

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

Decided on :18.03.2025

289 CWP-10107-2024 (O&M)

HITESH KUMAR . .Petitioner
Versus

UNION OF INDIA AND OTHERS

... Respondents

290 CWP-10124-2024 (O&M)

DURGA SINGH VERMA . .Petitioner
Versus

UNION OF INDIA AND OTHERS

... Respondents

291. CWP-10142-2024 (O&M)

AJAY SHARMA . .Petitioner
Versus

UNION OF INDIA AND OTHERS

... Respondents

291.1 CWP-19396-2024 (O&M)

PRASIDH KUMAR . .Petitioner
Versus

UNION OF INDIA AND OTHERS

... Respondents



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291.2. CWP-19605-2024 (O&M)

SURENDER KUMAR GAUTAM . .Petitioners

Versus

UNION OF INDIA AND OTHERS
... Respondents

292 CWP-10335-2024 (O&M)

BABU RAM DHIMAN . .Petitioner

Versus

UNION OF INDIA AND OTHERS
... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Vivek Dahiya, Advocate and
Mr. Rahul Gautam, Advocate
for the petitioner in CWP-10142-2024.

Mr. Vinod Kumar Sharma, Advocate
for the petitioners in CWP-19396 of 2024 and
CWP No. 19605 of 2024.

Mr. Karanvir Singh, Advocate
for respondents No. 2 and 3 in CWP-19396 of 2024 and
CWP No. 19605 of 2024

Mr. Maheshinder Singh Sidhu, Advocate
Additional Standing Counsel U.T. Chandigarh and
Mr. Varunveer Chauhan, Advocate
Panel Counsel, U. T. Chandigarh
for respondents No. 2 to 4
for U.T.Chandigarh in CWP-10107-2024,
CWP NO. 10124 of 2024 and CWP NO. 10142 of 2024,
CWP No. 10335 of 2024.

Mr. Piyush Khanna, Advocate
for respondent No. 1 in CWP-10142 of 2024.

Mr. Rajat Khanna, Advocate
for respondent No. 5 in CWP-10142-2024 and
CWP-10107 of 2024, CWP-10124 of 2024 and
CWP-10335 of 2024.



Mr. TPS Chawla, Sr. DAG, Punjab.

HARSIMRAN SINGH SETHI , J. (Oral)

1. By this common order, a set of writ petitions, the details of which have been given in the heading, are being disposed of as both the petitions involve the same question of law on similar facts.
2. In the present bunch of petitions, the grievance being raised by the petitioners is that their claim for adjudication of the demand notice dated 04.12.2023 (Annexure P-4) by Labour Court has been rejected by the Assistant Labour Commissioner (Central) Chandigarh vide impugned order dated 22.02.2024 (Annexure P-6) with the finding that the petitioners are not “workman” and advise has been given to the petitioners to approach the appropriate forum for the redressal of their dispute/grievance.
3. Learned counsel for the petitioners argues that the impugned order has been passed on the ground that the designation of the petitioners was Deputy Manager hence, the applicants who were in charge of the raw material section in managerial capacity i.e. as a Deputy Manager, cannot be treated as a “workman”, is incorrect as the question whether the petitioners are “workman” or not, it is a matter of fact and evidence which will come before the labour Court, hence, the impugned order is liable to be set aside and matter should be referred to labour Court for adjudication.
4. Learned counsel for the petitioners submits that in the demand notice dated 04.12.2023 (Annexure P-4), the duties being performed by the petitioners have been detailed in extensive which, have been ignored by the conciliation officer and in case, the petitioners-workman are able to prove the said duties being performed, the petitioners will be covered under the



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definition of the “workman” so as to become entitled to invoke the jurisdiction under the Industrial Disputes Act, 1947 (hereinafter referred as ‘1947 Act’). Hence, the recording of fact in the impugned order dated 22.02.2024 (Annexure P-6) that the petitioners are not “workman” and that too without there being any evidence, is incorrect.

5. Upon notice of motion, the respondents have appeared and have stated that once as per the appointment order of the petitioners, they were appointed in the managerial capacity as Deputy Manager and the petitioners have conceded that they were the Incharge of the raw material section as Deputy Manager, the same has been taken into consideration, hence, no further fact was required to be proved keeping in view the averments which have been made by petitioners in their demand notice itself, hence, the conceded position has been accepted by the labour-Cum-Conciliation Officer to record a finding that the petitioners are not “workman” so as to avail the remedy under the 1947 Act hence, the writ petitions filed by the petitioners may kindly be dismissed.

6. I have heard learned counsel for the parties and have gone through the case file with their able assistance.

7. The question which is posed before this Court is whether an employee who has approached the Labour Court under the 1947 Act claiming himself to be the “workman”, the findings can be recorded by the Conciliation officer that they are not “workman” even without appreciating the fact only or not?

8. It may be noticed that some times, the factual position as conceded by the respective parties in their pleadings before the Labour-cum-Conciliation Officer can be good enough to record the findings so as to



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decide the maintainability of the claim before labour Court. Hence, this Court is required to adjudicate as to whether from facts of the present case, the factum that the petitioners are “workman” can be assessed or not.

9. In the demand notice, certain facts have been mentioned by the petitioners with regard to the duties being performed by the petitioners while working with the respondents. The relevant paragraph No. 6 of the demand notice is as under:-

“6. It will not be out of place to mention here that although a designation of Deputy Manager (04) was declared for me by Adani Cement referred to above, yet I am a workman covered under the Industrial Disputes Act, 1947 as right from beginning till 13th October, 2023 I have been working as a workman and have not executed managerial or officers work. It is pertinent to mention here that even after 28th October, 2022 when I worked as Deputy Manager (Raw Material), I had to execute the work of material handling and inventory management as per the production planning. I had to verify and check the bills of transporters and send the same to the accounts section. I had to check the quality and quantity of raw material. In case the raw material did not confirm the required parameters, I had to make the deductions and refer the same to the accounts section. I had to generate the data of raw material in the SAP system. I had to prepare the CGCR data of raw material and send the same to the accounts section. I had to prepare the



purchase requisition, service entry sheets, and execute the work of purchase and transportation of raw material through railway. While executing the work of monthly closing I was further required to physically verify the raw material physical stock with book stock. I was also required to execute the Civil Engineering activities which included submission of drawings of new structures to the Industry Department of the State of H.P. as also to the Baddi Barotiwala Nalagarh Development Authority. It is pertinent to mention here that earlier when I was working as Civil Engineer and Assistant Manager Civil, I had to conduct surveys with contractor surveyor as per the drawing of plant. I was also responsible for the execution/construction work of the plant structures. I had to check, verify / physically measure the bill of quantity (Area, Volume, weight) as per drawing accordingly and pass the bills of the contractors and then enter the relevant data in the SAP system. I was also required to prepare the estimates of routine/non routine maintenance activities, prepare purchase requisitions for the award of construction work including material & services to contractors. Besides this whenever required, I had to look after the work in Production department for the removal of any jamming for which I had to remove the fault by blasting, poking, hammering or manually removing the jam. All the above jobs required manual work which had



to be executed by hands by me and other workers. Under the circumstances, my services are covered under the Industrial Disputes Act, 1947 and all other Industrial and Labour Laws as a workman.”

10. A bare perusal of the above averments shows that there are certain averments made by the petitioners as to what duties they had performed while working with the respondents. In case, the petitioners are able to prove the same by leading the cogent evidence, then it becomes the duty of the labour Court to decide the claim of the petitioners as to whether the petitioners are covered under the definition of “workman” or not in order to avail the remedy under the 1947 Act.

11. Though, the respondents have denied the averment as raised in paragraph No. 6 of the demand notice and have stated that once, the petitioners were working on a managerial post or even on a supervisory post having salary beyond the limit fixed under the 1947 Act, the petitioners cannot claim themselves to be the “workman”, but, the said dispute needs to be decided on the basis of the evidence which will come on record before the labour Court.

12. The Conciliation officer after going through the pleadings only cannot record the finding that the petitioners are not “workman” especially, in the facts and circumstances of the present case, where certain averments have been made by the petitioners qua certain nature of duties being performed by them, the said averments needs to be proved by cogent evidence.

13. Further, as per the settled principle of law as settled by the Hon’ble Supreme Court of India in **Civil Appeal No. 11709 of 2024 titled as**



Lenin Kumar Ray versus M/s Express Publications (Madurai) limited, decided on 21.10.2024 wherein it has been held that the determining factor for an employee to be covered under the definition of workman under Section 2 (s) of the Industrial Disputes Act, 1947 is the principal duties and the function performed by the employee in the establishment and not merely designation of his post and the proving of the nature of employment rests upon the person claiming to be “workman”

14. The relevant paragraphs No. 15 and 16 read as under:-

“15. The law is well settled that the determinative factor for "workman" covered under section 2(s) of the I.D. Act, is the principal duties and functions performed by an employee in the establishment and not merely the designation of his post. Further, the onus of proving the nature of employment rests on the person claiming to be a "workman" within the definition of section 2(s) of the I.D. Act.

16. In the present case, there is no specific document adduced relating to the actual work and functions performed by the employee. In the absence of any concrete material to demonstrate the nature of duties discharged by the employee, the employment orders issued by the management will have to be taken into consideration and as per the same, the employee was appointed as Junior Engineer and was promoted as Assistant Engineer, on the administrative side. It is the evidence of M.W.1 that the employee was supervising the



work of two junior Engineers, who were working under him, which was also admitted by the employee in his cross examination, as W.W.1. Even according to the employee, the nature of duties and functions discharged by him was of supervisory. As such, applying the pre-amended provision of section 2(s), since the employee was terminated from service on 08.10.2003 and was drawing salary of more than Rs.1,600/-, he does not come within the definition of "workman". Therefore, we hold that the employee is not a "workman" as defined under section 2(s) and is not covered by the provisions of the I.D. Act. In view of the same, the order of the High Court upholding the finding of the Labour Court that the employee was a "workman" within the definition of post-amended section 2(s), is liable to be set aside. ”

15. Hence, keeping in view the totality of the fact and circumstances, where the petitioners have claimed that they were discharging particular nature of duties which will bring them under the definition of the “workman”, the findings recorded by the Labour -Cum- Conciliation Officer in the impugned order is contrary to the settled principle of law and that too without allowing the petitioners to place on record the evidence to support their contentions and the same cannot be accepted. **The Impugned order is accordingly set-aside. The conciliation officer is directed to refer the matter to the labour Court for deciding the claim of the petitioners.**

16. It may be noticed that before deciding claim of the petitioners on



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merit, the labour Court will record the finding as to whether in the facts and circumstance of the present case keeping in view the evidence which will come on record before the Court, the petitioners are “workman” or not.

17. Present petitions are allowed in above terms.

18. Pending miscellaneous application, if any, also stands disposed of.

19. A photocopy of this order be placed on the file of connected case.

**(HARSIMRAN SINGH SETHI)
JUDGE**

18.03.2025

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