

* **HIGH COURT OF DELHI : NEW DELHI**

+ **WP (C) No. 6493/2008**

Singer India Ltd. Petitioner

Through: Mr. Kailash Vasudev, Sr. Adv.
with Mr. Sidharth Dias, Adv.

Versus

(Secretary) Labour, Govt. of NCT of Delhi
& Anr.

.... Defendant

Through: Nemo

Judgment reserved on : April 13, 2010

Judgment pronounced on : May 03, 2010

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MANMOHAN SINGH, J.

1. By the present writ petition filed under Articles 226 and 227 of the Constitution of India the petitioner company has prayed that this Court be pleased to issue an order/ appropriate writ/ direct the respondents to quash award dated 30.11.2007 passed in I.D. Case No. 4/2002 by the Learned Presiding Officer, Labour Court No. IX, Karkadooma, Delhi. The petitioner has further sought the quashing of the order of reference made by respondent no. 2 under Order No. F.24 (3469)2001/Lab. dated 03.01.2002 and prohibiting the respondents from giving effect to order dated 30.11.2007.

2. The brief facts leading up to the present writ are that respondent no. 2 joined the petitioner company on 12.03.1979 in the capacity of a Junior Adjuster. His service was confirmed on 17.12.1979 and he was promoted to the designation of a shop manager at the petitioner's Amritsar shop on 27.05.1995 with salary of Rs. 6,000/- per month. Due to reports of shortage in stocks and funds a shop audit was carried out which showed that there was shortage of equipment and a cash shortfall of Rs. 6,81,302/-. The said audit report was handed over to respondent no. 2 with a Memo and the latter was advised to explain the cause of shortfall and make it good within 15 days. Respondent no. 2 failed to do anything and vide letter dated 24.06.1999 pleaded with Mr. S.P. Kalra, Zonal Sales Manager, New Delhi that he may be allowed to visit the Head Office to obtain documents which would help him assist the petitioner in recovering the amount of the shortfall.

3. After writing several letters, the petitioner lodged a complaint on 16.11.1999 in a Police Station in Amritsar with regard to embezzlement of funds naming the respondent no. 2 as the accused. The respondent no. 2 did not turn up for his duty since June, 2000 and thereafter. Respondent no. 2 sent a Demand Notice dated 12.06.2000 to which the petitioner replied vide letter dated 20.06.2000. Respondent no. 2 then invoked conciliation proceedings before the Labour Office but no settlement could be reached thereat therefore the NCT of Delhi referred the matter to the Labour Court under Section 10 (5) of the Industrial Disputes Act, 1947. Both parties filed their claims and respective replies. Issues were framed and the parties filed their

affidavits by way of evidence as per procedure and were cross examined. The learned Presiding Officer held in the impugned award that the Labour Court at Delhi has jurisdiction to entertain the reference of the NCT of Delhi, that the respondent was a workman as per Section 2 (s) of the Industrial Dispute Act and was to be paid compensation of Rs. 75,000/- by the petitioner in lieu of reinstatement and back wages. Thus the present writ was filed.

4. The petitioner has argued the present writ on the following grounds :

(a) The learned Labour Court has failed to appreciate that the responsibilities entrusted to respondent no. 2 establish that he was working as a Shop Manager (job description detailed in Annexure P-7) and could not possibly be classified as a 'workman' under Section 2 (s) of the Industrial Disputes Act. Respondent no. 2 performed his services independently without any supervision or control and he negotiated on behalf of the petitioner company all by himself. These facts have been overlooked by the Learned Labour Court as a bare perusal thereof would indicate that he cannot be classified as a 'workman' under the Industrial Disputes Act.

(b) The learned Labour Court has failed to appreciate that the services of respondent no. 2 were never terminated and he ceased coming to the work place of his own choice i.e. he abandoned his services. The petitioner consistently gave the respondent no. 2 opportunities to explain and make good the shortfall indicated by

the audit report so much so that respondent no. 2's services have till date not been terminated. As the said services were never terminated, the reference made by the NCT of Delhi is unsustainable. Further, the said NCT of Delhi had no jurisdiction to make any reference as the respondent no. 2 did not work in Delhi.

(c) The learned Labour Court had no territorial jurisdiction to entertain the proceedings as the place of work of the respondent no. 2 was at Amritsar.

(d) The learned Labour Court has mis-read and mis-interpreted the various documents (Ex. MW-1/6) filed by the parties insofar as respondent no. 2 only visited the Delhi office to verify records etc. and did not work here. Further, the respondent no. 2's nature of work has been mis-interpreted and has been wrongly deemed to be of a petty financial nature without any reference to the petitioner's documents filed as Ex. MW-1/6 - 12. The said respondent's last place of work with the petitioner was in Amritsar with a salary of Rs. 6,000/- per month.

(e) Instead of holding the respondent no. 2 responsible for the loss/ deficit of Rs. 6,81,302/-, the learned Labour Court has gone ahead and allowed compensation of Rs. 75,000/-.

5. This writ was first listed before this Court on 05.09.2008 and on that date the award dated 30.11.2007 was stayed subject to the petitioner depositing Rs. 75,000/- in the Court. Notice was issued to the respondents and none appeared for them despite various orders to do so and the respondents were finally proceeded against ex-parte vide order

dated 24.11.2009.

6. During the course of the hearing, learned senior counsel for the petitioner submitted that the learned Presiding Officer of the Labour Court had failed to take cognizance of certain documents filed by the petitioner and the award dated 30.11.2007 had been passed without due consideration to these documents filed by the petitioner. These documents are the Audit Report which showed discrepancies and a list of additional documents filed by the petitioner on 02.11.2004. The said list includes various photocopies intended to show that respondent no. 2 was engaged with the petitioner in the capacity of a Shop Manager and hence could not be categorized as a 'workman' under the Industrial Disputes Act.

7. After going through the contentions of the petitioner and the documents placed on record, I shall first of all decide the argument vis-à-vis the jurisdiction of the Government of NCT of Delhi and consequent argument regarding the territorial jurisdiction of the Labour Court. In *Bikash Bhushan Ghosh v. Novartis India Ltd.*, (2007) 5 SCC 591, the Supreme Court held as under :

“13. We may notice that in *Paritosh Kumar Pal v. State of Bihar*, 1984 Lab IC 1254 (Patna) (FB) a Full Bench of the Patna High Court held: (Lab IC p. 1258, para 13)

“13. Now an incisive analysis of the aforesaid authoritative enunciation of law would indicate that three clear-cut principles or tests for determining jurisdiction emerge, therefrom. For clarity these may be first separately enumerated as under:

(i) Where does the order of the termination of services operate?

(ii) Is there some nexus between the industrial dispute arising from termination of the services of the workman and the territory of the State?

(iii) That the well-known test of jurisdiction of a civil court including the residence of the parties and the subject-matter of the dispute substantially arising therein would be applicable.”

Referring to the provisions of the Code of Civil Procedure, it was held that the situs of the employment of the workman would be a relevant factor for determining the jurisdiction of the court concerned.”

8. In the case at hand, the respondent no. 2 had submitted before the Labour Court that he was transferred from Amritsar to Delhi by a fax order w.e.f. 19.03.1999. As per the said respondent, he was not paid his proper wages and was not even allowed to mark his attendance after October, 1999 and on 06.06.2000 was flatly refused duty by the Delhi Office. However, in its written statement to the above-said claims, the management (petitioner herein) has stated that the respondent no. 2 was last posted at the Amritsar shop where due to his alleged indulgence in financial irregularities he was required to report to Mr. S.P. Kalra, Zonal Sales Manager at the Delhi Office for settlement of issues and for future assignment. The petitioner has explained in the written statement that the respondent no. 2's services were not transferred from the Amritsar shop to the Delhi shop but he was only required to explain/settle all outstanding issues relating to the issues at the former.

9. Further, during cross examination of Sh. Santosh Saran, General Manager- HRD of the petitioner at the Labour Court, he stated on 10.03.2005 that employees were always given transfer letters for transfer and that it was wrong to suggest that the petitioner was

transferred to the Delhi office but that he would have to check if respondent no. 2 marked his attendance in the Delhi Office. Thereafter, on 24.05.2005 the said deponent stated that he had brought the original attendance register of North Zone Office at Delhi for the period from January, 1998 to December, 2001 of all employees working in Zonal Office Delhi and that the said Register bore the signatures of respondent no. 2 for the period 01.07.1999 to 01.10.1999. In view of the clear statement of the HRD Manager of the petitioner company as regards the respondent no. 2's signatures on the attendance sheet of the Delhi office for a period of three months, I find no error in the Labour Court's finding and as the respondent no. 2's last place of work was decidedly Delhi, the Labour Court was vested with the jurisdiction to adjudicate upon the reference made by the Government of NCT of Delhi, which in turn was not objectionable in any way as the said body was the appropriate government as per the Industrial Disputes Act.

10. As regards the issue of whether the respondent no. 2 can be called a 'workman' under Section 2(s) of the Industrial Disputes Act, while debating whether a particular person can be said to be a 'workman' or not, the Courts have time and again stated that the designation given to the employee is by no means conclusive and the basis of such a determination must be the nature of work assigned to the employee. It has been held in *S. Balkrishna Vs. Merz Mclellan (India) Ltd., (1956-57)11 FJR 397* that if work requires initiative, technical knowledge and independent judgment which is not of a mere routine or of mechanical nature and the employee is highly paid, he cannot be said

to be a workman. On the other hand, if the main duties are manual or clerical, an employee will be said to be a workman (*Management, Bharat Kala Kendra Vs. R.K. Baweja, 1980 (41) FLR 390*).

11. In a similar case titled *S.K. Maini Vs. M/s. Carona Sahu Co. Ltd. & Ors., (1994) 3 SCC 510* the appellant was working as the shop manager in the respondent company. Though that case primarily revolved around whether the termination of the appellant's service was justified or not, his duties etc. were discussed at length as the respondent company's preliminary objection was that the appellant was not a 'workman' as defined under the Industrial Disputes Act as his duties entailed discharge of administrative and managerial functions. After discussing the factors which would help determine whether an employee is a workman in paragraph 9, the Supreme Court held that the appellant could not be covered under Section 2(s) of the Industrial Disputes Act. The relevant extract from paragraph 9 as well as the reasons for the above-said finding are reproduced hereunder :

“9. In this connection, reference may be made to the decision of this Court in *Burmah Shell Oil Storage and Distribution Co. of India Ltd. v. Burmah Shell Management Staff Assn.* In *All India Reserve Bank Employees' Assn. v. Reserve Bank of India* it has been held by this Court that the word 'supervise' and its derivatives are not words of precise import and must often be construed in the light of context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with the power of inspection and superintendence of the manual work of others. It has been rightly contended by both the learned counsel that the designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The determinative factor is the main duties of the employee concerned and not some works incidentally done. In other words, what is, in substance, the work which

employee does or what in substance he is employed to do. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or for a fraction of time also does some manual or clerical work, the employee should be held to be doing supervisory works. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of 'workman' as defined in Section 2(s) of the Industrial Disputes Act.

11. In the instant case, it, however, appears to us that Shri Maini as Manager/In-charge of the shop was made responsible and liable to make good such amount of credit whether such sale on credit had been made by him or by any other member of the staff in employment under him with or without his knowledge. Under the terms and conditions of service, he was asked to take charge of the shop to which his service was transferred. Mr Maini, under the terms and conditions of service, was required to be held responsible and liable for any loss suffered by the Company due to deterioration of the quality of the stock or any part thereof and loss of any of the other articles lying in the shop caused by reason of any act of negligence and/or omission to take any precaution by the employees. Mr Maini was also required to notify the Company by trunk call and/or telegram not later than three hours after the discovery in the said shop of any fire, theft, burglary, loot or arson. He was required to investigate into the matter immediately and get the cause and amount of loss established by local authorities. Mr Maini as in-charge of the shop was required to keep and maintain proper accounts as approved by the Company indicating the exact amount to be paid from the receipts from the respective staff. Under Clause XIII of the terms and conditions of the service, Mr Maini would remain fully responsible to the Company for damages or loss caused by acts or commission of the loss of the employees of the shop. Under Clause XV of the terms and conditions of service, the shop in-charge was required to keep himself fully conversant with all the regulations in force which may come into force from time to time with regard to Octroi, Sales Tax and Shops and Commercial Establishments Act and/or any other local regulation applicable to the shop. Clause XXI indicates that non-compliance with any of the local or State Acts or Central Acts would be viewed seriously and Manager would be held responsible for any fine/penalty imposed and/or prosecution launched against the Company. It also appears that in the event of a salesman being absent, the shop in-charge is empowered to appoint temporary helper for the said period to

work as acting salesman. Similarly, in the event of helper being absent, the shop manager is also empowered to appoint part-time sweeper and to entrust the work of a helper to a sweeper. Such functions, in our view, appear to be administrative and managerial.”

12. In the present case, in his claim before the Labour Court the said respondent had submitted that the designation of shop manager was glorified as he did only clerical work and he never performed any managerial, supervisory or administrative duty and in fact, the details of his work was stated as under :

“The claimant used to collect money from the different salesman engaged by the company and used to deposit the same in the company’s account. Besides the above, the Workman used to prepare weekly shop report and to submit the same in the office. The aforesaid duties were performed by the claimant under the guidance, supervision, instructions and direction of his superiors and seniors.”

13. On the other hand, details of the respondent no. 2’s duties as per the petitioner in its written statement before the Labour Court read as under :

“He was then entrusted with onerous duties and responsibilities amongst others, he was declared as the “Occupier” of the shop under the Statute viz., Shops and Establishments Act. The Claimant consequently in law was required to ensure all statutory compliance viz., opening and closing of the Shop; maintenance of statutory records viz., attendance, leave overtime, payment registers; submission of Returns to various statutory authority; grant/sanction of leave, initiation of disciplinary proceedings recommending action against other employees posted at the Shop viz., promotion increment, transfer and the like. In the circumstances, the Claimant was functioning as an Employer under the law. The Claimant used to conduct the business at the Shop independently. The over all functioning of the Shop was under his supervision and control. He performed his such duties with the assistance of other subordinates employed in the Shop. He was responsible and liable to make

good such amount of credit, whether such sale of credit had been made by any member of the staff employed under him. He was the appointing/recruiting authority in respect of the engagement of the Agents for the promotion of company's business. He was required to protect the Company's assets. He was authorized to approve and control expenses incurred by the Shop personnel. The Claimant was required to train Shop personnel in respect of its business as also to appear before Government and statutory authorities, sanction leave of the personnel working in the Shop. The Claimant used to make recommendations for recruitment, promotion, transfer and reward personnel working in the shop."

14. In this regard, the Presiding Officer has held that from the documents produced being Ex. MW1/6 to Ex. MW1/12 what appeared was that respondent no. 2 was discharging functions which were of petty financial nature and in the event of the management being unable to place anything on record (for instance the record showing which subordinates the workman was supervising, the action he took against any of them etc.) proving that respondent no. 2 was working in managerial, supervisory or administrative capacity, he had to be held that he was a workman under the Industrial Disputes Act. While referring to the documents Ex. WW1/M-6 to WW1/M-12 i.e. photocopies of petty cash vouchers sanctioned by respondent no. 2 in his capacity as Shop Manager filed by the petitioner the Presiding Officer has noted that the *"principal duty of the claimant was to look after the sale of the products of management. He had been given some incidental work of writing the accounts and keeping account of the sales/purchase if the management. The documents EXMW1/6 to EXMW1/12 also indicates that he was discharging the functions of petty financial nature. The management has not been able to prove anything,*

on record to show that actually and factually the claimant was working in managerial, supervisory or administrative capacity.”

15. In my view the stance taken by the Presiding Officer is untenable in view of a very pertinent document placed on record being the promotion letter dated 07.08.1995 sent by the petitioner to the respondent no. 2 which has been attached with the documents along with a separate copy of the Job Description as mentioned in Clause 16 of the promotion letter. The duties of respondent no. 2 have been laid out in great detail in the said document under various heads being Sales, Training, Collection, Control, Administration, General and Reporting Relationship.

16. Although respondent no. 2 was required to report to the Area Manager (Retail) of the petitioner, he was responsible, inter-alia, for planning and organising selling activities of the shop, supervising and controlling the working of the personnel assigned to the shop, representing the company in respect of its business before a Government authority, training shop personnel in product knowledge, demonstration, selling techniques, organised canvassing etc. Respondent no. 2 was to ensure that the accounts were properly maintained and trade receivable received, product trials held within time and direct the activities of the shop mechanic to ensure prompt service to customers. There is a special category of duties titled ‘Administration’ and under this the respondent no. 2 was to protect the company’s assets and receivables at all times; despatch defective merchandise to warehouses after obtaining

authorisation of the Area Manager on form F-609; ensure maintenance of the shop by utilizing the amount sanctioned under controllable expenses; ensure all reports and forms are up to date and neatly kept; sanction casual leave of personnel in the shop; recommend sanction of sick leave/ privilege leave for personnel; carry out routine and surprise checks of hire accounts created by business agents, sales trainee, sales representative and assistant shop manager; keep a close watch on activities of Field Sales Force and report irregularities to the Area Manager/ Audit Department etc. among others.

17. A perusal of the above listed duties and responsibilities attributed to respondent no. 2 by virtue of the promotion letter dated 07.08.1995, which is an admitted document between the parties, indicates that there is some doubt vis-à-vis the respondent no. 2's status as a workman under the Industrial Disputes Act. Further, additional documents placed on record by the petitioner on 02.11.2004 have not been considered or referred by the Presiding Officer in the impugned award. These documents are photocopies of Hire-Purchase applications, Cash memos, letters and various office related work papers signed by respondent no. 2 in his capacity as the Shop Manager of the petitioner and marked as Ex. MW1/7 to Ex. MW1/16. Nowhere in the impugned award have the said documents been mentioned.

18. In view of the aforesaid discussion it appears to me that the matter must be considered afresh by the Labour Court since important documents such as the promotion letter as well as Ex. MW1/7 to Ex.

MW1/16 of the additional documents filed on 02.11.2004 have not been referred and considered, therefore, the present writ petition is allowed and the matter is remanded back to the Labour Court for adjudication. The writ petition is disposed of.

MANMOHAN SINGH, J.

MAY 03, 2010
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