



2024:DHC:4650



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

% **Date of order: 28th May, 2024**

+ **W.P.(C) 5166/2017**

RITA SACHDEVA Petitioner

Through: **Mr. Atul T. N, Advocate**

versus

SECRETARY (LABOUR) & ANR Respondents

Through: **Mr. Joginder Sukhija and Mr. Shailendra Babbar, Advocates for R-2**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner seeking the following reliefs:

- “(a) Issue a writ of certiorari thereby quashing /setting aside the award dated 03.11.2016 passed in DID No.02/16 (Old No. DID No. 12/10) Unique ID No.02402C0031662010) in case titled as Rita Sachdeva VS. M/s Bennet Coleman & Co. Ltd' and writ of mandamus holding the petitioner to be a workman under section 2(s) of the Industrial Disputes Act, 1947;*
- (b) Issue writ of mandamus directing the respondent No.2 to reinstate the workman/petitioner with continuity of service with full back wages;*
- (c) Pass any other or further orders as this Hon'ble Court may deem just and proper in the facts and circumstance in the case.”*



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2. The petitioner was appointed as a clerk with the respondent no. 2 company on 12th January, 1984. On 1st November, 1990, the petitioner was re-designated as EDP-Operator-cum-Sr. Clerk. Subsequently, petitioner was promoted to the post of Executive – Reception on 7th February, 1996 and finally, he was promoted to the post of Senior Officer (Administration) in the year 2006 at the basic salary of Rs. 11,800/-.

3. Thereafter, the petitioner was terminated from his services *vide* letter dated 25th June, 2009 due to closure of the business to which the petitioner protested and sent a letter dated 10th July, 2009 to respondent no. 2. The petitioner also raised an industrial dispute bearing number 02/16 before the learned Labour Court and filed her statement of claim on 29th January, 2010.

4. *Vide* award dated 3rd November, 2016 ('impugned award' hereinafter), the learned Labour Court held that the petitioner is not a "workman" under Section 2(s) of the Industrial Disputes Act, 1947 ('I.D. Act' hereinafter) and dismissed the petitioner's claim.

5. Aggrieved by the same, the petitioner has preferred the instant writ petition before this Court.

6. Learned counsel appearing on behalf of the petitioner submitted that the impugned award is bad in law and the same is liable to be set aside as the learned Labour Court failed to take into consideration the entire facts and circumstances of the case.

7. It is submitted that the learned Court below failed to appreciate that despite the petitioner's promotion to the post of Senior Officer (Administration), she was performing duties of a clerical nature and is thus a



“workman” under Section 2(s) of the I.D. Act. She was having no subordinate employees under her and had no power to sanction leaves, take disciplinary action and take final decision or to sanction any bill or voucher.

8. It is submitted that neither the post to which an employee is stated to be employed nor the salary which he is drawing is relevant to determine whether a person is covered within the definition of “workman” under Section 2(s) of the I.D. Act.

9. It is submitted that the petitioner is unemployed since his illegal termination and has been facing financial hardship for so many years.

10. Therefore, the learned counsel appearing on behalf of the petitioner seeks that this Court may allow the present writ petition and set aside the impugned award dated 3rd November, 2016.

11. *Per contra*, the learned counsel appearing on behalf of the respondent no. 2 vehemently opposed the present writ petition submitting to the effect that the same being devoid of any merit is liable to be dismissed.

12. It is submitted that the Learned Labour Court passed a reasoned award holding that the petitioner was not a “workman” as per Section 2(s) of the I.D. Act and the same has been concluded after appreciating the evidence and documents on record.

13. It is submitted that the petitioner was getting variable payouts contingent upon the achievement of the company’s business results and targets, an incentive attributable only to the employees belonging to the officers cadre.



14. It is submitted that the burden to prove that the petitioner is a workman falls on her and that she failed to discharge the said burden whereas the management proved that she was performing work of a supervisory nature and the same was rightly appreciated by the learned Court below.

15. It is submitted that the question regarding whether a person is a workman or not depends upon nature of industry, type of work, organisational set-up and like factors.

16. It is further submitted that this Court may not interfere in the impugned award under Article 226 of the Constitution of India as the petitioner has not pointed out any patent perversity in the impugned award or a violation of the principles of natural justice.

17. Hence, in view of the foregoing submissions, it is prayed on behalf of the respondent no. 2 that this Court may dismiss the instant writ petition.

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

19. Before proceeding to adjudicate the present matter, this Court deems it imperative to consider the scope of review afforded to it under Article 226 of the Constitution of India.

20. It is no longer *res integra* that it is not for the High Courts to convert itself into an Appellate Court over Tribunals constituted to resolve disputes of a kind qualitatively different from ordinary civil disputes and to re-adjudicate upon questions of facts decided by those Tribunals.



21. In *J.D. Jain v. State Bank of India*, (1982) 1 SCC 143, the Hon'ble Supreme Court observed that the jurisdiction of the High Court is limited in a petition for a writ of certiorari under Article 226 and an award passed by a Court below can be quashed only when there is an error apparent on the face of the record or when a finding of fact is perverse. The relevant paragraphs are reproduced herewith for reference:

“11. In an application for a writ of certiorari under Article 226 of the Constitution for quashing an award of an Industrial Tribunal, the jurisdiction of the High Court is limited. It can quash the award, inter alia, when the Tribunal has committed an error of law apparent on the face of the record or when the finding of facts of the Tribunal is perverse. In the case before us, according to the Tribunal, as Kansal was not examined, the evidence before it was hearsay and as such on the basis thereof the appellant could not be legally found guilty.”

22. Now advertent to the issue at hand, it is the case of the petitioner that the learned Court below did not appreciate the settled position of law, and therefore, impugned award is bad in law.

23. In rival submissions, the learned counsel for the respondent has rebutted the aforesaid claim by stating that the petitioner is not a workman as per the definition of the I.D. Act and therefore, a relief under I.D. Act cannot be sought by the petitioner.

24. In light of the same, this Court deems it imperative to analyse the findings arrived at by the learned Labour Court *vide* award dated 3rd November, 2016. The relevant portion of the impugned award is as follows:



Issue No. (a)

10. In the case in hand, it has been admitted by MW1 that the claimant did not have any power to appoint anyone in the company. She was not empowered to sanction leave of any employee or to grant annual increment. He is not aware whether any worker was working under her. In *Chauharya Tripathi and Others Vs. Life Insurance Corporation of India and Others* (2015) 7 SC 263 (relied upon by management), it was held by the Hon'ble Supreme Court that even if the person did not have authority either to appoint any person or to take disciplinary action against them and even if the employee did not have authority to supervise the work of the agents though he was required to train them and assist them, such a person was not workman. That citation cuts to size the arguments of Ld. ARW that the claimant did not have authority to appoint any person or to take disciplinary action against them.

11. Ex. WW1/M1 to Ex. WW1/M7 are performance assessment worksheets / evaluation reports of the claimant from 1999 to 2006. The reports from 1999 to 2004 i.e. Ex. WW1/M2 to Ex. WW1/M7 are irrelevant because this Court is to consider the nature of duties of the claimant at or near to the time of termination of her service. The nearest dated document to the date of termination of her service is Ex. WW1/M1. That document was put to WW1 in cross examination and she replied that it was bearing her signatures. She further admitted that page No. 2 of Ex. WW1/M1 was also bearing her signatures at point A. She volunteered the space for, comments of the boss was left blank at the time of her signatures and the comments were inserted later on. Ex. WW1/M1 is performance assessment worksheet of the claimant for the year 2005 - 2006. Such appraisal form is never filled up by the senior officers in the presence of the official concerned. In that document, the nature of the duty of the claimant has been mentioned. It is mentioned that she was doing effective supervision of housekeeping and canteen. She was having very good cooperation with outside



agencies in the functionality of office equipments. For maximum utilization of conference / meeting rooms of the management, she had effective planning. On page No. 2 of that document, it is mentioned that she was handling the administration work independently. That document clinches the issue in favour of the management because it proves that the claimant was working in a supervisory capacity and she used to take decisions independently. That conclusion is further corroborated by the cross examination of WW1 who admitted that she used to supervise the Departments of Housekeeping, Airconditioning, Telecommunication Maintenance, Canteen and Building Maintenance Department. She further admitted that it was she who used to give completion report in respect of the work done by the employees posted in those departments. As per letter Ex. WW1/11 dated 27.09.2003 by management to claimant, the management was to pay her bonus subject to her achievements of targets agreed upon. It is mentioned in another letter Ex. WW1/12 dated 07.09.2004 that variable dues were contingent upon achievements of company's business results and her performance against set targets. To the same effect is letter Ex. WW1/14 dated 01.08.2006. These letters prove that she was not getting fixed salary and that her salary used to vary based upon the fact whether she had achieved the targets or not. That fact also brings her out of the category of the workman.

13. In view of above discussion, this issue is decided in favour of management and against claimant by holding that the claimant is not a workman.

Issues Nos. b & c

14. Both these issues are inter-connected and hence are being taken up together.

After holding that claimant was not a workman, the labour court loses jurisdiction to decide other issues. But taking into account the fact that if the higher courts come to the conclusion



that the claimant was a workman, decision of this court on this issue shall be helpful for the higher courts to decide the case fully and finally. Due to that reason, this issue is being taken up.

17. In view of above discussion, both these issues are decided in favour of the claimant and against the management.

Issue No. d

18. Consequent to decision on issue No. a, it is held that claimant is not entitled to any relief. Statement of claim is dismissed. Award is passed accordingly. Parties to bear their own costs.

25. Upon perusal of the impugned award dated 3rd November, 2016, it is observed that as per the findings of the learned Labour Court, the petitioner acted in a supervisory capacity and used to take independent decisions. The nature of her duties was to give completion reports in respect of work done by other employees posted in her department.

26. In the impugned award, the learned Court also held that the petitioner used to receive variable compensation and the same was dependent upon the fulfilment of the targets, therefore, making her outside the definition of a workman as provided under the I.D. Act and therefore, the issue no. a) was adjudicated in favour of the respondent no.2.

27. In this backdrop, the learned Labour Court admitted that it ceases to exercise jurisdiction over the present matter by virtue of the claimant not being a “workman” under Section 2(s) of the I.D. Act, however, it goes on to conduct an academic exercise by analysing implications of a counterfactual,



i.e., implications that would flow if the claimant is held to be a “workman” u/s 2(s) of the I.D. Act by Higher courts.

28. In view of the above-said observations by the learned Labour Court, this Court deems it appropriate to reiterate the settled position of law regarding the inclusion of employee within the definition of workman on the basis of nature of work performed by the said employee.

29. In ***Bharti Airtel Ltd. v. A.S. Raghavendra***, 2024 SCC OnLine SC 492, the Supreme Court discussed the criteria for determining the nature of work for inclusion of an employee as a workman and held that the 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 whether a person is a “workman” or not. The relevant paragraph is reproduced here for reference:

“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. We cannot be oblivious of the impact of our decisions...”

30. The above cited paragraph makes it clear that an employee cannot be held as a workman merely on the basis of him not having the power to appoint, dismiss or hold disciplinary enquiry.



31. Therefore, the submission that the petitioner did not have power to sanction leaves, take disciplinary action, take final decision or to sanction any bill or voucher does not have any force for the same is not relevant for the present determination.

32. It is also relevant to note that Section 2(s)(iv) of the I.D. Act expressly excludes a person who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees *per mensem* (was one thousand six hundred prior to the Amendment in 2010) 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 from the definition of a “workman”.

33. Therefore, this Court is of the view that the categorical finding made by the learned Labour Court regarding the nature of job of the petitioner was based upon the evidence produced before it and the application of law.

34. In light of the above submissions and observations, this Court is of the further view that the petitioner has failed to make a case that she is a “workman” in terms of the definition provided under Section 2(s) of the I.D. Act and it is appropriate to hold that the learned Labour Court has rightly adjudicated the industrial dispute raised before it and there is no illegality of any kind in the findings arrived at by it.

35. In view of the foregoing discussion, this Court is of the firm view that the petitioner has failed to provide cogent reasons for this Court to interfere with the impugned award as the application of settled position of law clearly depicts that the learned Labour Court did not commit any error on the face of record.



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36. In view of the above discussion on facts and law, the impugned award dated 3rd November, 2016 passed by the learned Labour Court, Karkardooma, New Delhi in I.D. no. 02/16 is upheld and the instant writ petition, accordingly, stands dismissed.

37. Pending applications, if any, also stands dismissed.

38. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 28, 2024

GS/AV/RYP

Click here to check corrigendum, if any