

(2023) 04 DEL CK 0024

In the Delhi High Court

Case No : Letter Patent Appeal No. 153 Of 2023

Jagbir Singh Malik

APPELLANT

Vs

Energy Infrastructure India Ltd.

RESPONDENT

Date of Decision : 11-04-2023

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(s), 2(z), 25F
Code of Civil Procedure, 1908 — Section 151

Citation : (2023) 04 DEL CK 0024

Hon'ble Judges : Satish Chandra Sharma, CJ; Subramonium Prasad, J

Bench : Division Bench

Advocate : ` Harmeet Singh Bhasin

Final Decision : Dismissed

Judgement

Satish Chandra Sharma, CJ

1. The present Letters Patent Appeal (LPA) is arising out of order dated 11.01.2023 passed in W.P.(C.) No. 3729/2019, by which the learned Single Judge has dismissed the writ petition preferred by the Appellant upholding the Award dated 07.03.2019 passed by the Labour Court in LID No.398/16 (Old No.347/14) titled Sh. J.S. Malik v. M/s. Energy Infrastructure (India) Ltd, wherein the Labour Court has held that the Appellant/ Claimant is not a 'Workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (I.D. Act).

2. The facts of the case reveal that the Appellant was appointed on 28.04.1989 as Secretary in the services of M/s. Wimco Ltd.

3. The facts further reveal that in the year 1995 M/s. Energy Infrastructure was incorporated in its erstwhile name, i.e. Wimco Petrogas Limited under the control of Mr. Shiv Kumar Jatia, Managing Director of Wimco Limited and the Respondent No.1 M/s Energy Infrastructure (India) Ltd was based out of the same premises as Wimco Limited. The Appellant was transferred to M/s Energy Infrastructure (India) Ltd vide letter dated 24.02.1998, with the transfer being in effect from

01.04.1998 and he was appointed as Deputy Manager in M2 Grade at a monthly salary of Rs.6500/-.

4. The Appellant was later on awarded a higher designation and a higher salary and he was designated as Senior Coordinator – Database vide letter dated 17.12.2002 and he started working as Senior Coordinator on a salary of Rs.3,03,596/- per annum.

5. The facts further reveal that while serving with Respondent No.1, the Appellant completed his LL.B. Degree, and finally, enrolled with Bar Council of Delhi on 22.09.2009. As the Appellant was registered with the Bar Council of Delhi, the Respondent No.1 Company vide order dated 05.10.2009 entrusted the job of Executive Assistant to the Executive Director to the Appellant and he was also made in-charge of handling legal and liaisons matters of the company. The services of the Appellant were terminated vide termination letter dated 08.10.2010. In terms of Clause 4 of the Appointment letter dated 17.12.2002, he was paid Rs. 4.34 Lakhs being 3 months' salary in lieu of 3 months' notice period. The Appellant accepted the amount, utilized the same and also served a legal notice dated 18.10.2010 to the Respondent seeking compensation. A reply dated 03.11.2010 was given to the Appellant by the Respondent justifying their action. The Appellant was informed that as per the terms and conditions of his appointment order, his services have been put to an end and he has been paid 3 months' salary in lieu of notice period.

6. The Appellant before this Court thereafter took shelter of the provisions of the I.D. Act and filed a statement of claim before the Labour Court stating that he is a 'Workman' and the action of the Management/ Respondent in terminating his services is illegal, wrongful and in violation of Section 25-F of the I.D. Act. The Workman sought reinstatement, continuity in service, full back wages as well as consequential reliefs from the Labour Court. The Management did file a reply to the statement of claim and it was contended before the Labour Court that the Workman in question has been disengaged in terms of the appointment letter dated 17.12.2002 especially in line with Clause 4 of the Appointment Letter which provides for termination of services by either giving 90 days notice, or 3 months' salary in lieu thereof. The employer contended that the Appellant is not a 'Workman' under Section 2(s) of the I.D. Act; he was enrolled as an Advocate on 22.09.2009 and; he was performing the duties of Assistant Manager (Legal & Liaison) and, therefore, by no stretch of imagination, could he be treated as a 'Workman'.

7. The Labour Court framed the following issues:

(i) Whether the Claimant is covered within the definition of 'Workman' provided under Section 2(s) of the I.D. Act.

(ii) If issue No.(i) is decided in favour of the Claimant, whether his services were illegally or unjustifiably terminated by the Management.

(iii) Relief.

8. The Labour Court has finally passed an Award on 07.03.2019 and paragraphs 13 to 19 of the Award passed by the Labour Court read as under:

"13. Since, the perusal of the appointment letter dated 24.02.1998 reveals that this claimant was appointed as "Deputy Manager" on dated 24.02.1998 and perusal of the various documents placed on record reveal that this claimant has written himself as Assistant Manager (Legal and Liaison).

14. Perusal of letter dated 13.03.2009 reveals that this claimant has written beneath his signature as Assistant Manager (Legal and Liaison) and similarly letter dated 18.03.2010 also reveals that J.S. Malik as "Assistant Manager" "(Legal and Liaison)" is mentioned beneath his name, since, the employee appraisal form for the year 2006 filed by this claimant reveals that this claimant has mentioned about the various independent decisions and the assignments as mentioned by the claimant in his Employee Appraisal Form for the year 2006 reveals that he was performing managerial duties and similarly, copy of the Board of Director meeting held on 27.09.2006 clearly manifests that claimant was authorized to file/institute suit /appeal /applications /Crl. Complaints / review /writ etc. and also to compromise/settle or withdraw the suit, and to engage solicitors and to do all such acts; which were necessary and expedient for the interest of the company and since, perusal of the copy of the application for grant for anticipatory bail filed in the Hon'ble High Court of Gujarat at Ahamdabad by the claimant reveals that he had impleaded that he worked as Assistant Manager, whereas, copy of the first appointment letter dated 24.02.1998 reveals that he was appointed as Deputy Manager. Whereas, the document of restructuring of the terms of appointment dt. 17.12.2002, clearly manifests that it is mentioned therein that the employment of this claimant could be terminated at any time by either party by way of giving 90 days notice in writing and accordingly, on dated 08.10.2010, the services of the claimant were terminated by way of giving all salary and benefits for 90 days. Since, copy of the roll of the Bar Association of Saket reveals that this claimant has enrolled himself as an Advocate in the year 2009 and thus, it is clear that this claimant was an advocate by profession on the date of termination of his services.

15. Since, their lordship of Supreme Court in Muir Mills Unit of NTC (UP) Ltd. Vs. Swayam Prakash Srivastava and anr. was pleased to observe that:

"18. In the fact situation of this case, from the perusal of the job profile of respondent no.1 and after examining Section 2(z) of the U.P.I.D. Act it can be said that, respondent no.1 did not fall into the category of workman as contended by the respondents as respondent no.1 falls under exception(iv) of Section 2(z) of the U.P.I.D. Act, 1947. The case of Sonipat Cooperative Sugar mills Ltd. V. Ajit Singh MANU/SC/0105/2005: (2005) ILLJ1122SC, can be referred to in this context. Here the respondent was appointed to the post of "Legal Assistant" the qualification for which was degree in law with a practicing

licence. The nature of his duties was to prepare written statements and notices, recording enquiry proceedings, giving opinions to the management, drafting, filing the pleadings and representing the appellant in all types of cases. He was also conducting departmental enquiries against workmen in the establishment. He was placed in probation and his post was dispensed with, following which he was terminated. He raised an industrial dispute.”

“The question before the Labour Court was “whether the applicant was a workman” Labour Court held he was a workman, which was upheld by High court, management preferred as appeal to this Court. Following the decisions of this Court in a Sundarambal vs. Govt. of Goa, Daman and Diu MANU/SC/0282/1998: (1989) ILLJ61SC, HR Adyanthaya vs. Sandoz (India) Ltd. MANU/SC/0525/1994: (1995) ILLJ303SC and rejecting SK Verma vs. Mahesh Chandra (supra), this court held:

“Thus, a person who performs one or the other jobs mentioned in the aforementioned provisions only would come within the purview of the definition of workman. The job of a clerk ordinarily implies stereotype work without power of control or dignity or initiative or creativeness. The question as to whether the employee has been performing a clerical work or not is required to be determined upon arriving at a finding as regards the dominant nature thereof. With a view to give effect to the expression to do ‘any manual, unskilled, skilled, technical, operational, clerical or supervisory work’, the job of the employee concerned must fall with one or the other category thereof. It would not be correct to contend that merely because the employee had not been performing any managerial or supervisory duties, ipso facto he would be a workman.”

...The Respondent had not been performing any stereotype job. His job involved creativity. He not only used to render legal opinion on a subject, but, also used to draft pleadings on behalf of the appellant as also represent it before various courts/authorities. He would also discharge quasi-judicial functions as an enquiry officer in departmental enquiries against workman. Such a job, in our considered opinion, would not make him a workman.

Their Lordship had further observed that:

“Furthermore if we draw a distinction between occupation and a profession we can see that an occupation is a principal activity (job, work or calling) that earns money (regular wage or salary) for a person and a profession is an occupation that requires extensive training and the study and mastery of specialized knowledge, and usually has a professional association, ethical code and process of certification or licensing. Classically, there were only three professions: ministry, medicine, and law. These three professions each hold to a specific code of ethics, and members are almost universally required to swear some form of oath to uphold those ethics, therefore, “professing” to a higher standard of accountability. Each of these professions also provides and requires extensive training in the meaning, value, and importance of its particular oath in the practice

of that profession.”

“A member of profession is termed a professional. However, professional is also used for the acceptance of payment for an activity. Also a profession can also refer to any activity from which one earns one’s living, so in that sense sport is a profession. Therefore, it is clear that respondent no.1 herein is a professional and never can a professional be termed as workman under any law.”

“And also held “In view of our finding that the respondent is not a workman.”

16. Whether the claimant has relied upon the judgment passed by the lordship of High Court of Delhi in case K.H. Pandhi vs. The Presiding Officer, Additional Labour Court and anr. 110(2004), Delhi Law Times 101 and this court has perused the said judgment, but, the ratio decidendi of this judgment cannot be applied to the case in hand, as in the said case the claimant was an accountant, whereas, claimant in the present case is an advocate.

17. Since, from the assignments, assigned to this claimant (as the claimant mentioned in Employee Appraisal from in the year 2006) and from the various undisputed documents placed on record by both the parties, it is clear that this claimant was working as Assistant Manager (Legal and Liaison) at the time of termination of his services on dated 08.10.2010 and this claimant was performing managerial duties. He was also authorized to file/institute suit/appeal/applications/Crl. Complaints/review/writ etc. He was also authorized to compromise/settle or withdraw the suit and to engage solicitors and to do all such acts, which were necessary and expedient for the interest of the company and all such acts of the claimant involved creativity and from all such acts of the claimant, it is also clear that he was not doing stereo typed job and he was competent to take important decisions and he was authorized to sign the pleadings on behalf of the management. He had also enrolled as an advocate way back in the year 2009 i.e. prior to the termination of his services and the law laid down by the lordship of Supreme Court in Muir Mill Unit of NTC (UP) Ltd. Vs. Swayam Prakash Srivastava (supra) leaves no iota of doubt that – the person who is enrolled at the roll of the Bar Counsel is a professional and he cannot be termed as workman within the meaning of Section 2 (s) Industrial Disputes Act. Therefore, relying upon the judgment passed by the Hon’ble Supreme Court of India, in the Muir Mill Unit of NTC (UP) Ltd. Vs. Swayam Prakash Srivastava (supra) I am inclined to hold that this claimant is not covered within the definition of workman as provided U/s 2 (s) of Industrial Disputes Act. Accordingly, issue no.1, which is treated as preliminary issue is decided against the claimant and in favour of the management and in view of determination of issue no.1 against the claimant, the claim of the claimant does not fall within the meaning of an industrial disputes, since, this claimant is not a workman, so, he is not entitled to get any relief from this court, therefore, the claim of the claimant is hereby dismissed and miscellaneous applications filed by the claimant are also deemed to have been dismissed.

18. In the above said terms, the application filed by the management u/s 151 of CPC for treating issues no.1 as preliminary issue is disposed off.

19. A copy of this Award be sent to the Deputy Labour Commissioner, Government of NCT of Delhi of Distt./Area concerned for publication as per rules and judicial file be consigned to Record Room as per rules."

9. The Appellant, being aggrieved by the Award passed by the Labour Court, came up before this Court by filing a writ petition, being W.P.(C.) No.3729/2019, and the learned Single Judge taking into account the judgment delivered in the cases of Muir Mills Unit of N.T.C. (U.P) Ltd. Vs. Swayam Prakash Srivastava & Anr., Appeal (Civil) 1839/2005 decided on 01.12.2006; Bhim Sain Vs. The Govt. of NCT of Delhi, 2014 SCC Online Del 849; Nitya Nand Sinha Vs. HL Promoters Private Limited and Others, W.P.(C.) No. 9843/2018 decided on 04.12.2019; and Mileage Advertising (P) Ltd. Vs. Goutam Bhattacharjee and Others, W.P. No.609/2016 decided on 19.07.2019; has arrived at a conclusion that the Appellant was working on a managerial post, and can by no stretch of imagination, be treated as a 'Workman' under Section 2(s) of the I.D. Act and has upheld the Award passed by the Labour Court.

10. Paragraphs 27 to 32 of the order passed by the learned Single Judge in W.P. (C.) No.3729/2019 are reproduced as under:

"27. In view of the foregoing discussion, the legal position on the question of whether an employee would fall within the ambit of the term 'Workman' as defined under Section 2(s) of the Industrial Disputes Act, 1947 is, thus, clear to the following effect:

- i. That any person working in a managerial or administrative capacity cannot be considered to be a 'Workman' as defined under Section 2(s) of the Industrial Disputes Act, 1947.
- ii. Even if the duties being performed by the said person are multifarious in nature, the primary nature of the duty or the dominant purpose of employment needs to be ascertained, in order to decide whether a person is a 'Workman', or not.

28. Applying the above rationale to the facts of the present case, this Court has examined the various documents on record in order to ascertain the primary nature of the duties performed by the Petitioner. The documents on record reveal the following:

- i. In the self-appraisal forms which have been filled by the Petitioner himself, he admits to performing the following duties:

- * Coordination with various governmental authorities;
- * Coordination with officials in the Government for procurement of land;
- * Performance of smooth and cost-effective administration;

- * Arrangement of bank guarantees for the company;
- * Playing of an active role in marketing;
- * Coordination between bottling plants;
- * Giving of recommendations for cost-cutting.

ii. The Petitioner has regularly coordinated with lawyers engaged by the Respondent - Company. In the communications addressed by the Petitioners to lawyers, he described himself as 'Team Leader - Legal Cell', 'Assistant Manager - Administration & Coordination', 'Assistant Manager - Legal & Liaison'.

iii. The Petitioner has submitted replies to the police officials in respect of some complaints against the company and even in those letters he describes himself as 'Team Leader - Legal Department'.

iv. The Petitioner has also addressed legal notices on behalf of the company describing himself as 'Assistant Manager - Administration and Coordination'.

v. The Petitioner has rendered legal advice and opinion to the Respondent - Company from time to time.

vi. The Petitioner was entrusted with the task of updating the Respondent - Company and its Management regarding the status of various legal cases of the Management.

vii. The Petitioner held delegated authority from the Board of Directors of the Respondent - Company for instituting legal proceedings, criminal complaints, engaging lawyers, etc. on behalf of the Respondent - Company.

viii. The Petitioner signed pleadings as an authorised representative on behalf of the Respondent - Company.

ix. The Petitioner executed vakalatnamas on behalf of the Respondent - Company.

x. The Petitioner has appeared as a witness on behalf of the Respondent - Company in various legal proceedings.

xi. The Petitioner has appeared before District Courts, attended court proceedings, and has even pleaded in certain matters before the Courts and other fora. A few instances of the same placed on record are set out below:

Email dated 10th November, 2009

"Although I briefed the district judge about the facts myself, yet to strengthen our claims, I am planning to have counsel Mr. B.S. Randhawa to assist me in the court of Ms. Ina Malhotra for tomorrow's proceedings and if required, till an order is passed for transfer of case to the courts in Rewari/Gurgaon, jurisdiction of judgment debtor/respondent.

FYI please

Regards,

JS Malik"

Email dated 3rd March, 2010

"The undersigned visited and attended the district court in Rewari with regard to the subject case. The notice sent by the court to the judgment debtor, returned duly accepted by the father of the judgment debtor.

Initially the court asked me to wait until the judgment debtor submits the objection against the decree executed against him but till afternoon he did not turn to the court and finally court pronounced ex-parte decision in our favour fixing the next hearing to be held on 20.3.2010.

On the next hearing we will have to submit to the court all relevant documents with regard to judgment debtor's assets in Rewari as well as in Gurgaon, after which the judge shall appoint a liquidator for his assets in Rewari and issue order for Executive magistrate for disposal of assets in Gurgaon, to recover the award amount.

FYI please.

Regards,

JS Malik"

Email dated 19th March, 2010

"The subject case was heard in the court of Mr. Vijay Shankar (link magistrate Prashant Sharma) Respondent was available with his counsel.

Every case listed for today was passed over for 4th of October, 2010. I pleaded in the matter and requested the magistrate to shorten it. He accepted my request and marked it for hearing for 4.8.2010.

FYI pleased

Regards,

JS Malik"

29. The performing of the above functions and rendering of the above duties by the Petitioner is not in dispute. A perusal of the documents placed on record clearly demonstrates that the Petitioner was not a 'Workman' and was, in fact, the whole and sole of the Legal Department of the Respondent - Company. Thus, this Court has no doubt that the Petitioner's role was managerial in nature, and he was discharging duties in the capacity of a lawyer representing the Respondent - Company.

30. The Respondent - Management has raised issues relating to whether a

person enrolled with the Bar Council could be in part-time service or employment with a company. The said issue need not be gone into in this case, inasmuch as it is usual for lawyers to be engaged by companies on a retainer basis for giving legal advice and consultation.

31. In view of the primary nature of the duties being performed by the Petitioner, as also, the settled legal position as laid down by the Supreme Court in *Muir Mills*(supra) and the subsequent decisions, the impugned Award dated 7th March, 2019 passed by the Labour Court is not liable to be interfered with and is upheld by this Court.

32. With the above observations, the present petition is dismissed. All pending applications are also disposed of. No order as to costs."

11. The Appellant has filed the present appeal before this Court on various grounds. The first ground raised by the Appellant is that the learned Single Judge ought to have passed the order as per the settled law that "not only justice be done, but it must also be seen to be done".

12. The second ground raised by the Appellant before this Court is that the learned Single Judge has committed an error in dismissing the claim of the Appellant without considering that the mixed question of fact & law that arises in an industrial dispute can only be decided after leading evidence through witnesses, and in the present case, opportunity to lead evidence through witnesses was denied to the Appellant.

13. The next ground of challenge raised by the Appellant has been raised stating that the learned Single Judge ought not to have accepted the misrepresentation on the part of the Respondent by relying upon letters dated 24.02.1998, 17.02.2002 as well as Resolutions of the Board dated 27.09.2006, 07.03.2010 and 08.10.2010. He argues that these were the letters/ Resolutions casting duties other than primary duties fixed upon the Appellant. He submits that his role was in the nature of a Steno-Typist Clerk with general duties and he was merely performing the other duties as assigned to him from time to time.

14. Another ground has been raised by the Appellant stating that the learned Single Judge ought to have considered the Rules and procedures as the handmaid of justice and not as its mistress. Due to procedural discrepancies, if any, the Appellant cannot be denied the opportunity of natural justice guaranteed by legislation.

15. It has also been stated that the litigant should not suffer on account of misdemeanor, inaction, deliberate or omission of his Advocate to deprive him from natural justice.

16. Learned Counsel for the Appellant has vehemently argued before this Court that the Appellant was a 'Workman'; he was a Steno-Typist Clerk and performing non-managerial duties as per the HR policy of the Management, and by no stretch of imagination, an Award could have been passed holding that the

Claimant is not a 'Workman' and the Award passed by the Labour Court and the order passed by the learned Single Judge deserve to be set aside and he is entitled to reinstatement in service with full back wages.

17. Heard learned Counsel for the Appellant and perused the record.

18. The undisputed facts of the case are that the Award passed by the Labour Court reveals that the Labour Court has upheld the primary objection raised by the employer that the present Appellant is not a 'Workman', and in those circumstances, no relief has been granted to him. The Award passed by the Labour Court has been upheld by the learned Single Judge.

19. The relevant statutory provisions, as contained in the I.D. Act, for adjudicating the present LPA are reproduced as under:

"Section 2(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.

Section 25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

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(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

20. The statutory provisions governing the field provide safeguard to a ‘Workman’ in case of retrenchment and Section 25-F of the I.D. Act is applicable only in case the person is a ‘Workman’.

21. The facts of the case reveal that the Appellant was inducted into service by an order dated 26.04.1989, relevant extract whereof reads as under:

“ April 26, 1989

Mr. Jagbir Singh Malik,

333, Deoli,

New Delhi-110062.

Dear Sir,

Further to our letter dated February 2, 1969, we are pleased to inform you that you have been taken in the Junior Management Cadre of the Company with effect from 1st May 1989 on the following terms and conditions:

1. ASSIGNMENT

Your present assignment will be that of “SECRETARY” in Match Division, New Delhi. However, the Company may reassign or transfer you to any other subsidiary or associate Companies or agencies anywhere in India.”

22. The aforesaid appointment order makes it very clear that he was appointed in the Junior Management Cadre of the company and was posted as a Secretary in the Match Division, New Delhi.

23. The facts further reveal that in the year 1995, Respondent No.1/ M/s Energy Infrastructure India Ltd. was incorporated in its erstwhile name, i.e. Wimco Petrogas Limited, under the control of Mr. Shiv Kumar Jatia, Managing Director of Wimco Limited, and the Appellant was officially transferred to M/s Energy Infrastructure India Ltd. vide letter dated 24.02.1998 and w.e.f. 01.04.1998 he was appointed as Deputy Manager in M2 Grade and was paid a salary of Rs.6,500/- per month. The appointment letter dated 24.02.1998 is reproduced as under:

“ 24th February 1998

Mr. J.S. Malik,

House No.6, Gali No.3

Gazipur Village,

Delhi – 110096

SUB: APPOINTMENT LETTER

Dear Sir,

This is in reference to your application and the discussions regarding your appointment in Wimco Petrogas Limited. We are pleased to appoint you in the company and the terms and conditions of your service will be as under:

1. ASSIGNMENT

Your initial assignment will be that of Deputy Manager in M2 Grade. The company may however reassign and/ or transfer you to any other position within the Company or in any of its subsidiaries or associated Companies or agencies anywhere in India. You are required to join the services of the Company on or before 1.4.1998.

2. SALARY

Your monthly consolidated salary will be Rs.6500/- (Rupees Six thousand five hundred only) in the Grade M2.

3. HOUSE RENT ALLOWANCE

You will be paid Fixed House Rent Allowance Rs.2500/- (Rupees two thousand five hundred only) per month. On transfer from your present location to another location at the discretion of the Company you will either be provided with company arranged accommodation subject to availability or house rent allowance as applicable to your grade.

4. GRADE ALLOWANCE

You will be entitled to Grade allowance of Rs.3500 (Rs. Three thousand five hundred only) per month.

5. REIMBURSEMENT OF LEAVE TRAVEL EXPENSES.

After completion of 12 months services with the Company you and your family (spouse and dependent, non earning children below the age of 25) will be entitled to leave travel assistance of Rs.9000/- (Rs. Nine thousand only) per year as per Company rules.

6. MEDICAL:

You will be reimbursed Medical Expenses of yourself and your family, to a maximum of Rs.9000/- (Rupee nine thousand only) per annum, in addition, the company shall arrange for yourself, spouse and dependent children up to the age of 25 years, medical hospitalisation insurance policy with a GIC subsidiary as applicable to your grade.

7. EX-GRATIA IN LIEU OF ANNUAL BONUS

On completion of one year service in the company, you will be paid a lumpsum of

Rs.6000/- (Rupees Six thousand only) as ex-gratia in lieu of Annual Bonus.

8. SEPARATION:

Your services may be terminated by the Company on three months notice or payment of consolidated salary in lieu thereof. Similarly, you may leave the Company's services after giving three months notice or payment in lieu thereof.

9. RETIREMENT BENEFITS:

Provident Fund:

Both the Company and yourself will contribute to the Provident Fund at the rate applicable from time to time. The present rate of contribution is 12% of consolidated salary.

Superannuation:

The Company policy for Superannuation benefits is under formulation and the benefits shall be extended to you with effect from the date of joining.

Gratuity

Gratuity shall be payable after completion of a minimum period of five years service with the Company. The entitlement to gratuity shall be as per the Payment of gratuity shall be as per the Payment of Gratuity Act 1972 as amended from time to time.

10. GENERAL

You will be governed by the Rules and Regulations of the Company in force as amended from time to time.

You shall devote your whole time and attention to the business of the Company and shall not be entitled or engaged or participate in or be interested in any other duties, work, business or occupation of any kind or nature and shall not take whole or part time employment with any other person, firm or organization in any capacity.

All correspondence addressed to you or by you to or by the Company including press and other copies of such correspondence and all vouchers, book, records including all notes or records of business or prices or other market data samples and/ or other papers belonging to the Company's business which shall come into your possession in the course of your employment shall be the absolute property of the Company and you shall at any time during the services or upon termination thereof or for any reason whatsoever deliver the same to the Company without claiming any lieu thereon.

During the term of your employment with the Company or at any time thereafter you shall not use or disclose to any other Company, firm, organization or person any information concerning the secrets, business or affairs of the company, nor

countenance any act prejudicial to the interest of the Company.

If during your service you make any invention or improvement relating to the manufacture of any of the materials or products in which the Company is interested or relating to machinery used for the manufacture of the said materials or products, all rights in respect of such inventions or improvements shall belong to the Company and you will if required at the cost of Company cause, such invention or improvements to be patented in such countries as the Company may desire and concur in all things necessary to cause or procure any patent of patents so obtained to be vested in the company or as it may be added and in the meantime hold such patent or patents in trust for the Company.

We trust the above terms and conditions are acceptable to you in which case, please sign and return two copies of this letter as a token of the receipts.

Your faithfully,

For WIMCO PETROGAS LIMITED

Sd/-

(SHIV JATIA)

DIRECTOR

I confirm acceptance of the above

Sd/-

(J.S. MALIK)."

24. The aforesaid appointment letter makes it very clear that he was appointed as Deputy Manager in M2 Grade and the appointment letter also provides for termination of services by giving 3 months notice from either side or payment of consolidated salary of 3 months in lieu thereof. While the Appellant was working as Deputy Manager in M2 Grade, on account of restructuring, another order was issued on 17.12.2002 and the Appellant was designated as Senior Coordinator – Database at an annual salary of Rs.3,03,596/-. The order dated 17.12.2002 is reproduced as under:

"We are pleased to inform you that Energy Infrastructure (India) Limited has revised your emolument package & service conditions effective 01.01.2003 in line with current competitive and performance oriented environment. We are confident that this forward looking measure would spur you to perform better and focus on key result areas.

Assignment

1. you are designated as Senior Co-ordinator - Database in line with your current assignment/responsibilities and nature of duties in employment level E-3 (New) with effect from 01.01.2003- 'You would be currently located at New Delhi.

It should be clearly understood that you might from time to time be transferred in the services of the Company to any of the Company's branches and/or divisions in India. You may also be transferred/deputed to the services of an affiliate/associate/subsidiary company and the expression "The Company" used in this letter will include any such Company in which you may for the time be employed.

Salary and Allowances

2a. Your gross compensation (cost to the Company) will be Rs. 3,03,596/- (Rupees Three lakh three thousand five hundred ninety six only) per annum (As per the detailed break-up in Annexure-I). Your compensation will be subject to taxes at source as applicable before payment.

2b. You will be entitled to allowances/ perquisites/ facilities/ reimbursements like Provident Fund, Leave, Gratuity, Leave Travel Allowance, Medical Reimbursement, Insurance, in accordance with the Law/Company Policy from time-to-time, as mentioned in the enclosed compensation structure (Annexure-1).

NOTICE:

Your employment on confirmation may be terminated at any time by either party giving to the other 90 days notice in writing of its mere intention in this behalf. The Company may terminate the services of any confirmed employee in the services of the company with immediate effect by paying notice pay in lieu of the notice period as stated above. The employee may also end his services in the Company with immediate effect by paying notice pay in lieu of the said notice period."

25. It is pertinent to note that while the Appellant was working as Senior Coordinator – Database, he completed his LL.B. Degree and was also enrolled with the Bar Council of Delhi on 22.09.2009. The Appellant – as he was a registered Advocate, was assigned further higher duties and was assigned the job of "Executive Assistant to the Executive Director" and the relevant extract of the e-mail dated 05.10.2009 – which forms part of the record, is reproduced as under:

"Subject: EXECUTIVE ASSISTANT TO EXECUTIVE DIRECTOR

Ladies and Gentlemen,

Please note that with immediate effect Mr. J.S. Malik would work as Executive Assistant to the Executive Director Mr. Sanjay Banthiya, in addition to his handling the legal and liaisons matters of the company.

Kindly extend your usual fine co-operation to him."

26. Prior to his termination – which was as per the terms & conditions of his employment, the documents on record make it very clear that the Appellant

during his employment completed his LL.B. Degree; enrolled as an Advocate and also became a member of Saket Bar Association; he was appearing in Courts on behalf of the Management; he was advising lawyers, in fact, he was working as the Head of the Legal Department of the Company; and therefore, by no stretch of imagination, it can be held that the Appellant was discharging the duties of a 'Workman'. In fact, he was discharging the duties which are managerial in nature.

27. The learned Single Judge was justified in placing reliance in the case of Muir Mills (supra) and the paragraphs 38-40, 48 & 54 of the said decision read as under:

"38. Furthermore, if we draw a distinction between occupation and profession we can see that an occupation is a principal activity (job, work or calling) that earns money (regular wage or salary) for a person and a profession is an occupation that requires extensive training and the study and mastery of specialized knowledge and usually has a professional association, ethical code and process of certification or licensing. Classically, there were only three professions: ministry, medicine, and law. These three professions each hold to a specific code of ethics, and members are almost universally required to swear some form of oath to uphold those ethics, therefore "professing" to a higher standard of accountability. Each of these professions also provides and requires extensive training in the meaning, value, and importance of its particular oath in the practice of that profession.

39. A member of a profession is termed a professional. However, professional is also used for the acceptance of payment for an activity. Also a profession can also refer to any activity from which one earns one's living, so in that sense sport is a profession.

40. Therefore, it is clear that respondent No.1 herein is a professional and never can a professional be termed as a workman under any law.

xxx

48. However, we are of the view that, the emoluments for the month of April, 1983 drawn by respondent No.1 was Rs.866.51 and the nature of duties of respondent No.1 were totally supervisory and he was designated as Legal Assistant in the Mill's litigation department. So the respondent is not entitled to raise an industrial dispute and also that his services are governed by all the rules and regulations, terms and conditions of service, administrative orders and/or standing orders presently in force or as may be framed, amended, altered or extended from time to time and as applicable to the employees of the Mills as is clear from the appointment order of 04.06.1982. Also it is clear from the facts that the appellants have complied with the interim order of the High Court

xxx.

54. In view of our finding that the respondent is not a workman, he will not be entitled to payment of half of the decreed amount which was ordered to be

deposited. If the amount has not been withdrawn so far, the Management is at liberty to withdraw the same from the court deposit. However we are not ordering costs.”

28. In the considered opinion of this Court, as the Appellant was working as a Lawyer and he was looking after all legal affairs of the company, by no stretch of imagination, can he be treated as a ‘Workman’. His duties, his salary and job profile does not make him a ‘Workman’ as defined under Section 2(s) of the I.D. Act, and therefore, the learned Single Judge was justified in upholding the Award passed by the Labour Court.

29. This Court has also gone through the judgements delivered in Bhim Sain (supra) and Nitya Nand Sinha (supra), wherein, in similar circumstances, the Petitioners therein were held not to be ‘Workman’ keeping in view the definition of ‘Workman’ as defined under Section 2(s) of the I.D. Act.

30. A person who is performing managerial duties or working in a supervisory capacity can never be treated as a ‘Workman’ as held by the Calcutta High Court in Mileage Advertising (P) Ltd. (supra).

31. In the considered opinion of this Court, the Appellant who was working in managerial/ administrative capacity can never be held to be a ‘Workman’ as defined under Section 2(s) of the I.D. Act, and even if it is presumed for a moment that the duties being performed by him are multifarious in nature, the primary nature of the duty or the purpose of employment needs to be ascertained in order to decide whether a person is a ‘Workman’, or not. The documents on record establish that the Appellant was coordinating with various Government Authorities; he was coordinating with officials in the Government for procurement of land; he was playing an active role in marketing; he was giving recommendations for cost cutting; he has regularly coordinated with lawyers engaged by the Respondent company; he was filing replies to notices issued by various Authorities and describing himself as Team Leader of the Legal Department; he has, in fact, performed all managerial activities and by no stretch of imagination, it can be said that he was working as a ‘Workman’ in the company as claimed by him.

32. In the considered opinion of this Court, the findings of fact arrived at by the Labour Court holding the Appellant not to be a ‘Workman’ is based upon cogent material and the findings of fact arrived at by the Labour Court have been affirmed by the learned Single Judge.

33. This Court – in the totality of circumstances and the material on record, is of the opinion that the Appellant was not at all a ‘Workman’ under Section 2(s) of the I.D. Act. In fact, he was the Head of the Legal Department of the company; he was performing managerial role and he was discharging the duties of a Lawyer representing the company; he was enrolled with the Bar Council of Delhi; he was member of the Saket Bar Association, and therefore, the question of interference in the peculiar facts & circumstances of the case does not arise.

34. Accordingly, the appeal stands dismissed.