. To support his arguments Learned Representative for the workman referred the case law reported in 2006(4) SCT 1 (SC) titled as Anand Regional Co-op. Seedgrowers Union Ltd. Versus Shaileshkumar Harshadbhai Shah wherein para 11 to 13 it is held as below :—

"11. For determining the questions as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.

12. Supervision contemplates direction and control. While determining the nature of the work performed by the employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a small one and relating to quality control would not answer the test.

13. The precise question came up for consideration in Ananda Bazar Patrika (P) Ltd. v. Workmen ((1970)3 SCC 248] wherein it was held :

"The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely,

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if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity...

...

A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence.

Judging by the said standard, we are of the opinion that the First Respondent did not come within the purview of the exclusionary clause of the definition of workman. Ananda Bazar Patrika (supra) was followed by the court in large number of cases."

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xxx xx xxx xx

17. *In the present case, the perusal of termination letter Exhibit W1/10' reveal that before terminating the services of the workman, the management neither issued one month's prior notice incorporating the reason of termination nor offered to pay or paid notice pay in lieu of notice period nor paid any retrenchment compensation to the workman. Moreover, the management has failed to prove that the conditions of termination contained in the appointment letter have any statutory sanction. The employer is not permitted to terminate the services of a 'workman' without assigning any reason; the employer is not permitted to impose terms & conditions of employment on the workman by superseding the provisions of the ID Act. Para/condition No. 3 incorporated in the appointment letter Exhibit 'W1/1' is contrary to the provision of Section 25-F of the ID Act. Para/condition No.3 seems to have been mentioned by the management in the appointment letter/Exhibit 'W1/1' to avoid the liability arising under Section 25-F of the ID Act. Provision of Section 25-F of the ID Act shall prevail over Para/condition No.3 of Exhibit 'W1/1'. As per the judgment of Hon'ble Supreme Court of India referred by Learned Representative for the workman reported in 1988(4) SLR 388 titled*

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as Narotam Chopra Versus Presiding Officer, Labour Courts & Another, if the services of an employee are terminated in violation of Section 25-F of the ID Act, 1947, the order of termination is rendered ab-initio void and the employee would be entitled to reinstatement with continuity of service along with full back wages and other allowances. In the judgment of Hon'ble High Court of Punjab & Haryana referred by Learned Representative for the workman reported in 2008(6) SLR 360 (DB) titled as M/s New Midh Bhabra Transport Company (P) Ltd. Versus Presiding Officer, Labour Court, Gurdaspur & Another, in para 4 it is held as below :—

"4. After hearing counsel for the parties, we are of the opinion that the services of respondent No.2-workman on 2.9.1998 were terminated without any charge sheet or any inquiry. In view of the said fact, the Award of the Labour Court dated 6.6.2006 does not suffer from any patent illegality and material irregularity when the Labour Court ordered reinstatement of respondent No. Z-workman with continuity of service and also to grant 50% of the back wages."

8. With the reasons assigned by the learned Tribunal and after going through the pleadings and evidences recorded in the impugned award (P-1), this Court does not find any substance to interfere in the same. Thus, while maintaining the impugned award (P-1), present writ petition is hereby **dismissed**.

(SANJAY VASHISTH)
JUDGE

March 13, 2024

J.Ram

Whether speaking/reasoned: ✓ Yes/~~No~~

Whether Reportable: ✓ Yes/~~No~~