Before A. K. Sikri, Chief Justice & Rakesh Kumar Jain, JJ.

ASHWANI KUMAR KAMBOJ—*Appellant*

versus

PRESIDING OFFICER, LABOUR COURT - II, FARIDABAD AND ANOTHER—*Respondent*

LPA No. 401 of 2010

March 19, 2013

A. Letters Patent Appeal - Labour Laws - Industrial Disputes Act 1947 - S. 2(s) -Workman - Who is - Main job or predominant duties of an employee to be seen -Discharge of certain incidental duties not determinative factor - Extra duties assigned not relevant to determine status of individual - Separate attendance

registers, membership of workers' union, mode of payment of salary, consistent supervision and lack of independence, freedom to innovate and create, and expertise, strong and indicative factors while determining status - Rightly not held to be "workman"

Held, that by catena of judgments interpreting the aforesaid provision, law is clarified by laying down the principle that technicality of the post which a person is occupying would be immaterial and it is the duties which are performed by such a person that have to be taken into consideration while deciding the issue. It is further held that the main job or predominant duties of an employee should be the focus and if along with main duties, an employee is discharging certain incidental duties that may not become determinative factor. This aspect would be more relevant in deciding as to whether a person is discharging supervisory duties or not? In that case what is to be seen is that the dominant duties of the employee included the power entrusted to him to control his subordinates which may be in the form of supervising their work and giving instructions to them in that behalf, sanctioning the leave or recommending the leave, assigning the duties and distributing the work among the workers working under him, power to take disciplinary action etc. It is also trite that if the dominant purpose of the employee is clerical and he performs the duties which are clerical or skilled in nature etc., merely because he is given some duties which are supervisory in nature and are only incidental, he would not cease to be a workman. Meaning thereby, these extra duties assigned to such a person would not be relevant to determine his status.

(Para 13)

Further held, that a workman would normally work under his supervisor or the dictates and under the instructions of his superior. He is under consistent supervision of his senior/supervisor. There is hardly any scope for him to act independently and without any control. There is limited play in the joints and his freedom to do his duties is severely restricted. On the contrary, in the present case, we find that the two appellants who were doing the work of making designs and removing the bottlenecks, had complete freedom to do work in an innovative and creative manner. Treating them to be experts in industrial designing of components by use of computers, the Management was giving them only the specifications of a particular and

customized weighing machine that was required to be made. Working on those specifications, these two appellants were using their own creative methods for designing the machine. Thereafter, these designs were given to the workers for the manufacture of the machine as per those drawings/ designs. While doing the job of manufacture, if any of the workers encountered any difficulty, he had to advert to these appellants for advice and admittedly it was the function of these appellants to remove those "bottlenecks". In a way, in this manner the appellants were supervising the work of those workmen also. As far as the other two appellants are concerned, as recorded above, it is not that the recommendation of leaves or issuance of gate passes was only an incidental work performed occasionally.

(Para 16)

B. Judicial Review - Scope of - Finding of fact by trial court - Whether can be interfered with - Only where such findings are perverse and based on no evidence -whether or not a person is workman or not is jurisdictional issue -Application of law to admitted position permissible where trial court failed to exercise jurisdiction.

Held, that it was argued by learned counsel for the appellants that the learned Single Judge did not confine within the parameters of Article 226 of the Constitution of India which provides limited scope of judicial review over an award passed by the Labour Court inasmuch as the High Court cannot interfere with the finding of facts recorded by the Labour Court unless it is shown that the said findings are based on no evidence and are perverse. Various judgments are cited in support of this proposition. There is no quarrel about the aforesaid legal proposition. It is for this reason that we had pointed out earlier that apart from stating the law interpreting Section 2(s) of the Act, the learned Labour Court did not even make any attempt to analyze the duties performed by these appellants when arriving at the conclusion that they were workmen under Section 2(s) of the Act. Further, it has also to be borne in mind that whether a person is a workman or not, is a jurisdictional issue as the jurisdiction of the Labour Court to entertain a reference depends upon the outcome of this issue. Moreover, as already noted above, the various duties, which are highlighted by the learned Single Judge, are based on admitted position. Therefore, there is no tinkering of facts by the learned Single Judge. It is only the application

of law on the basis of admitted position which exercise is undertaken by the learned Single Judge and rightly so that too in a case where the Labour Court had failed to do this exercise.

(Para 19)

Harsh Aggarwal, Advocate, *for the appellant(s).*

P.K. Mutneja, Advocate, *for the respondent(s).*

A.K. SIKRI, C.J. (ORAL)

(1) These 4 appeals arise out of common judgment rendered by the learned Single Judge in 4 writ petitions which were preferred by the respondent No.2 (hereinafter referred to as the "Management"). In those writ petitions, the Management had challenged the awards passed by the Labour Court for deciding the references pertaining to the termination of the services of the 4 appellants herein. We may record at the outset that the primary defence of the Management questioning the validity of the reference and jurisdiction of the Labour Court to entertain the dispute referred by the appropriate Government was that these appellants are not "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). Evidence was led by both the parties on this issue as well. The Labour Court, in each of the appellant's case, came to the conclusion that these appellants were covered by the definition of "workman". This finding was under challenge, in respect of each of the appellant, in the writ petitions filed by the Management. The learned Single Judge has accepted the plea of the Management and while holding that the appellants are not workmen, the writ petitions are allowed and as a result, the awards given by the Labour Court are set aside. It is for this reason the entire focus in these appeals was on the issue as to whether these appellants are workmen within the meaning of Section 2(s) of the Act or not?

(2) Counsel for both the parties had addressed detailed arguments on this aspect with reference to the records of the Court below.

(3) Though the learned Single Judge has taken up the cases together and has even discussed the duties of all these appellants at one place and not separately, in order to have some clarity in the matter, we would like to discuss in brief the duties of these appellants as per the evidence which has surfaced on the records of the Labour Court.

Ashwani Kumar Kamboj (LPA-401-2010)

(4) The appellant in this case, at the relevant time when his services were terminated, was working as Assistant Engineer (Design). In that capacity, he was working in research and development of the Management and his main job/duty was to make designs of the machines and to remove the bottleneck in the machines. The Management is in the business of manufacture of weighing scales. It is not that Management manufactures substandard weighing scales which are marketed. It needs to be emphasized that for manufacture of particular weighing scales, orders are received from the customers who give their specific requirements. Based on the requirements of the clients in respect of each work order received by the Management, it becomes imperative for the Management to design a weighing scale meeting the specifications. It is, thus, customized service which is given by the Management depending upon the needs and requirements of each client. Since the specifications of the weighing machine needed by different customers would vary, it becomes necessary to prepare design for each of this machine. It is this job which was assigned to the appellant in question, namely, Ashwani Kumar Kamboj. He, being technically qualified and expert in computer designing, was undertaking the work of designing the weighing machines. Based on the designs prepared by him, other workers of the Management would do the job of manufacturing the machines. While undertaking this work, if any of the workers would feel difficulty, the same would be referred to the appellant and the appellant would take care of those difficulties by removing the bottlenecks in the machines. It was this job, as described by us above, which was the main job of the appellant, namely, making designs of the machine and removing bottlenecks in the machines.

(5) Apart from this, there are certain other jobs/tasks assigned to the appellant which we would be delineating at later part of the judgment as those duties are in common with other three appellants.

Ashim Kumar Dass (LPA-1567-2011)

(6) The appellant in this case was also working as Assistant Engineer (Design) with same duties as performed by Shri Ashwani Kumar Kamboj (appellant in LPA-401-2010).

Satish Kumar (LPA-1443-2010)

(7) The appellant in this case was working as Assistant Engineer (Production) to which post he was appointed when he started his career with the Management. He was, however, transferred to Quality Assurance Department two years before his termination. As per the Management, this person was doing the job of supervising and guiding his subordinates in discharging their duties. He has also the authority to sanction the gate passes to his subordinates and could even initiate disciplinary action against erring subordinates. Shri S.S. Malhotra (MW-1), who appeared as Management witness before the Labour Court, produced the history sheet as MW-1/1 prepared by him, the organizational chart as MW-1/2 as well as the attendance register of supervisory staff as MW-1/3. These documents are signed by the appellant as prepared by him. Salary register of the Supervisors and Executives was also produced as MW-1/4 bearing the signatures of the appellant. MW-1/5 produced by this witness is the salary register of the workers who were getting salaries according to the settlement to show that name of this appellant did not figure therein as he belong to supervisory category and was not covered in the settlement which was entered into by the Management with the workman. On the basis of these documents, the Management had submitted before the Labour Court that he was responsible to allot and supervise the work of his subordinates; allowances and benefits giving to supervisory category were different than that of workers category and the appellant was getting the benefits meant for supervisory category; appellant was authorized to sanction leave of his subordinates which were sanctioned by him vide Ex.M-18 to Ex.M-110; he was issuing even gate passes to his subordinates which were produced as Ex.M-1 to Ex.M-17. On the other hand, case of the appellant was that his primary job was to check the instrument and components as well as the drawings and in his capacity as Assistant Engineer, as he was diploma holder in Mechanical Engineering, he was checking the quality of the components with the help of instruments.

Nand Kishore Sharma (LPA-1437-2010)

(8) The appellant in this case is in the same position as Satish Kumar insofar as the designation and nature of duties etc. is concerned except that his main duty was production and manufacturing of machines.

(9) As already pointed out above, the Labour Court in different awards pertaining to all these appellants, came to the conclusion that none of these appellants were covered by the definition of "workman" under Section 2(s) of the Act. It was further held that since the termination was in violation of the provisions of Section 25-F of the Act as no retrenchment compensation or notice of retrenchment was given at the time of termination of their services, termination was illegal on that basis. The Management was directed to reinstate all the appellants with continuity of service and 50% of the back wages of the intervening period.

(10) Perusal of the awards in all these cases would demonstrate that the Labour Court had taken into consideration various judgments of the Supreme Court as well as this Court on the scope of Section 2(s) of the Act. It is observed that the Court is supposed to go by the principal duties which are discharged by a person in order to determine as to whether such duties are of supervisory nature or not? After taking note of these judgments, the Labour Court returned the finding that none of these workmen were discharging supervisory duties. Though in reaching this conclusion, the evidence which appeared on the record and the nature of duties which we have specified above are not analyzed or dealt with.

(11) This vital omission in the awards of the Labour Court is specifically taken note of by the learned Single Judge in the impugned judgment as can be seen from the reading of paras 11 and 14 thereof. Be that as it may, since there is no dispute about the nature of the duties performed by all these appellants, it has to be seen as to whether all these appellants, or any of them, fit into the definition of "workman" contained in Section 2(s) of the Act. At this juncture, therefore, we reproduce Section 2(s) of the Act as under:-

> "**2. Definitions.** —In this Act, unless there is anything repugnant in the subject or context, - -
>
> (a) to (r) xxx xxx xxx
>
> (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."

(12) As would be evident from the plain reading of the aforesaid provision, any person, in order to qualify as "workman" within the aforesaid definition, is to show that he is doing the work of the natures specified therein, namely, manual, skilled, unskilled, technical, operations, clerical or supervisory work for hire or reward. A person who is doing the supervisory work, though is treated as workman, however, in case his salary is more than '1,600/- (though this provisions is amended vide Act No.24 of 2010 raising the limit of '1,600/- to '10,000/-, at the relevant time the ceiling of '1,600/- prevailed), in that case, he would not be treated as workman.

(13) By catena of judgments interpreting the aforesaid provision, law is clarified by laying down the principle that technicality of the post which a person is occupying would be immaterial and it is the duties which are performed by such a person that have to be taken into consideration while deciding the issue. It is further held that the main job or predominant duties of an employee should be the focus and if along with main duties, an employee is discharging certain incidental duties that may not become determinative factor. This aspect would be more relevant in deciding as to

whether a person is discharging supervisory duties or not? In that case what is to be seen is that the dominant duties of the employee included the power entrusted to him to control his subordinates which may be in the form of supervising their work and giving instructions to them in that behalf, sanctioning the leave or recommending the leave, assigning the duties and distributing the work among the workers working under him, power to take disciplinary action etc. It is also trite that if the dominant purpose of the employee is clerical and he performs the duties which are clerical or skilled in nature etc., merely because he is given some duties which are supervisory in nature and are only incidental, he would not cease to be a workman. Meaning thereby, these extra duties assigned to such a person would not be relevant to determine his status.

(14) We have summed up the legal position and it is not necessary to refer to various judgments in this behalf. Our purpose would be served by citing Constitution Bench judgment of the Supreme Court in the case of ***H.R. Adyanthaya and others*** versus ***Sandoz (India) Ltd. and others (1),*** as in that judgment not only the Constitution Bench resolved the earlier conflicting judgments, and in the process, clarified and firmly laid down certain principles while determining the status of an employee. The Court also traced the history of the provisions of Section 2(s) of the Act as amended from time to time. That was a case of Medical Representatives (Sales Persons) employed by a pharmaceutical concern. The controversy was as to whether it is necessary, in order to fit into the definition of the "workman" under the Act, that the employee is discharging the duties of the nature specifically stipulated in Section 2(s) of the Act, namely, manual, skilled, unskilled, technical, operational, clerical or supervisory. There was some difference of opinion earlier on this issue. After tracing the history and taking into consideration various case laws, the Supreme Court answered this issue, and in the process, settled the controversy by holding that in order to treat a person as workman under the Act, he must be employed to do the work of any of the aforesaid categories. It is not enough that he is not covered by either of the four exceptions to the definition, therefore, it becomes imperative for the workman to show that he is covered by any one of the categories specified in Section 2(s) of the Act. As pointed out above, learned Single Judge, after stating the facts of each case, started with his comments on the awards of the Labour Court by pointing out that

(1) (1994) 5 SCC 737

the duties being performed by these appellants, which were stated by the Management in their evidence, were not analyzed. Thereafter, the learned Single Judge proceeded to mention the duties which are performed by these workers and pointed out that overall picture which emerges by considering the admitted position, reveals that these appellants were discharging the following duties:-

> "(i) all the claimants were either designated as Assistant Engineer (Designs); they were in the shop floor each assigned a table and chair with telephone facility and not working along the assembly line; (iii) they had 8 to 10 persons working under each one of them and they had the power to guide and assist them in the work; (iv) recommended leave and issued gate passes; (v) they had their own independent attendance register different from what was meant for workers; (vi) they were not members of the workers' union and the settlement with the workmen did not apply to them; (vii) they represented the Management before public authorities such as quality control and Weights and Measurement authorities."

(15) May be, while enlisting the aforesaid duties, these observations have come in respect of all the appellants which may not be entirely direct. Insofar as the designation of Assistant Engineer (Design) is concerned, it applies to the first two appellants (Ashwani Kumar Kamboj and Ashim Kumar Dass mentioned above. Other two appellants (Satish Kumar and Nand Kishore Sharma) were performing the duties which are ministerial/ administrative in nature and not technical duties of making designs. Likewise, the two appellants who were discharging the duties of technical nature were not performing the duties of recommending leaves or issuing gate passes. However, at the same time, it is not in dispute that all these appellants had their own independent attendance register, different from what was meant for workers. Likewise, they were not the members of the workers' union. It is an admitted fact that the Management had been entering into settlement with the workers' union under Section 18 of the Act and in all these settlements, the appellants were not covered. The arrangement of payments in the form of salary or other benefits which were made to these appellants were different than those of the other workers who were paid in accordance with the settlement arrived at with the workers' union. These would be strong factors which would indicate that the appellants were not treated as workmen as per the definition contained in Section 2(s) of the Act. Not

only the appellants did not choose to become the members of the workers' union with the understanding that they did not belong to that category, when these appellants were not getting the benefit of the settlement arrived at by the Management with the workers' union, they accepted and acquiesced into that position as well. It is in this backdrop when we consider the duties which were being performed by these appellants, our conclusion would be that the learned Single Judge has rightly held them as not covered by the definition of "workman" contained in Section 2(s) of the Act.

(16) A workman would normally work under his supervisor or the dictates and under the instructions of his superior. He is under consistent supervision of his senior/supervisor. There is hardly any scope for him to act independently and without any control. There is limited play in the joints and his freedom to do his duties is severely restricted. On the contrary, in the present case, we find that the two appellants who were doing the work of making designs and removing the bottlenecks, had complete freedom to do work in an innovative and creative manner. Treating them to be experts in industrial designing of components by use of computers, the Management was giving them only the specifications of a particular and customized weighing machine that was required to be made. Working on those specifications, these two appellants were using their own creative methods for designing the machine. Thereafter, these designs were given to the workers for the manufacture of the machine as per those drawings/designs. While doing the job of manufacture, if any of the workers encountered any difficulty, he had to advert to these appellants for advice and admittedly it was the function of these appellants to remove those "bottlenecks". In a way, in this manner the appellants were supervising the work of those workmen also. As far as the other two appellants are concerned, as recorded above, it is not that the recommendation of leaves or issuance of gate passes was only an incidental work performed occasionally. The Management produced on record plethora of evidence showing such a work being performed by these two appellants regularly and on day-to-day basis.

(17) We entirely agree with the observations of the learned Single Judge that all these functions and duties discharged by these appellants have to be taken into consideration cumulatively and not in isolation. The totality of the circumstances and effect of such consideration lead us to the conclusion that these appellants were not discharging supervisory work and since salary

of all these appellants was much more than '1,600/- they were rightly not held to be the workmen.

(18) As already noted above, the Management is in the business of manufacture and sale of weighing scales. This business comes under the control of Weights and Measurement Authorities as the said activity is regulated by the Weights and Measures Act, 1976. There are certain statutory obligations which are to be fulfilled by the Management under the said Act. It was Satish Kumar, appellant in LPA No.1443 of 2010, who was representing the Management before the public authorities under this Act. By no stretch of imagination, this can be treated as clerical or incidental work. This was a task of prime importance and could even be treated as managerial work.

(19) It was argued by learned counsel for the appellants that the learned Single Judge did not confine within the parameters of Article 226 of the Constitution of India which provides limited scope of judicial review over an award passed by the Labour Court inasmuch as the High Court cannot interfere with the finding of facts recorded by the Labour Court unless it is shown that the said findings are based on no evidence and are perverse. Various judgments are cited in support of this proposition. There is no quarrel about the aforesaid legal proposition. It is for this reason that we had pointed out earlier that apart from stating the law interpreting Section 2(s) of the Act, the learned Labour Court did not even make any attempt to analyze the duties performed by these appellants when arriving at the conclusion that they were workmen under Section 2(s) of the Act. Further, it has also to be borne in mind that whether a person is a workman or not, is a jurisdictional issue as the jurisdiction of the Labour Court to entertain a reference depends upon the outcome of this issue. Moreover, as already noted above, the various duties, which are highlighted by the learned Single Judge, are based on admitted position. Therefore, there is no tinkering of facts by the learned Single Judge. It is only the application of law on the basis of admitted position which exercise is undertaken by the learned Single Judge and rightly so that too in a case where the Labour Court had failed to do this exercise.

(20) Thus, finding no merit, we dismiss all these four appeals. There shall, however, be no order as to costs.

S. Gupta