



IOIN-FAO-996-1996 IN/AND FAO-996-1996

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201 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

IOIN-FAO-996-1996 IN/AND
FAO-996-1996

Date of Decision: 24.07.2024

SH. RAM SARAN

... APPELLANT

VS.

THE PRINCIPAL, VIVEKA NAND HIGH SCHOOL AND ANOTHER
... RESPONDENTS

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present : Mr. Maneet Kaushik, Advocate for
Mr. Ashit Malik, Advocate
for the appellant.

Mr. Nischal Chetanya Manchanda, Advocate for
Mr. Jagdish Manchanda, Advocate
For respondent No.1.

Mr. K.K.Saini, Advocate with
Mr. Mahesh Kumar, Advocate
for respondent No.2.

RITU TAGORE, J.

1. This is a burnt case.
2. Counsel for the appellant and counsel for respondents No.1 and 2 submits that they do not possess any copy of the other records pertaining to the present FAO, except for a photocopy of the order dated 27.09.1995 passed by learned Commissioner under Workmen's Compensation Act, 1923 (for short 'the Act'), Karnal which has already been included in the paper book. The counsel for the parties requested that this appeal be decided based on the available record.



3. The challenge raised in the Grounds of Appeal is that order dated 27.09.1995, passed by the learned Commissioner, Karnal under the Act is bad in the eyes of law. Learned Commissioner, erred in law by holding that appellant/claimant is not covered under the definition of a 'workman' and is not covered under the provisions of Scheduled II of the Act Clause VIII. In Grounds of Appeal, it is *inter alia* pleaded that appellant/claimant, aged 38, was employed by the respondents as a mason at salary of Rs.2800/- per month. During the course of his employment, the appellant suffered serious injuries resulting in amputation of left leg above the knee. He sent a registered notice to respondents, claiming compensation for the injuries sustained during the course of his employment. Despite issuance of notice to the respondents, they failed to pay any compensation to him, necessitated him to file the petition, claiming a sum of Rs.5 lac as compensation alongwith penalty, interest and cost.
4. The learned counsel for the appellant while relying upon the judgment titled as **Swaran Kaur Vs. Sardari Lal Kapur, 1994 (2) PLR 436,** submits that learned Commissioner, erred in interpreting the provisions of Clause VIII of Scheduled II of the Act and wrongly concluded that the appellant failed to establish his status as a workman. Accordingly, a prayer is made that case be remanded to the concerned authority with direction to decide the matter afresh in accordance with law.
5. Conversely, learned counsel for the respondents submit that appellant failed to plead and prove the basic ingredients of Clause VIII of Scheduled II of the Act to establish his status as a workman. The learned



counsel for the respondents argued that learned Commissioner rightly dismissed the appellant's claim due to the inherent lack of essential elements needed to qualify him to maintain his claim application against the respondents as a workman. It is stated that there is no merit in the appeal and a prayer is made to dismiss the appeal.

6. I have heard learned counsel for the parties and gone through the grounds of appeal and the impugned order and find no irregularity or illegality committed by the empowered authority for the reasons recorded below.

(i) For ready reference the order passed by learned Commissioner is reproduced as under: -

“Today application is fixed for R/E, evidence C.K.Thakar Manager & Sh. Sunder Dass Pahuja H.t president are present by my attention was drawn towards the claim application and statement made by applicant as A.W.1, no-where it is described that applicant worked in building which was of more than one story or 12 feet or more height from the ground level as in Schedule II of the W.C. Act Clause VIII reads.

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VIII employed in any construction, maintenance, repair or demolition of

(a) any building which is designed to be or is or has been more than one story in height above the ground or twelve feet or more from the ground level to the apex of the roof.

(b) _____

(c) _____

(d) _____



As the applicant did not work under this clause, so it does not fall under the definition of workmen as defined in Sec. 2(n) of this Act. Hence the claim application is dismissed.”

(ii) Upon being confronted by this Court with the observations made in the impugned order, learned counsel for the appellant was unable to point out any factual error in the impugned order. Additionally, learned counsel could not bring to the notice of this Court any other material fact or circumstance to establish that the appellant was employed by the respondents and was working under them at time and falls under the definition of a workman as defined in Section 2 (n) of the Act. Section 2(n) of the Act defines ‘workman’ in the following terms

"Workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is-

(i) xxxxxxxx

(ii) employed in any such capacity as is specified in Schedule II,

whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing, but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead includes a reference to his dependants or any of them."

(iii) The perusal of the impugned order indicates that the appellant, both in his claim application and in his statement as AW-1, failed to establish that he had ever worked in the building which was of more than one story or 12 feet or more height from the ground level, as specified in Clause VIII of Scheduled II of Act.



7. The learned Commissioner, Karnal, therefore rightly concluded that the appellant failed to demonstrate on record that he falls within the definition of a 'workman' as defined in Section 2 (n) of the Act. The case *Swaran Kaur* (supra) is distinguishable, as in that said case, there was a finding of a fact that respondents admitted the appellant's employment as a mason under them. In the present case, there is no such finding recorded in the impugned order suggesting the admission made by the respondents regarding the appellant's employment as a workman under them.
8. In view of the foregoing discussion, there seems no illegality in the jurisdiction exercised by the learned Commissioner, while dismissing the claim application of the appellant, warranting any interference by this Court.
9. Resultantly, there is no merit in the appeal and is, hereby, dismissed.
10. Pending application(s), if any, shall also stands disposed of.

24.07.2024

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(RITU TAGORE)

JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No