
(2016) 05 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Writ Petition No. 884 of 2008.

Dharampal Singh

APPELLANT

Vs

Manager Gulshan Chemicals Ltd. and another.

RESPONDENT

Date of Decision : 12-05-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2016) 3 CLR 530 : (2016) 2 DNJ 772 : (2016) 150 FLR 352

Hon'ble Judges : Anupinder Singh Grewal, J.

Bench : Single Bench

Advocate : Suresh Kashyap, Advocate, for the Appellant; R.K. Mathur, Sr. Counsel assisted by Ajay Tantia, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Anupinder Singh Grewal, J. - The petitioner has challenged the award of the Labour Court dated 20.08.2007 whereby the claim of the petitioner for reinstatement in service has been rejected.

2. The petitioner was appointed as Electrical Engineer with respondent No.1 on 27.01.1989. It is stated that he was not allowed to work with effect from 29.07.2002 and his services were terminated on 05.02.2003.

3. The petitioner raised an industrial dispute which was referred to the Labour Court by the appropriate Government. The petitioner filed his statement of claim. However, as the employer/Management did not put in appearance before the Labour Court, the Labour Court proceeded ex parte and vide award dated 20.08.2007 the claim of the petitioner was rejected on the ground that he does not fall under the definition of "workman" as defined in the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

4. Learned counsel for the petitioner has contended that the Labour Court has erroneously passed an ex parte award, although the petitioner had substantiated his claim as a workman and without any rebuttal by the Management, finding

that he is not a workman could not have been recorded by the Labour Court. He has further contended that merely because the designation of the petitioner was Electrical Engineer, that by itself is not enough to hold that the petitioner is not a workman. In support of his submissions, he has placed reliance upon the judgments of the Supreme Court in the case of Anand Regional Corporative Oil Seedsgrowers Union Ltd. v. Shailesh Kumar Harshadbhai Shah [(2006) 6 SCC 548] and Ved Prakash Gupta v. Delton Cable India (Private) Ltd. Faridabad [(1984) 2 SCC 569].

5. Per contra, learned Senior Counsel for the respondents has submitted that the petitioner had been charge-sheeted on 07.08.2002 for several acts of misconduct. He had submitted his reply thereto on 20.09.2002 and after considering his reply, the enquiry officer found all the charges to be proved and the petitioner was dismissed from service vide order dated 05.02.2003. He has also contended that as the petitioner was employed on a salary of Rs. 9,550/-, he cannot be considered to be a workman.

6. I have heard learned counsel for the parties and perused the writ petition.

7. Indisputably, the petitioner was appointed as Electrical Engineer with the respondent No.1 in the year 1989. At the time when his services are stated to have been terminated/dispensed with in the year 2002-2003, he was drawing his salary of Rs. 9,550/-. The "workman" is defined in Section 2(5)(s) of the Act, which is reproduced hereunder:-

"5[(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 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.]"

8. A bare reading of Section 2(5)(s) reveals that any person employed in supervisory capacity and drawing above Rs. 10,000/- (as per amendment with

effect from 15.09.2010) would not fall under the definition of workman. Prior to the amendment with effect from 15.09.2010, the amount of wages was Rs. 1,600/-. As the claim had been preferred by the petitioner in the year 2003, the maximum wages as prescribed in the definition at that time were Rs. 1,600/-. The petitioner, who was drawing a sum of Rs. 9,550/- at that time (2002-2003) which is almost six times the maximum limit of Rs. 1,600/-, cannot by any stretch of imagination be construed to be a workman.

9. It is apt to notice that the petitioner/workman in his affidavit filed before the Labour Court, had himself stated that he was working as an Electrical Engineer and performing the technical and engineering work. The petitioner has not led any evidence before the Labour Court which would indicate that he was not performing supervisory function and he was working as a mere mechanic or technician which would not exclude him from the definition of workman, even though he was drawing salary beyond the maximum amount prescribed therein. It was for the petitioner to have led evidence in support of his claim and merely because the Management was not heard in the matter, cannot be a ground to set aside the findings recorded by the Labour Court. The petitioner has to, at least, prima facie prove his case and cannot rely entirely upon the stand taken by the respondents in their evidence or cross-examination to build his case.

10. The judgment in the case of Anand Regional Corporative Oil Seedsgrowers Union Ltd. (supra) is distinguishable on facts as the workman therein was working as Assistant Engineer and he had been able to prove that he was not employed in supervisory capacity. There is no mention in the judgment about the wages or salary which the workman therein was drawing. In the case at hand, not only the petitioner has not been able to make out any case that he was not working in the supervisory capacity but he was also drawing a salary of Rs. 9,550/- which is way beyond the maximum limit of Rs. 1,600/- as prescribed in the Act.

11. The judgment in the case of Ved Prakash Gupta v. Delton Cable India (Private) Ltd. (supra) is also distinguishable as the workman therein was employed as a security Inspector at the gate of the factory premises and hence, it was held that such a function cannot be held to be managerial or supervisory in nature.

12. It is well settled that the interference by this Court in the award of the Labour Court would be called for only in case of patent illegality or the finding being perverse based on no evidence. Even if on the facts and circumstances another view is possible, this Court will not interfere as it does not exercise appellate jurisdiction so as to re appreciate the evidence. Reference may be made to the judgment by the Supreme Court in the case of General Manager, Oil and Natural Gas Commission, Silchar v. Oil and Natural Gas Commission Contractual Workers Union [(2008)12 SCC 275].

13. In the aforementioned facts and circumstances, I do not find any manifest

illegality in the judgment of the Labour Court which would warrant interference while exercising writ jurisdiction. In the result, the petition is dismissed with no order as to costs.