



2024:DHC:2265



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 7th March, 2024.**

+ **W.P.(C) 7386/2010**

SATYAPAL SINGH

..... Petitioner

Through: **Mr. Anjum Kumar, Advocate.**

versus

CONTINENTAL FUSE GEARS

..... Respondent

Through: **Mr. A. K. Jain, Advocate.**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“(a) call for the records relating to the Award dated 03.10.2009 passed in ID No. 64/97/09 by Shri Daya Prakash, Presiding Officer, Labour Court XVI, Karkardooma Courts, Delhi, and quash the same; and

(b) Direct the Respondent to reinstate the petitioner with continuity of services alongwith the full back wages; and

(c) Pass such other order(s) as this Hon'ble court may deem fit and proper in the facts and circumstances of the case.”

2. The relevant facts necessary for the adjudication of the instant petition are reproduced herein below:

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- a) The petitioner i.e., Satyapal Singh (“petitioner employee” hereinafter) joined the services of the respondent (“respondent entity” hereinafter) at the post of ‘General clerk-cum-Engineer’ in February, 1986, last drawn salary being Rs.4,625/- per month.
- b) It is stated that on 28th November, 1996, the services of the petitioner employee were terminated by the respondent entity and no earned wages for the period 1st November, 1996 to 28th November, 1996 and bonus for the year 1996 to 1997 was paid to him.
- c) Subsequently, the petitioner employee served a legal notice dated 1st December, 1996, thereby, demanding reinstatement with full back wages and also filed a complaint in such regard with the SHO, PS Krishna Nagar, Dy. Commissioner, Commissioner of Police and Home Minister.
- d) The petitioner employee, through the Industrial Mazdoor Union served demand letters dated 3rd and 4th February, 1997, to the respondent entity, and subsequently on 5th February, 1997, he filed a complaint before the Labour Conciliation Officer. Thereafter, due to non-appearance by the respondent entity before the conciliation officer, the failure report was sent to the Delhi Government for reference of the industrial dispute.
- e) Pursuant to receipt of the above said failure report, the Secretary, National Capital Territory of Delhi *vide* reference dated 24th July, 1997, (“impugned order” hereinafter) bearing reference no. F-24(2069)/97/Lab./23810-14, referred the said industrial dispute to the



learned Labour Court for adjudication in the following terms:

“Whether the services of Sh. Satyapal and Sh. Ashok Kumar Sharma have been terminated illegally and/or unjustifiably by the management and if so, to what relief are they entitled and what directions are necessary in this respect?”

- f) Subsequently, the learned Labour Court after completion of pleadings, on 10th March, 2000 framed three issues, and thereafter, passed the Award dated 3rd October, 2009, (“impugned Award” hereinafter), thereby, holding that the petitioner employee is not a workman under the Industrial Disputes Act, 1947 (“the Act” hereinafter) since he was employed in a supervisory and managerial capacity.
- g) Aggrieved by the aforementioned impugned Award the petitioner employee has preferred the instant writ petition under Article 226 of the Constitution seeking setting aside of the impugned Award dated 3rd October, 2009.
3. Learned counsel appearing on behalf of the petitioner employee submitted that the learned Labour Court erred in passing the impugned Award as the same has been passed without taking into consideration the entire facts and circumstances of the case and also based on surmises and conjectures, therefore, the same is liable to be set aside.
4. It is submitted that the learned Labour Court has wrongfully concluded that the petitioner employee was employed with the respondent entity in a supervisory and managerial capacity, whereas, no such work has ever been carried out by him during his entire tenure.



5. It is submitted that the learned Labour Court failed to appreciate that the petitioner employee was authorised only to the extent of signing and collecting the forms and documents on behalf of the respondent entity, and the said authorisation nowhere specifies the nature of work carried out by him to be supervisory or managerial.

6. It is submitted that the learned Labour Court failed to consider the fact that the petitioner employee was only directed to receive leaves/resignations and had nothing to do with the sanctions of the same therefore, the finding that the petitioner employee is not a workman, is perverse.

7. It is submitted that the learned Labour Court failed to appreciate that there exists clear contradiction in the stance taken by the respondent entity in its written submission and the contents of the appointment letter produced on record before the learned Labour Court, as the former mentions the designation as 'Electrical Supervisor' and the latter as 'manager'.

8. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner employee seeks that the instant petition may be allowed, and the relief be granted, as prayed.

9. *Per Contra*, learned counsel appearing on behalf of respondent entity vehemently opposed the instant petition submitting to the effect that the Award impugned by the petitioner is well reasoned and has been passed after profoundly considering the entire facts, circumstances and evidence, thereby, making the instant writ petition, liable to be dismissed.

10. It is submitted that the learned Labour Court has rightfully held that the petitioner employee was working in a supervisory and managerial



capacity since he failed to prove that he is a workman and falls under the definition of a workman as provided under Section 2(s) of the Act.

11. It is submitted that the learned Labour Court has duly considered the evidence produced in the form of application dated 14th February, 1986, Ex.W1/M1, Ex.W1/M2, Ex.W1/M3, Ex.W1/M6, Ex.W1/M13 and Ex.W1/M16, which categorically states that the work carried out by the petitioner employee was in the capacity of a supervisor and manager.

12. It is submitted that the learned Labour Court formulated three issues for consideration in the present case and it rendered a detailed and accurate findings on each of the issues in accordance with the settled position of law hence, the instant writ petition is a gross misuse of law.

13. It is submitted that it is a settled position of law that the writ Court cannot travel beyond the pleadings of the parties, evidence placed on record and the cross examination recorded by the learned Labour Court until there exists a palpable wrong apparent on the face of the findings.

14. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondent entity prayed that the present petition, being devoid of any merits, may be dismissed.

15. Heard learned counsel appearing on behalf of the parties and perused the record.

16. The petitioner employee has approached this Court seeking quashing of the impugned Award dated 3rd October, 2009, passed in I.D. No.64/97/09 whereby, the learned Labour Court decided the reference against the petitioner employee, thereby, holding that he is not a workman under



Section 2(s) of the Act.

17. In order to adjudicate the present case, this Court deems it imperative to analyse the findings of the impugned Award and ascertain the reasoning afforded by it. The learned Labour Court heard the parties and perused the evidence led before it, and on the basis of such evidence adduced and cross examinations, it passed the impugned Award, thereby, deciding the dispute against the petitioner employee and in favour of the respondent entity to the limited point of the petitioner employee not being a workman as per the Act.

The relevant paragraphs of the impugned Award are reproduced below:

“....13. On the basis of claim, reply, evidence and documents on record, my findings on the issues are as under:

Regarding Issue no.1: Workman Issue

Keeping in view the documentary evidence as well as arguments addressed by both the parties, my inference is that the issue no. 1 i.e the issue of workman be decided against the workman Satyapal Singh and in favour of Ashok Kumar Sharma on following grounds:

*(i) Definition of workman has been provided under section 2(s) of Industrial Dispute Act. Four categories of persons have been excluded from the definition of workman. **First category** of persons are **member of armed forces** which is not relevant here. **Second category** for excluded persons are **members of police service** which is also not relevant here. **Third category** of excluded persons are the **persons employed mainly In a managerial or administrative capacity**. Hence for the purpose of decision of workman issue this clause of excluded person is also relevant. In **fourth category** of excluded persons are those persons (a) **employed In a supervisory capacity** and (b) **who draws wages exceeding one thousand six hundred rupees per mensem**. So far as wages of claimants are concerned their last*



paid wages or carry home salary were more than Rs. 1600 pm at the time of dismissal. Hence, second condition of fourth category is fulfilled. Now, only question is to be seen whether the claimants working in supervisory capacity or not.

(ii) Burden of proof

*My impression on the basis of authorities cited by the parties is that the burden of proof is on the workman to prove that he is covered under the definition of workman. I am supported by Supreme Court judgment; In **Workman N/lg/rl Coop. Marketing Society Ltd. Vs. State of Tamil Nadu and ors., 2004 LLR page 351** wherein Hon'ble Supreme Court has held that:*

"The burden of proof being on the workman to establish the employer and employee relationship and adverse Inference cannot be drawn against the employer that If he _ were to produce books of accounts they would have proved employer-employee relationship."

*I am also supported by **Swapan Das Gupta and ors. Vs. The First Labour Court of West Bengal and ors., 1975 LIC pg. 202** wherein it has been held that :*

"Where a person asserts that he was a workman of the company, and it is denied by the company, It is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person."

*I am also supported by **Shanker Chakravartl Vs. Br/tan/a Biscuit Company, 1979 (II) LLJ pg. 134** wherein it was held that:*

"Obligation to lead evidence to establish an allegation made by a party Is on the party making the allegation. The test would be who would fall if no evidence Is led."

The management in the WS as well as in the preliminary objections and reply on merits has denied the claimants to be workmen. Accordingly, the workmen have to prove that they are



covered within the definition of Section 2(s) of the I.O. Act. AR for workmen states that since the workmen have stated themselves to be workmen and the management had denied the stand, the burden of proof is on the management.

In view of the above judgments by the Courts, it is for the claimant to prove that he is a workman as defined u/s 2(s) of the I.D. Act. Unless and until, it is proved by the workman or admitted by the management, this court has no jurisdiction to further to entertain or decide the dispute. Hence, my conclusion is that it is for the claimant to prove that he is a workman.

III) Nature of Duties

a) Both the claimants stated that they were not appointed in managerial or in administrative or supervisory capacity whereas the management stated that both the claimants were appointed on supervisory, managerial and administrative post.

(b) Whether a person is doing supervisory work or not depends on the nature of duties and functions assigned to them. Supervisor means a person who oversees the work of others. Hence, it means overseeing. A person can be said to be supervisor if there are persons working under him over whose work he has to keep a watch. Hence, supervisor keeps a watch over the work of person and if they err in any way, corrects him/them. It is the duty of the supervisor to see that the work is done by the person under his control in accordance with the manual or in accordance with the usual proceedings. It is not his function to take any managerial decision but it is the duty of the supervisor to see that the person over whom he is, suggests to supervise the work assigned to them according to rule and regulations. Hence, Supervisor need not be a Manager or an Administrator. A person may not be a Manager or Administrator still he can be outside the purview of 'workmen' as he may be doing supervisory function.



(c) *In Industrial adjudication the essence of duties is the primary factor to say that a claimant is doing supervisory/managerial/Administrative function or not. Designation of person is not given undue importance nor on the name assigned to the class to which he belongs. [Lloyd Bank Ltd. Vs. P.L Gupta (1961) 1 LLJ 18 (SC)].*

(d) *In Mathur Aviation Vs. LG Delhi {1977} 2 LLJ 255 (Del), it was held that when one talks of a person working as Supervisor, one understands it to mean a person who is watching the work be done by others to see that it is being done properly.*

(e) *To come to a conclusion that a person is working in the Supervisory capacity, it is necessary to prove that there were at least some persons working under him whose work he is required to supervise.*

(f) *Merely because apart from supervisory functions, claimant might be doing some clerical work, what is to be seen is predominant nature of work. His predominant nature of work was as Shift Incharge [Anand Bazar Patrlka Pvt. Ltd. Vs. Its Workmen (1969) LLJ 670 (SC)].*

(g) *In the conclusion, designation of a person is not a deciding factor. In LKP Merchant Financing Ltd. vs. Govt. of NCT, Delhi & Ors, 2003 LLR 367, it was held that the claimant was Executive (Customer Support). Without evidence, it cannot be held that the claimant was in managerial or administrative capacity. The question is of mix law and fact and has to be decided after evidence by both the parties. Similarly, in Anand Regional Co-op. Oil Seedsgrowers Union Ltd. vs. Shailesh Kumar Harshadbhai Shah, 2006 LLR 1052, it was held that though the designation of the claimant was Assistant Executive, still he was not having any supervisory or managerial duties as he was not authorized to initiate any departmental proceedings against his subordinates. Similarly, in Sharad Kumar vs. Govt. of NCT. Delhi & Ors. 2002 LLR 545, it was held by their Lordships of Supreme Court that to prove whether the*



designation of Area Sales Executive is supervisory or managerial function or not, evidence is required and can be decided only after evidence.

*(h) What is to be seen whether a person is working in supervisory or managerial capacity and as to what is his primary duty. If the primary duty of a claimant is supervisory or managerial, then merely because he was doing some incidental clerical work, will not make him workman. In **S.K. Main/ V\$. Carona Sahu Co. Ltd. Ors. 1994 LLR 321, 1994 (68) FLR 1101 1994(3) SC P510.** it was held by their Lordship of Supreme Court that for determining the status of workman, his primary duty must be seen. In **Shanker Bhal Nathalal Prajapatl vs. Maize Products 2003 LLR 192 Gui**, it was held by their Lordship of Gujarat High Court that where a person was appointed as Starch Chemist and he was also given the work of supervision of subordinate staff but his primary duty was of workman i.e. Starch Chemist and it was held that he was workman. Similarly are the findings of the court in **Management of May & Baker m Ltd. vs. Workman, 1967 SC 678** and **S.S. Oli & Dlstd. Co. vs. Management Staff Association, 1970 131 SC 378.** In **Heaw Engineering Corporation Ltd. Vs. P.O. 11 sec 236**, it was held that if many duties of claimant is of supervisory, his incident work of manual and clerical cannot take him out for the category of supervisor. In this case, the claimant was supervising the work of sweepers and was also countersigning on casual leave register. It was held by their Lordships of Supreme Court that he was working in supervisory capacity. The above principle has to be applied in case of both the claimants.*

14. Regarding claimant No.1 Satyapal Singh :-

a) Appointment :- In view of the evidence on record, my impression is that the claimant Satyapal Singh was working in supervisory and managerial capacity on the following grounds:



i) Ex. WW1 /5 is a certificate of Satyapal Singh, which shows that he was awarded the diploma in Electrical Engineering that specialized in Thermal Power Plant. The management had employed two engineers. Sr. Engineer is the claimant Satyapal Singh. The other persons are machineman, helpers and skilled persons. If Satyapal Singh is a workman then who can supervise the other workmen. The application dated 14.02.86 by which claimant Satyapal Singh applied to the management is on the record. Perusal of this application shows that his appointment is as an **Electrical Supervisor**. This document is an admitted document. It is explained by claimant Satyapal Singh that he left some space blank which was later on filled by the management and hence it is forged and fabricated documents. Claimant is not an illiterate person. He is having diploma in Electrical Engineering and if he has signed a blank document, which is later on alleged to be filled, then he is to be blamed. It is further a fact that during cross examination, Satyapal Singh has admitted that the word "Electrical Supervisor" is in his own handwriting.

ii) Ex. W1/M1 is an application for leaving the job of one Sushma Grover Seth. This is duly and admittedly signed by claimant Satyapal Singh. It was tried to be explained by claimant Satyapal Singh that he merely received the application and the resignation was accepted by the management. However, the careful perusal of this document shows that there is no other writing except the signature of Satyapal Singh and this shows that Satyapal Singh accepted the resignation of Sushma Grover Seth on 27.08.89. The application is dated 27.05.89.

iii) Ex. WW1/M2 is admittedly signed by claimant Satyapal Singh at point A. By this document, Sh. Jai Prakash Gupta, management authorized Satyapal Singh to sign all the documents pertaining to his department with the Supdt. Central Excise, New Delhi. Hence, this shows that management has given the authority to the claimant Satyapal Singh to deal with



the Excise Department which makes that he was working in Supervisory capacity.

iv) Ex. WW1 /M3 is again admittedly signed by claimant Satyapal Singh which is stock taking report as on 26.02.93 received by Inspector Central Excise Deptt. On 26.02.93. This further shows that the claimant Satyapal Singh worked in supervisory/managerial capacity. Ex. WW1 /M11 is a report in Form 1 to the Excise Department admittedly signed by claimant Satyapal Singh.

v) Ex. WW1 /M6 is a resignation letter of Nimmi Sharma showing that resignation was received by claimant Satyapal Singh. There is no other noting on this document. Ex. WW1/M12 is a letter to Supdt. Central Excise Department to claimant Satyapal Singh by which the gate pass was surrendered and this again was taken on behalf of management showing that he was given supervisory and managerial functions.

vi) Ex. WW1/M13 is a letter to Supdt. Engineer, DESU seeking copy of tender documents. This further shows that claimant Satyapal Singh was acting in supervisory capacity. Ex. WW1/M16 is again a letter by claimant Satyapal Singh seeking tender documents.

*vii) Document has placed on record showing the designation of Satyapal Singh as Engineer-cum-manager. It is argued by AR for workman that this word was written later on. However, the fact remains that the claimant Satyapal Singh was the **senior most Engineer** and he used to accept resignation of other workers, represent the management to Excise department, Sales Tax department and also to call tender form from various government departments and he was also authorized by the management to even collect statutory form as shown in Ex. WW1/M7.*

In view of the above, my conclusion is that claimant Satyapal Singh was working in supervisory, managerial and administrative capacity and hence he is not a workman U/s 2(s)



of the I.D. Act 1947. Since, he is not a workman, this court has no further jurisdiction to decide.”

18. Upon perusal of the extracts from the aforementioned Award, it can be summarily stated that the learned Labour Court whilst answering the issue no.1 with regard to the petitioner not being workman, held, that he does not fall within the ambit of Section 2(s) of the Act and therefore, is not a workman, since he was working in a managerial, supervisory and administrative capacity. The learned Court below further noted that the management had employed two engineers out of which the claimant was the senior engineer. The learned Court below placing reliance upon application dated 14th February, 1986, Ex.W1/M1, Ex.W1/M2, Ex.W1/M3, Ex.W1/M6, Ex.W1/M13 and Ex.W1/M16, based its reasoning on the ground that as per the evidence on record, the designation of the claimant was ‘Engineer-cum-manager’, and that he had accepted resignations of other workers at various point of time, represented the management before the Excise and Sales tax Department and further called tenders from various departments of the government.

19. In the above backdrop, this Court is of the considered view that a person employed to undertake work in the capacity of supervisor and/or manager does not fall within the ambit of the definition of a ‘workman’ as provided under Section 2(s) of the Act. Although the said definition expressly excludes person working in supervisory and managerial capacity, the same has been expounded by the Hon’ble Supreme Court in ***Bangalore Water Supply & Sewerage Board v. A. Rajappa***, (1978) 2 SCC 213 and



reiterated this Court time and again.

20. At this juncture, it is imperative to understand the scope of a Writ Court's jurisdiction in interfering with labour or workman disputes. The Hon'ble Supreme Court in a catena of cases has reiterated time and again that the Labour Court is the final court of fact in the disputes between the labour or workman and employer or an industry.

21. In this backdrop, this Court deems it imperative to briefly reiterate the scope of a Writ Court's jurisdiction under Article 226 of the Constitution of India in interfering with findings of the Labour Court/Tribunal *qua* the following circumstances. *Firstly*, a High Court shall exercise its writ jurisdiction sparingly and shall act in a supervisory capacity and not adjudicate upon matters as an appellate court. *Secondly*, in matters wherein the Labour Court has adjudicated after having gone in the details of both fact and law while carefully adducing the evidence placed on record, the High Court shall not exercise its writ jurisdiction to interfere with the award when *prima facie* the court can conclude that no error of law has occurred. *Thirdly*, judicial review involves a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. The reasoning must be cogent and convincing. *Fourthly*, a High Court shall intervene with the order/award passed by a Court below only in cases where there is a gross violation of the rights of the petitioner and the conclusion of the Tribunal/Labour Courts is perverse. A mere irregularity which does not substantially affect the cause of the petitioner shall not be a ground for the



court to intervene with the order passed by the concerned court. *Fifthly*, if the Court observes that there has been a gross violation of the principles of natural justice. *Lastly*, the punishment imposed can be challenged on the ground of violation of doctrine of proportionality.

22. This Court is of the considered view that, the learned Labour Court has dealt with the issues agitated before it in detail and has based its reasoning on each of the issues, after having appraised the evidence placed on its record, the cross examination as well as the settled position of law.

23. Thus, in view of the above discussion of law and fact, this Court observes that the learned Labour Court after having perused the evidence and witnessed the cross examination, has rightly arrived at the finding that the petitioner employee was employed to carry out work in the nature of managerial and administrative capacity. There exists no evidence on part of the petitioner employee to support that he was not employed in the managerial and supervisory capacity and thus, it cannot be construed otherwise.

24. This Court is further of the view that as the scope of its writ jurisdiction is limited and is to be exercised sparingly, this Court cannot undertake an exercise, impermissible for this Court in exercising the writ jurisdiction, by liberally re-appreciating the evidence and drawing conclusions on pure questions of fact, as this Court is not sitting in an appellate jurisdiction over the awards passed by the learned Labour Court.

25. This Court further concludes that the instant matter has been heard at length by the learned Labour Court and the petitioner employee was granted



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sufficient opportunity to justify that he is a workman within the ambit of Section 2(s) of the Act, however, the finding of the facts narrated a completely different view than that alleged by the petitioner employee. Thus, since no error on account of appraising evidence by the learned Labour Court is noted by this Court, the reliefs, as prayed by the petitioner employee cannot be granted.

26. It is perceptible from the findings of the learned Labour Court that it had gone into depth of the material placed before it, therefore, this Court discerns no material to establish the proposition put forth by the petitioner employee.

27. It is held that there is no material to characterise the impugned Award as perverse and the learned Court below is well justified in passing the same.

28. In view of the foregoing discussions, this Court finds no infirmity in the impugned Award dated 3rd October, 2009, passed by learned Presiding Office, Labour Court XVI, Karkardooma Courts, Delhi.

29. Based on the aforementioned observations, this writ petition is accordingly dismissed along with pending applications, if any.

30. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 7, 2024

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By: GAURAV SHARMA
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