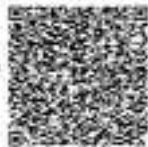


**CM-7736-37-LPA-2024 in/and
LPA-3141-2024**

2024.PHHC.165352-DB



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

**CM-7736-37-LPA-2024 in/and
LPA-3141-2024
Date of Decision: December 11, 2024**

BALDEV SINGHAppellant

Versus

**PRESIDING OFFICER INDUSTRIAL TRIBUNAL LUDHIANA AND
ANR** Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present: Mr. Ravi Gakhar, Advocate for the appellant.

LISA GILL, J.

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1. For the reasons mentioned in the application as well as arguments addressed, delay of 77 days in filing the appeal is condoned.
2. Application is, accordingly, disposed of.

LPA-3141-2024 (O&M)

1. Prayer in this appeal is for setting aside order dated 29.07.2024 passed by learned Single Bench whereby writ petition filed by present

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appellant, seeking setting aside of order dated 22.04.2022 passed by Industrial Tribunal has been dismissed.

2. It is the case of appellant (writ petitioner) that he had been appointed Store Keeper/Store Manager on 14.02.2012 by respondent – Establishment. His services were, statedly, terminated illegally without any notice, charge sheet or inquiry on 04.02.2017 whereas his juniors were retained in service. Industrial Dispute was raised. Learned Industrial Tribunal, Ludhiana vide Award dated 22.04.2022 found no merit therein and accordingly, dismissed the Reference. It was concluded that appellant was working in Supervisory capacity, therefore, did not fall under definition of Workman under Industrial Disputes Act. CWP No. 17483 of 2024 was filed by appellant challenging said Award. This writ petition was also dismissed by learned Single Bench finding no merit therein. Aggrieved therefrom, present appeal has been filed.

3. Learned counsel for appellant vehemently argues that both learned Tribunal as well as learned Single Bench have erred while rendering decision dated 22.04.2022 and 29.07.2024. Appellant did not have any power to appoint or dismiss any employee and as per evidence on record he did not exercise any supervisory power. Reference was made to the appointment letter (Ex.W1) as well as Personal Particulars Form (Ex.M1). Learned counsel also referred to statement of representative of management - Maninder Singh (MW1) to substantiate the said argument. It was vehemently argued that MW1 - Maninder Singh, Assistant Manager, Human Resource of Establishment specifically stated that there is no record on court file to show that appellant

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had any power to take any decision against any worker. In case of any managerial duties being performed, appellant was only carrying out specific directions issued by employer. Therefore, it cannot be said that he was working in managerial or supervisory capacity. Reference has been made to judgment of Hon'ble the Supreme Court in **Ved Prakash Gupta vs. Delton Cable India (P) Ltd. (1984) SCC (L&S) 281** and **H.R. Adyanthaya Vs. Sandoz (India) Ltd. Etc. (1994) 5 SCC 737**,

4. We have heard learned counsel for appellant and have perused the file as well as record of Labour Court which was produced by learned counsel during the course of hearing.

5. Admittedly, as per appointment letter (Ex.W1), appellant was appointed as Manager (Stores) while drawing salary of Rs.30,000/-. Learned Labour Court did not find any merit in the Reference claiming termination of appellant to be illegal and arbitrary. It was concluded that appellant did not fall within the definition of Workman. It was further observed that appellant had himself tendered his resignation on 17.01.2011.

6. Question which arises for consideration in this matter is whether appellant, appointed as Manager with Establishment falls within the definition of Workman or not and whether an incorrect decision has been rendered by learned counsel and the writ Court. Section 2(s) of I.D. Act defines 'Workman' as under:-

“(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or

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implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison, or
- (iii) who is employed mainly in a managerial or administrative capacity, or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

7. As per affidavit dated 23.07.2018 submitted by appellant by way of his evidence before the learned Labour Court it is stated that he had joined with respondent – Establishment on 14.02.2012 styled as M/s New Swan Enterprises (Agro Division), Focal Point, Ludhiana. In August 2015, after 3½ years, respondent - employer transferred him to another of its concern i.e. M/s New Swan Multitech Limited, Kohara Machhiwara road Heeran Ludhiana. Appellant claimed to be working as Store Manager receiving a salary of Rs.48,500/-. He worked continuously from 14.02.2012 to 04.02.2017 without enjoying any power to appoint, terminate or take any action against any other employee. Violation of provisions of Section 25(g) and (h) were claimed.

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Appellant in his cross examination revealed that details of his earlier appointments as clerk from 2003 to about 2006 with one Hybrid Cycles as Store Clerk and thereafter with M/s Hero Cycles at Mangli as Store Clerk from where he resigned in December, 2010 to work as Store Manager with M/s New Swan Enterprises, Ludhiana. Relevant part of cross examination of the appellant WW1 reads as under:

“ I have seen personal particular form alongwith my Bio Data and personal particular form is signed by me, copy of which is Ex. M/1. It is correct that I had been working with M/s. New Swan Enterprises as Manager Store. I have brought the original of Ex. W/1. After about 3 and half years of my working with M/s. New Swan Enterprises, new company M/s New Swan Multitech Limited was formed by the respondent. I was not given any letter by M/s New Swan Enterprises regarding transfer of my job with M/s New Swan Multitech Limited because the whole plant was shifted to Village Raian. Rest of the cross-examination is deferred for want of original documents.

RO&AC

Presiding officer
21.01.2019”

“ It is correct that I was store incharge with the respondent. It is correct that there were 3 employees working in the store under my supervision (emphasis added). For the last one year of my employment with respondent attendance was marked through biometric system. It is correct that as store manager I had been using mail id on the website namely store/agro@swanindia.com. The material was firstly used to be received at main gate/security department where it was counted and thereafter, the bill was received by

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me after preparation of MR (material received memo). Volunteered, I was just receiving the material and not counting the same. I have seen the originals of Ex. M/2 to Ex. M/15 and the same bears my signatures. Besides me there are signatures of the person who received and counted the goods. **Again stated I use to verify bills received** (emphasis added). It is correct that I had received an email from Human Resource Department regarding my transfer from Ludhiana to New Swan Multitech Limited village Vithlapur, Mandal, District Ahmdabad. It is correct that alongwith the email I had received an attachment dated 17.01.2017 where I was asked to join my duty on village Vithlapur on or before 25.01.2017, copy of which is Ex. M/16. **Volunteered, after receipt of the transfer order I had personally talked to Mr. Bhatt and informed him that I am not in a position to join at Vithlapur on account of ill-health of my father**(emphasis added). Further voluntarily stated that I was told by Mr. Bhatt that the management is not interested in keeping me in the employment and this order has been passed only to harass me. I was further told that I should resign my job. It is incorrect to suggest that there was no talk as stated by me with Mr. Bhatt. It is further wrong that Mr. Bhatt never informed me regarding dis-interestness of respondent in my employment. **It is correct that I had sent an email on 19.01.2017 to the company that I am unable to move to Ahmdabad, so please give me one month notice to search for a new job. Copy of the email is Ex.M/17. It is correct that as per this email, I was supposed to work upto 19.02.2017**(emphasis added). It is incorrect to suggest that I worked upto 04.02.2017. Volunteered, when I went to the --- (line missing) --- I do not know whether 05.02.2017 was Sunday or not. It is incorrect to suggest that my services were not terminated by the respondent on

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04.02.2017, rather I worked on that day. It is further wrong that I did not join my duty w.e.f 06.02.2017 to complete the notice given by me. I have not mentioned in the demand notice, statement of claim and my affidavit the details of my conversation with Mr. Bhatt after the issuance of my transfer order. It is wrong that I have concocted the conversation with Mr. Bhatt and the same is after thought.

I am married. I have no children. I had given an application for seeking employment after about 4 months of my unemployment. I had applied for job with M/s. Hero Echotech Ltd., Mangli and got the same and I worked there from 04.05.2017 to 10.11.2018 and I was getting Rs. 34,000/- basic alongwith other allowances. My gross salary was Rs. 45,000/-. I had left the job of M/s. Hero Echotech Ltd. after resigning the same. Volunteered, I was called by HR and he asked me to submit resignation as I have filed a case against the respondent. It is incorrect to suggest that I am still gainfully employed. It is further wrong that I am not a 'workman' under the ID Act as my duties were of supervisory and managerial nature and that I was getting salary more than Rs. 10,000/-. It is further wrong that I have filed a false case. **I am ready to join duties at Vithlapur, Ahmdabad provided I am given residence and conveyance. I am not ready to join without back wages** (emphasis added). It is incorrect that I have filed a false affidavit.

RO&AC

Presiding officer

14.03.2019”

8. In the given factual matrix, learned Labour Court as well as learned Single Bench have correctly observed that appellant was not only performing supervisory duties over three employees but was also getting

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salary of Rs.48,500/-, therefore, he did not fall within the definition of Workman under Section 2(s) of I.D. Act. Reliance by learned counsel for appellant on judgment of Hon'ble the Supreme Court in **Ved Prakash Gupta's** case (supra) is of no avail inasmuch as appellant therein was proved to be working as Security Inspector at the gate of factory premises with said employment not being managerial or supervisory in nature. Similarly, the case of **H.R. Adyanthaya** (supra) which had been relied upon by learned counsel for appellant does not come to his aid.

9. Argument raised by learned counsel for appellant that as appellant did not have any power to appoint or dismiss any employee, it cannot be held that appellant was working in a managerial or supervisory capacity is devoid of any merit, hence rejected. Hon'ble the Supreme Court in **M/s Bharti Airtel Limited versus A.S. Raghavendra (2024) 6 SCC 418** has negated such argument by holding as under:-

“25. That being said, in our considered view, mere absence of power to appoint, dismiss or hold disciplinary inquiries against other employees, would not and could not be the sole criterion to determine such an issue. Holding otherwise would lead to incongruous consequences, as the same would, illustratively, mean that, employees in high-ranking positions but without powers to appoint, dismiss or hold disciplinary enquiry would be included under the umbrella of “workman” under [Section 2\(s\)](#), ID Act.”

10. It is, thus, apparent that appellant is not covered under definition of Workman under I.D. Act. At this stage, we also take note of factum of resignation submitted by appellant. Learned counsel is unable to point out any material on record to indicate that said resignation was due to any compulsion which he faced from Establishment. Apart from the same, it is not established

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that appellant falls under the definition of ‘Workman’. Controversy has been correctly appreciated and decided by learned labour Court as well as learned Writ Court and brooks no interference.

11. Learned counsel for appellant is unable to point out any illegality, infirmity or irregularity in impugned order dated 29.07.2024 which calls for interference.

12. No other argument has been raised.

13. This appeal is, accordingly, dismissed with no order as to costs.

**(LISA GILL)
JUDGE**

December 11, 2024
Rts

**(SUKHVINDER KAUR)
JUDGE**

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