

(2008) 03 KAR CK 0054

In the Karnataka High Court

Case No : Writ Petition No. 1931 of 2008

L.M. Glasfiber General Employees Union

APPELLANT

Vs

The Assistant Labour Commissioner and Conciliation Officer
and The Management, L.M. Glasfiber India Pvt. Ltd.

RESPONDENT

Date of Decision : 07-03-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 2 (s), 33

Citation : (2008) 03 KAR CK 0054

Hon'ble Judges : Subhash B. Adi, J

Bench : Single Bench

Advocate : T.S. Anantharam, for the Appellant; Jagadish Mundargi, GA for R-1, Subramanya, for Bhoopalam, Law Assts. for R-2, for the Respondent

Final Decision : Allowed

Judgement

Subhash B. Adi, J.—Petitioner has questioned the order dated 21.1.2008 passed by the first respondent produced at Annexure-MM.

2. Respondent No. 1 by the impugned order has declared that, one S.C. Kumaran and C. Narasimhamurthy of the petitioner - Union are not the workmen within the meaning of Section 2(s) of the Industrial Disputes Act (hereinafter referred to as the Act) and they will not be protected workmen.

3. Case of the petitioner is that, one S.C. Kumaran and C. Narasimhamurthy were declared as protected workmen for 2007-08. The Union was registered on 17.9.2005 as per Annexure-A. As per Annexure-AA and BB, both these workmen were promoted as Team Leaders w.e.f. 1st September 2005, interalia, fixing the key areas of responsibility and accountability. Based on the said letters, these workmen were appointed as Team Leaders. By letter dated 21.9.2005, the Management wrote a letter to the Assistant Labour Commissioner for cancellation of the registration of the Union. A notice was also issued on 4th October 2005 interalia alleging that, the Union is formed together with Team Leaders, which is

not acceptable to the Management and the Management cannot recognize the said Union. In this regard, the Assistant Labour Commissioner replied to the Management by letter dated 22.10.2005 interalia informing that the Union is registered under the provisions of the Trade Union Act 1926 and also on the directions of the Commissioner of Labour and the registration of the Union cannot be cancelled. In view of this, as many as 13 Team Leaders, who were appointed by the Management, requested the Management to relieve them from the said post with immediate effect. In support of the same, they also sent individual letters of resignation from the post of the Team Leader.

4. The Management by its letter dated 4.11.2005 rejected the request for resignation, alleging that, they have willfully participated in the whole process and accepted the promotion, further informed that, if the Team Leaders insist that they should be relieved from said position, the Management will be compelled to relieve them from the service of the Company on the submission of the unconditional resignation letter. On 27.9.2006, the Management reverted as many as 11 Team Leaders to their original position except these two workmen. The Management did not extend the said benefit to these two workmen are concerned. In turn, by charge sheet dated 17.8.2006, these two workmen were charged with an allegation that, their irresponsible act has resulted in theft of company's property, act of subversive of discipline and their act is prejudicial to the interest of the Company, breach of rules and called upon these two workmen to submit the reply. In the meanwhile, they were also kept under suspension. On 4.12.2006, the Enquiry Officer rejected the request of the workmen to seek the assistance of an outsider or an Advocate on the ground that the standing orders of the Company will not permit to engage the outsider or the Advocate. Based on the enquiry report, these two employees were dismissed from service by order dated 25.5.2007. The orders of dismissal are produced by the respondent along with the objection statement at Annexures-R2 and R3.

5. Earlier these workmen were treated as protected workmen for the period of 2006-07 and the said order was called in question by the Management in W.P. No. 17393/2006 as per Annexure-R5 and the said writ petition was dismissed in view of the period for which the workmen were declared as protected workmen had expired. However, liberty was given to the parties to raise all contentions in appropriate proceedings. The Union had requested the Management to declare 5 workmen as protected workmen including these two workmen by letter dated 5.3.2007 for the year 2007-08, and had also informed the Assistant Labour Commissioner on 6.3.2007. In this regard, representation was also made by the Union on 28.3.2007 to the Assistant Labour Commissioner to intervene in the matter and declare the office bearers including these workmen as protected workmen for 2007-08. A petition was also filed before the Assistant Labour Commissioner on 3.5.2007. Several requests were made to the Assistant Labour Commissioner as per Annexures-N, O, P and Q. However, on 31.7.2007, the Assistant Labour Commissioner declared only three workmen out of five workmen as "protected workmen". The said order was called in question before

this Court in W.P. No. 12513/2007. This Court remanded the matter to the Assistant Labour Commissioner to consider the application as to whether, these two employees were workmen as on the date of making application and entitled for declaring them as protected workmen. In this regard, in pursuance of the order of this Court, both the workmen gave representation on 20th September 2007 to the Assistant Labour Commissioner for declaring them as "protected workmen". However, again the Assistant Labour Commissioner rejected the request by his order dated 29.10.2007. Again, Union filed another writ petition in W.P. No. 17284/2007. The said writ petition was disposed of by this Court on 27.11.2007 *inter alia*, directing the Conciliation Officer to dispose of the matter afresh in accordance with law after providing an opportunity to both the parties. While disposing, this Court observed that, the Conciliation Officer has not considered the plea taken by the Union in its rejoinder dated 10.5.2007 and also the documents produced in support of the case. After disposal of the writ petition, again Union made one more representation on 11.12.2007 along with the necessary documents.

6. The respondent No. 2 - Management also filed documents in support of its case before the Conciliation Officer. The Conciliation Officer on appreciation of the evidence by his order dated 21.1.2008 held that the members of the Union are not the workmen and they cannot be declared as "protected workmen". It is this order called in question by the Union.

7. Sri. Anantharam, learned Counsel for the petitioner - Union submitted that the workmen in question were elected as office-bearers. The Union was registered. When the Management took objection of forming an Union by Team Leaders, all the workmen, who were promoted as Team Leaders i.e., as many as 13, they tendered their resignation and requested the Management to revert them back to original post. He submitted that, as per Annexures-K1 to K9 dated 27.9.2006, all other 11 workmen, who had sought for permission to revert them back to original post, were permitted and they were reverted back to the original position treating them as "workmen". However, insofar as these two workmen are concerned, by order dated 7.8.2006 produced at Annexure-CC and DD, an enquiry was initiated by issuing of article of charges and they were placed under suspension. He submitted that this order was passed in order to deny the request of these two workmen for reversion to original post. He submitted that, within 1? months from the date of suspension of these two workmen, all other 11 Team Leaders were reverted to the original place. However, as far as these two workmen are concerned, the enquiry was initiated only with intention to prevent them being declared as "protected workmen". The said enquiry is initiated after long lapse of time. He further submitted that, when the Union was registered comprising of these two workmen and other workmen, the Management took objection and in response to the same, all the 13 persons, who were promoted as Team Leaders, tendered resignation. If the action was to be taken, it should have been taken immediately. Having rejected their request earlier, subsequently choosing only 11 persons out of 13 and denying the said benefit to these two

workmen is nothing but adopting unfair labour practice and victimising these two workmen, with intention to prevent the Union being represented by effective workmen.

8. He also submitted that, though they were promoted as Team Leaders, they never worked as Supervisor or Manager, but they were functioning under the Executives. They were not given any independent charge and the entire authority was vested in the superiors. In this regard, he relied on the documents produced along with the representation dated 11.12.2007 wherein the leave applications or over time duties sought for by the workmen are only recommended to these two workmen and they had no power to sanction leave and such assignment was entrusted to these workmen even before they were promoted as Team Leaders. He submitted that the responsibilities alleged in the appointment letter are nothing but reiterating the assignment, which were already discharged by these two workmen and there is no change in the nature of work. He submitted that, except the nomenclature of "Team Leader", it was neither the managerial post nor was supervisory post, nor these workmen were discharging the functions as Supervisor or Manager. In this regard, he relied on the impugned order and submitted that the Conciliation Officer has taken into consideration all the extraneous matter. Though the documents were produced before the said authority, the authority has failed to notice the nature of work assigned to these two workmen.

9. The Conciliation Officer has observed that, 20 members were working under these workmen and they had the capacity to grant over time and also recommend for leave and further has observed that, the nature of responsibility proves that, these workmen were discharging the functions in the managerial capacity and not as workmen. He submitted that these findings are not based on the material placed before the authority, but based on self-serving inference drawn by the authority. In this regard, he also submitted that, the Management deliberately not granted the permission to revert these workmen to the original position. When the Management took objection for registration of the Union inclusive of these workmen, these workmen and others admittedly had tendered the resignation, not accepting the resignation and not reverting back to the original post and deliberately continuing them as Team Leaders and thereafter holding an enquiry against them by keeping them under suspension and thereafter only in respect of other 11 Team Leaders granting permission to revert them back to the original position, are nothing but victimization of these two workmen and submitted that the Management has adopted unfair labour practice in creating differences amongst the equally placed workmen by granting permission to few and rejecting as against some. In support of his contention, he relied on a judgment reported in 2007-II-LLJ 953 in the matter of Muraudharan K. v. Management of Circle Freight Intl. (India) P. Ltd. and submitted that, it is the nature of work is the decisive factor to know as to whether the person is workman or not. He also relied on another judgment reported in 2002-II-LLJ 959 in the matter of Sunder Lal Jain Hospital Karamchari Union v. Government of

Delhi and Ors. and pointed out that, in case of miscarriage of justice, this Court can interfere with the order of Conciliation Officer. He also submitted that, promoting as Team Leader is not the solitary criteria to decide as to whether he is a workman or Supervisor or Manager, but the nature of power and authority and the function assigned to the workman is the decisive factor as to whether he is working in the supervisory capacity or not.

10. When the workmen have sought for reversion, there was no reason for the Management to keep them in the post of Team Leader and continue them in the same post and thereafter, suspend and hold an enquiry is nothing but a clear case of victimization. He submitted that the authority has failed to exercise its jurisdiction by not considering the relevant material produced before it and in turn has drawn inference on consideration of extraneous matter unconnected with the dispute and the reasons assigned do not support the conclusion. Same is not based on the cogent reasons, none of the documents produced by the Management prove that these two workmen were discharging the functions of Supervisor and that the findings of the Assistant Labour Commissioner are perverse.

11. Sri. Subramanya, learned Counsel appearing for the Management submitted that, C. Narasimhamurthy was appointed on 31.7.1995 whereas, S.C. Kumaran was appointed on 3.11.2000. They were appointed as Team Leaders based on selection process and also the qualification. Since Narasimhamurthy and Kumaran had special skill and qualification, they were appointed as the Team Leaders. Accordingly, they participated in the selection process and based on the same, they were selected as Team Leaders. He further submitted that, the key areas of responsibilities were specifically mentioned in the appointment orders. Item Nos. 4, 6 and 7 of the key areas clearly reveal the responsibility and the functions of the Team Leaders and they were accordingly paid the monetary benefits. Specifically they were brought under the Management hierarchy and in the Management hierarchy. Team Leader is also one of the posts and in this regard, they were provided with all facilities like use of e-mail ID, power of rescheduling the employment adjustment of the duties and providing guidance to the staff. The nature of assignment clearly shows that, they were functioning as the Manager and they had all powers of the Manager and they had discharged the said function. He also submitted that the nature of work done by these two workmen after they became Team Leaders is different from the nature of work they were carrying as workmen. He also submitted that the certified standing order does not permit for engaging an Advocate or outsider. He also submitted that, as far as these two workmen are concerned, the certified standing order is not applicable because they were holding the managerial post and they were not the workmen. He submitted that the work assigned to the Team Leader is not an additional work, but it is an independent work, which is not the work they were discharging earlier.

12. He also supported the findings of the Assistant Labour Commissioner and

submitted that the Assistant Labour Commissioner being the fact finding authority, on appreciation has found that these two persons are not workmen and they do not come within the meaning of Section 2(s) of the Act. The facts are found by the authority. He also submitted that this Court cannot go into the disputed questions of facts.

12. Sri. Anantharam in reply submitted that, the workmen were pursuing their request for reversion. However, they were suspended whereas those, who were pursuing the same request along with these two workmen, were permitted to be reverted back to the original position. He further submitted that, just because these workmen are designated as Team Leaders, it is not sufficient to hold that they ceased to be workmen and he also submitted that, the application for grant of status of "protected workman" was filed prior to the same and it is the date of application, which is material for consideration and not the date on which the order is passed. He further submitted that the Conciliation Officer though has passed a lengthy order, but it lacks the proper appreciation of the evidence adduced by the Union in support of its case and in turn, the findings are erroneous and are not sustainable. The impugned order is based on no legal evidence and there is no evidence for the conclusion.

14. Learned Counsel for the respondent No. 2 Management had relied on a judgment reported in 2005-I-LLJ 364 in the matter of Vishakantaiah T.N. v. Management of Mysore Petro Chemicals Limited, Raichur and Anr. and had also relied on a judgment reported in Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others, He also relied on an unreported judgment of this Court in W.P. No. 33915/2004 dated 14th June 2005 between Airfreight Employees Union and Management of DHL Worldwide Express Pvt. Ltd and Anr.

15. Learned Counsel for the petitioner had relied on a judgment reported in 2002-II-LLJ 959 (supra) in regard to delay in declaring the office-bearers as protected workmen, amounts to miscarriage of justice. He also relied on a judgment reported in 1985-II-LLJ 401 in the matter of Arkal Govind Raj Rao v. Ciba Geigy of India Ltd., Bombay, in support of his contention that, even group leader is also a workman. He also relied on unreported judgments of this Court in W.P. Nos. 29831/2002, 32751/2001, 44717/2001 and 8220/2006 in support of his contention.

16. In the light of the above submissions, the question that arises for consideration in this writ petition is:

Whether the Assistant Labour Court - the Conciliation Officer was justified in rejecting the claim of the Union to declare, two of the office bearers as the protected workmen only on the ground that, they are not the workmen within the meaning of Section 2(s) of the Industrial Disputes Ad, by interpreting the nature of work or not?

16. Facts, which are not in dispute in this case, are:

The petitioner - Union was registered on 17.9.2005 and the two workmen in question were the office-bearers of the said Union. It is also not in dispute that, an application was also filed for declaring them as "protected workmen". Simultaneously, it is also not in dispute that, by order dated 18th August 2005, some of the workmen including these two workmen were promoted as Team Leaders under the terms and conditions as stipulated in Annexure-AA and BB. The terms stipulated under the promotion order show that, consequence upon the promotion, the Team Leaders would be governed by the Company's rules and regulations, which are applicable to all the Management staff, The key areas of responsibility and accountability were also stipulated, which reads as under.

1. Ensure shift targets are met & documentations are maintained properly (workshop order, Checklist, Attendance, productivity, 5S, etc)
2. Ensure 5 S and all EOHS requirements are implemented and safe working conditions maintained for 0 Accidents.
3. Responsible for Quality, Cost, Deliverable & safe working.
4. Train Technicians/Trainees on process, product, and safety. Quality and working instructions.
5. Monitoring the usage/damage. Maintenance of tools equipments required for production.
6. Motivation and discipline of the technicians as per the LM values and guidelines - lead by example.
7. Responsible for shift allotment, recommendation of OT, leave, late coming & early going, indent material preparation, complaint reporting, participation in committee and Management meeting.

The 7 key areas of responsibility and accountability were assigned to the workmen, who were promoted as Team Leaders.

17. When the Union was registered along with the two workmen in question as office-bearers, the Management raised an objection before the Assistant Labour Commissioner on 21st September 2005 alleging that, supervisors and workmen are governed by two different service conditions and they cannot form an union and called upon the Assistant Labour Commissioner to cancel the registration certificate. It is alleged that the persons, who have been promoted as Team Leaders, come under the category of "Supervisor" and they cannot be the part of the Union. It is also alleged that the Management will not recognize the Union. The Assistant Labour Commissioner rejected the said request of the Management alleging that the Union is registered in terms of the provisions of the Trade Union Act, 1926 at the direction of the Commissioner and held that the cancellation of the same does not arise.

19. It is also not in dispute that, when the workmen, who were promoted as Team Leaders and the Management took an objection of they being part of the

Union and office-bearers they sought for reversion of their position from that of alleged Supervisor to workman by their letter dated 25.10.2005. In all, 13 such persons had made a request and the said request was turned down by the Management on the ground that the Management has considered the matter and the workmen had participated in the selection process and have willingly accepted the promotion and new roles and responsibilities. If the Management is asked to revert them back to the position of the workman, then the Management would be compelled to relieve them from service of the Company on submission of their unconditional resignation letter and further informed that reverting of promotion is not permissible. After rejection of the request of all 13 persons, the matter was pursued by the workmen for reversion.

19. As things stood thus, the Management passed an order dated 7.8.2006 interalia, initiating an enquiry against only these two workmen in question on the allegation of misconduct As against the said charge sheet, a reply was given by the workmen in question and they also sought for an assistance of a legal expert for which the Management replied that the standing order of the Company does not permit for engaging outsider or Advocate and subsequently, it was clarified by the Management stating that, two workmen come under the category of supervisor and they are not governed by the standing order.

21. It is also not in dispute that, after initiation of the enquiry, the Management reverted 11 other workmen to original post as per their order dated 27.9.2006 Annexures-K1 to K9. It is necessary to mention here that, the reversion order is passed by the Management in reference to letter dated 25th October 2005 and the renewal letter dated 16.8.2006. Except two workmen, in respect of all other persons, an order of reversion was passed by the Management in reference to their request made on 25th October 2005 and 16th October 2005. As noted earlier, even these two workmen had also made a request along with the other workmen on 25th October 2005 and on 14th July 2006. There is no reason assigned by the Management as to why their request, which was made on 25th October 2005, was not considered when. there was no enquiry initiated against them till 7.8.2006. It is understandable that, if the two workmen had made a request after they were placed under suspension, there could have been some justification by the Management in not considering the said request.

22. It is also not in dispute that, these two persons were also office-bearers and their names were recommended by the Union for declaring them as "protected workmen". On remand, the Union, which is espousing the cause of these persons, filed a petition and along with the petition, it also produced number of documents. The Assistant Labour Commissioner by the impugned order rejected the request of the Union for declaring these two persons as "protected workmen" on sole ground that, they are not workmen within the meaning of Section 2(s) of the Act.

22. In the impugned order, the main ground on which these two persons were not treated as workmen is that, they have been promoted as Team Leader and

the post is supervisory in nature and the said post of Team Leader has key area of responsibility and accountability, such as they are authorised to recommend in regard to medical expenditure, in regard to leave, in regard to over-time, in regard to arranging of the shift and in regard to arranging of the employment. However, the authority has also observed that, even though they are working as Shift Operator, it does not change the nature of the job assigned to them, as they have been promoted as Team Leader and incidentally, even if they work, it will not amount to working as a labourer. It also observed that, as many as 20 to 30 persons would be working under the Team Leader and these Team Leaders have got Computer, e-mail ID. On these circumstances and relying on various judgments, the authority has held that, two persons in respect of whom the cause is espoused by the Union are not workmen.

24. In order to seek status of a protected workman, there has to be an union registered and should also be recognized as an entity connected with the establishment in accordance with the rules made in this behalf. The object of acquiring the status of protected workman was to recognize the persons, who can take the onerous task of fighting for the rights of their fellow workers and espousing industrial dispute and in this regard, they would be immediately targeted and in order to protect them, the legislation in its wisdom and by experience found it essential to give a status of "protected workmen" protecting from termination from their service or victimization by acts of the Management. It is not that the "protected workman" status is confirmed only with intention to fight against the Management, object was to protect the interest of both Management and the labour for the industrial peace and harmony and to create conducive atmosphere for welfare of both. In order to become a protected workman, he has to be a workman within the meaning of Section 2(s) of the Act and Rule 61 of the Industrial Disputes (Central Rules, 1957 ("Rules" for short) framed u/s 33 of the Act.

25. Rule 62 of the Rules framed under the provisions of the Industrial Disputes Act requires that, every registered trade union connected with the industrial establishment shall communicate to the employer before 30th April every year to see the names and addresses of such officers of the Union for recognizing them as the "protected workmen". If any dispute arises between the employer and employee, the power is conferred on the Conciliation Officer for reference of the dispute under Rule 61 Sub-rule (4) of the Rules. Reading of Section 33(4) of the Act and Rule 62 makes it clear that, except in the case of dispute, the employer or the Management is required to recognize the status of a protected workmen in respect of the names recommended by the registered union to the extent of limitation prescribed u/s 33(4) of the Act i.e., 1% of the total number of workmen employed in the establishment.

26. In this case, the dispute was referred to the Conciliation Officer as the Management did not agree with the names of these two persons on the ground that, they are the Team Leaders and they come under the category of Supervisor.

27. Learned Counsel appearing for the petitioner relied on a decision of the Apex Court reported in 1985-II-LLJ 401 (supra) and submitted that, to decide as to whether the person is workman or not, the primary duties assigned to him are required to be considered and not the additional or extra duties assigned to him. In this regard, he relied on paragraphs-6, 14, 15 and 16 and submitted that the Apex Court considering the earlier judgment has observed that, looking after the security of the factory and its property by deputing watchmen working under him to work at the factory gate or sending them to watchtowers or around the factory or to accompany visitors to the factory and making entries in the visitors' register or any other such works, they do not come within the purview of duties of Supervisor or Manager. If a few extra duties are done by the workmen, they do not confer the status of supervisor. He also submitted that just because the nomenclature of Supervisor or Manager is stated in the appointment order, that by itself would not confer status of Supervisor unless he is discharging the functions as Supervisor. Any work incidentally done does not constitute the functions of Supervisor. In this regard, as extracted above in the order of promotion, 7 key areas are mentioned, whether they by themselves constitute the work of supervisory nature or they are nothing but the work that is discharged by the workmen in addition to the earlier work. The key areas mentioned in the appointment letter are that ensuring shift targets, implementation and safe working conditions maintained, quality, cost, deliverable and safe working, training the technicians/trainees on process, product, safety, quality and working instructions, monitoring the usage/damage, maintenance of tools, equipment, motivation and discipline of technicians as per the LM values and guidelines and responsible for the shift allotment, recommendation of OT. leave, late coming and early going, indent material preparation, complaint reporting, participation in committee and Management meeting. No doubt, under Clause 18 of the said appointment order, it says that, on promotion as Team Leaders, they come under the category of managerial staff. Just mentioning as the managerial staff, that would by itself not confer the status of Manager or the Supervisor.

28. What is required to be noticed is, the actual discharge of function in the capacity of Supervisor or in the capacity of Manager. Along with the representation, documents are produced by the Union showing the leave application, overtime recommendation, etc.,. From the said documents produced in the writ petition also it shows that, these persons had the only right to recommend for sanction of leave and also sanction of over-time. It is not an independent power conferred on them to sanction leave, even before they were promoted as Team Leaders, they were discharging this power. What appears from the appointment order is that, only recommendation power is conferred on them and not sanctioning power, but none of the Clauses 1 to 7 in the key areas of responsibility and accountability shows any independent power conferred on these persons to discharge the functions as Supervisor over some persons or in the capacity of Manager.

29. The power exercised by the Assistant Labour Commissioner under Rule 61 Sub-rule (4) of the Rules is quasi judicial in nature, as submitted by the learned Counsel for the Management. If he is exercising a quasi judicial power, he is required to apply his mind and consider the relevant factors. No doubt, the impugned order runs into several pages, but at the same time, the reasons given are not cogent reasons to support his conclusion. The authority has relied more on the power of recommendation to grant leave, power of recommendation to grant over-time to some persons working under him and for arranging shifts. In order to support its conclusion, the authority also states that, e-mail ID is given to these persons. Granting of e-mail ID or recommending for sanction of leave cannot be characterized to say that, they are independently discharging power over some of the employees. It also does not show that they act as Supervisors in this case. The impugned order relies more on the consideration of extraneous circumstances by quoting some examples that, incidentally if some one also works in connection with the job assigned to him, it does not change the nature of his assignment. No doubt incidentally if he has worked as workman, it does not change the nature of work. But if the person is discharging the same functions earlier also and if some additional works are assigned to him, he cannot be characterized as a Supervisor. Learned Counsel for the respondent - Management has relied on the judgment of the Apex Court reported in AIR 1971 SC 922 (supra) and relied on paragraph-18 of the judgment and submitted that in determining the nature of employment as to whether it is a supervisory work or not Court has considered the work carried on over skilled and unskilled persons and also the supervision have to be taken into consideration, such as control, direction and allocation and re-allocation of work to the employees working under him. No doubt the Apex Court considering the facts and circumstances of the case has found that skilled and unskilled employees were working under the Supervisor and the Supervisor had the control and power over those workmen and had power to issue direction to allocate and re-allocate the work to them and to initiate disciplinary proceedings, etc... Such facts and circumstances are not available in this case. No such duties are assigned to these persons. It is not in dispute that the application is filed for seeking the status of the "protected workmen" for the period 2007-08, which would expire by 30th April 2008 and it is also not in dispute that the application has to be considered for the said period only. No doubt learned Single Judge of this Court has taken a view that, if, as on the date of the consideration of the application, the person is not in employment, considering his case for the status of "protected workman" also does not arise. In my view, without going into the said question, it is suffice if I consider the issue as to whether these two persons are workmen or not. If they come within the definition of "workman", the consequence would follow.

30. In this case, the other circumstance, which is required to be noticed is that, 13 workmen were promoted as Team Leaders and it is not in dispute that all the 13 Team Leaders sought for reversion to the original position mainly on account of refusal by the Management to recognize them as the members of the Union on

sole ground that there cannot be an Union of Supervisor and workmen. It is also not in dispute that after one month of the initiation of the enquiry against these two workmen, the Management considered the request of all other 11 workmen for reverting them to the original position and the consideration was made in pursuance of the earner request itself. This only shows that the Management was not interested in conferring status of the "protected workman" insofar as these two persons are concerned.

31. In law, a registered Union accepted by the establishment, makes a representation to the Management for conferring the status of "protected workmen". Normally, the Management is required to consider the same in the larger interest of industrial peace. It is not the case of the Management that, if the status of "protected workman" is conferred on these persons, it would have an adverse effect on the industrial peace. No personal allegations against these two persons are made as regard to the conferring of status of "protected workman". If there is no dispute as regard to the said aspect, there is no justification for the Management to deny the request for reversion to the original post No prejudice would have been caused to the Management.

32. The Assistant Labour Commissioner while considering the issue as to whether these two members of the Union are workmen or not, he should have considered the nature of the work assigned to them, as to whether it is in addition or whether it is similar or whether it is really supervisory in nature. Except the 7 key areas of responsibility and accountability, no other responsibility as such, is assigned to these persons and as stated above, these things do not by themselves create any supervisory power, at the best, they have little better rights than what was existed earlier, which do indicate that, they have to work under someone else and it is subject to their approval, the work has to be done by these persons. If that is so, this cannot be characterized as Supervisor.

33. The only issue decided in this case is that, two members of the Union, whose names were recommended for conferring the status of the "protected workmen", are the workmen and except this, the effect of order of the termination or suspension has not been gone into in this writ petition. The order of the Assistant Labour Commissioner is required to be interfered in view of the reasons assigned above.

34. Accordingly, the Writ Petition is allowed. The impugned order dated 21.1.2008 passed by the first respondent is quashed. In the circumstances stated above, two workmen namely, S.C. Kumaran and C. Narasimhamurthy come under the category of "workmen".