2024 INSC 802

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. OF 2024
(Arising out of SLP (C) No.5660 of 2023)

LENIN KUMAR RAY ... APPELLANT

VERSUS

M/s. EXPRESS PUBLICATIONS (MADURAI) LTD. ... RESPONDENT

WITH

CIVIL APPEAL No. OF 2024
(Arising out of SLP (C) No.12876 of 2024)

THE MANAGEMENT,
M/s. EXPRESS PUBLICATIONS (MADURAI) LTD. ... APPELLANT

VERSUS

LENIN KUMAR RAY ... RESPONDENT

J U D G M E N T

R.MAHADEVAN, J.

Leave granted.

2. These two appeals arise from an order dated 04.04.2022 passed by the High Court of Orissa at Cuttack[1] in Writ Petition (Civil) No.2083 of 2011, whereby, the High Court partly allowed the said writ petition filed by M/s. Express Publications (Madurai) Ltd[2] challenging the award dated 22.09.2010 passed by the Labour Court, Bhubaneswar[3] in I.D. Case No.27 of 2007. By the impugned order, the High Court set aside the award of the Labour Court to the extent that the employee is to be reinstated and to be paid compensation of Rs.75,000/- in lieu of back wages, while upholding the finding of the

[1] *Hereinafter shortly referred to as "the High Court"*
[2] *For short, "the management"*
[3] *Hereinafter shortly referred to as "the Labour Court"*

Labour Court that the employee falls under the definition of "workman" as given in section 2(s) of the Industrial Disputes Act, 1947[4].

3. Feeling aggrieved and being dissatisfied with the respective portion of the impugned order of the High Court, both the parties have preferred the instant appeals.

4. A few facts which are necessary for disposal of both the appeals, are as follows: The management is a newspaper establishment publishing a daily newspaper in English *viz.*, New Indian Express having its publication unit at Bhubaneswar. The employee was initially appointed as Junior Engineer (Electronics and Communication)[5] by the management on 07.06.1997 and was subsequently, confirmed in the said post on 13.07.1998. He was thereafter promoted to the post of Assistant Engineer (E&C) with effect from 01.05.2000 and was regularised in the said post with effect from 01.05.2001. While so, he was relieved from service on 08.10.2003, by paying a sum of Rs.6,995.65 towards one month salary in lieu of notice. Aggrieved by the same, he approached the Labour authorities, who referred the matter for conciliation. After failure of the conciliation and based on the opinion of the appropriate authority that an industrial dispute exists between the parties, a reference was made, which culminated in I.D. Case No.27 of 2007, in which, the Labour Court passed an award on 22.09.2010, reinstating the employee in service along with compensation of Rs.75,000/- in lieu of back wages, after having held that the employee was a "workman" in terms of section 2(s) of the I.D. Act. Challenging the same, the management filed the aforesaid writ petition, which was partly allowed by the High Court, in the terms as already stated in paragraph 2 *supra*. Therefore, the present Civil Appeals by both the parties.

5. The learned senior counsel appearing for the employee contended that the employee

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[4] *For short, "the I.D. Act"*
[5] *For short, "E&C"*

falls within the ambit of "workman" as per section 2(s) of the Act; he was terminated by the management without any reason; he was not given any opportunity before such termination nor there was any contract of service that his services will be terminated on 08.10.2003; and thus, there was a clear violation of provision of law in terminating the services of the employee. Taking note of the same, the Labour Court rightly passed the award in setting aside such illegal termination and directing the management to reinstate the employee in service. Without properly appreciating the same, the High Court set aside the part of the award *viz.*, direction to the management to reinstate the employee in service with payment of lumpsum compensation in lieu of back wages, by the order impugned herein, which will have to be set aside.

6. Drawing our attention to the judgments of this Court compiled in the form of typed set of papers, the learned senior counsel for the employee made the following submissions:

(i) In Industrial Law, interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section, Labour[6];

(ii) Concurrent findings of facts rendered by the Courts below cannot be interfered with by the writ Court[7];

(iii) The determining factor for a person to be qualified as "workman" as defined under section 2(s) of the I.D. Act is the nature of work done by him and not merely on the designation of his post[8]. Whether or not an employee is a "workman" under section 2(s) of the I.D. Act is required to be determined with reference to his principal nature of duties and functions; and the designation of an employee is not of much importance and

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[6] *K.C.P. Employees Association v. K.C.P. Ltd (1978) 2 SCC 42*
[7] *Southern Ispat Ltd v. State of Kerala, (2004) 4 SCC 68*
[8] *Shard Kumar v. NCT of Delhi, (2002) 4 SCC 490*

what is important is the nature of duties being performed by the employee[9];

(iv) Merely having a junior does not make an employee a supervisor or managerial cadre[10]; and

(v) In cases of wrongful / illegal termination of service, reinstatement with continuity of service and back wages is the normal rule[11]; and since the order of termination is *void ab initio*, the workman is entitled to full back wages[12].

By making the above submissions, the learned counsel prayed to allow the appeal filed by the employee and dismiss the appeal filed by the management and consequently, direct the management to reinstate the employee in service with full back wages.

7. It is the submission of the learned senior counsel for the management that the employee was discharging his duties initially as Junior Engineer (E&C) in group 3 (Admn) and thereafter as Assistant Engineer (E&C) in group 2A (Admn); the nature of the work performed by him was in the supervisory capacity; and his total emolument in the post of Assistant Engineer (E&C) as on 01.05.2001 was Rs.6805.45; and he was terminated from service on 08.10.2003 as his service was no longer required for the management. While so, he does not qualify to be a "workman" within the meaning of section 2(s) of the I.D. Act. It is further contended by the learned counsel that at the time of termination of the employee i.e., on 08.10.2003, the statutory requirement for a person to be classified as a "workman" in the I.D. Act was a salary of not exceeding Rs.1,600/- per month. However, the High Court proceeded to apply Amendment Act 24 of 2010 which came into force with effect from 15.09.2010, wherein, the statutory requirement for a person employed in the supervisory capacity to be qualified as a "workman" was a salary of not exceeding

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[9] *S.K.Maini v. Carona Sahu Co. Ltd, (1994) 3 SCC 510*
[10] *Ananda Bazar Patrika (P) Ltd v. Workmen, (1970) 3 SCC 248*
[11] *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324*
[12] *Jasmer Singh v. State of Haryana, (2015) 4 SCC 458*

Rs.10,000/- per month, and erroneously upheld the finding of the Labour Court that the employee was a "workman" as defined under section 2(s) of the I.D. Act. Therefore, the learned counsel sought to allow the appeal filed by the management, by setting aside the order of the High Court to that extent.

8. Continuing further, the learned senior counsel for the management submitted that the employee was appointed as Junior Engineer (E&C) in Group 3 (Admn) with a monthly pay of Rs.4761.75 by the management on 07.06.1997 and clause 14 of the appointment letter clearly indicated that after confirmation, the termination of service would require one month notice period or one month salary in lieu of notice by either of the parties. That apart, the employee was given promotion to the post of Assistant Engineer (E&C) on 25.05.2000 and his services as Asst. Engineer (E&C) in group 2A (Admn) were regularized with effect from 01.05.2001 with a total pay of Rs.6,805.45 per month; and it was categorically stated in the confirmation letter dated 30.04.2001 that all other terms and conditions mentioned in the Appointment Order dated 07.06.1997 shall continue to apply. In the light of the rules of the company and the terms of the employment orders, the management relieved the employee from duty by paying one month salary in lieu of notice on 08.10.2003, which was accepted and also encashed by the employee. Hence, there is no procedural violation of law on the part of the management in terminating the services of the employee. Thus, according to the learned counsel, the order of the High Court setting aside the award of the Labour Court to the extent of reinstating the employee with compensation in lieu of back wages, requires no interference by this Court.

9. We have given due consideration to the submissions made by the learned senior counsel appearing for both parties and carefully perused the materials on record.

10. At the outset, it is pertinent to point out that the Industrial Disputes Act, 1947, was

enacted by the legislature to settle the industrial disputes. It was brought with the object to ensure social justice to both the employers and employees and advance the progress of industry by bringing about the existence of harmony and cordial relationship between the parties.

11. Section 2(s) of the I.D. Act defines "workman", which is quoted below for ready reference:

> *"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—*
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> *(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*
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> *(ii) who is employed in the police service or as an officer or other employee of a prison; or*
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> *(iii) who is employed mainly in a managerial or administrative capacity; or*
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> *(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees][13] 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."*

As per the above provision, a person to be qualified as a "workman" has to do any work of manual, unskilled, skilled, technical, operational, clerical or supervisory in nature. But, the latter part of the section excludes four classes of employees including a person employed in a supervisory capacity drawing wages exceeding Rs.10,000/- after amendment (Rs.1,600/- before amendment) per month or exercises functions mainly of a

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[13] *Substituted by Act 24 of 2010, S.2, for "one thousand six hundred rupees" (w.e.f 15-09-2010)*

managerial nature. In this legal backdrop, let us first examine, whether the employee falls within the definition of "workman".

12. According to the employee, he comes within the meaning of "workman" as given in section 2(s) of the I.D. Act and the management without following the legal procedure, relieved him from service abruptly and hence, the same is illegal termination. On the other hand, it was the case of the management that the nature of the duties and functions performed by the employee was in the supervisory capacity and he was drawing a salary of above Rs.1,600/- and therefore, he does not belong to the category of "workmen". To prove their respective claims, the employee and the Senior Manager of the management were examined as W.W.1 and M.W.1; and Exts.W1 to W5 and Exts.A to D were marked before the Labour Court.

13. Evidently, the employee was appointed as Junior Engineer (E&C) with effect from 07.06.1997 under Group 3 (Admn) with a salary of Rs.4761.75 per month. Clause 14 of the appointment order issued by the management makes it clear that after confirmation of the job, the termination of service will be by one month's notice or one month's salary in lieu of notice by either side. It is not in dispute that the posting of the employee in the cadre of Junior Engineer was confirmed with effect from 07.06.1998 *vide* letter dated 13.07.1998. As per the letter dated 25.05.2000 of the management, the employee was promoted as Assistant Engineer (E&C) in Group 2A (Admn) with effect from 01.05.2000 and his revised salary was Rs.6008.79 per month. The services of the employee as Assistant Engineer were confirmed with effect from 01.05.2001 *vide* letter dated 30.04.2001 and it was categorically stated in the said letter that all other terms and conditions mentioned in the appointment order dated 07.06.1997 shall continue to hold good. *Vide* letter dated 08.10.2003, it was informed that the services of the employee were

no longer required by the management and hence, he was relieved from duty forthwith.

14. During the course of examination, the employee deposed as W.W.1 that he was not an executive cadre employee and there were senior officers to supervise and control his work. But, in the cross-examination, he asserted that he was supervising the work of two juniors who were working under him. According to M.W.1- Senior Manager of the management, the employee was an executive of the management and the management appointed two Junior Engineers and their works were being supervised by the said employee.

15. The law is well settled that the determinative factor for "workman" covered under section 2(s) of the I.D. Act, is the principal duties and functions performed by an employee in the establishment and not merely the designation of his post. Further, the onus of proving the nature of employment rests on the person claiming to be a "workman" within the definition of section 2(s) of the I.D. Act.

16. In the present case, there is no specific document adduced relating to the actual work and functions performed by the employee. In the absence of any concrete material to demonstrate the nature of duties discharged by the employee, the employment orders issued by the management will have to be taken into consideration and as per the same, the employee was appointed as Junior Engineer and was promoted as Assistant Engineer, on the administrative side. It is the evidence of M.W.1 that the employee was supervising the work of two junior Engineers, who were working under him, which was also admitted by the employee in his cross examination, as W.W.1. Even according to the employee, the nature of duties and functions discharged by him was of supervisory. As such, applying the pre-amended provision of section 2(s), since the employee was terminated from service

on 08.10.2003 and was drawing salary of more than Rs.1,600/-, he does not come within the definition of "workman". Therefore, we hold that the employee is not a "workman" as defined under section 2(s) and is not covered by the provisions of the I.D. Act. In view of the same, the order of the High Court upholding the finding of the Labour Court that the employee was a "workman" within the definition of post-amended section 2(s), is liable to be set aside.

17. As regards the grant of reinstatement of the employee in service and payment of compensation in lieu of back wages by the Labour Court, it appears to us that in terms of clause 14 of the appointment letter, the employee was required to be paid one month salary in lieu of notice. As is evident from the letter dated 08.10.2003 of the management, the employee was relieved from duty with effect from that date; and he was issued with a cheque bearing No.019345 for Rs.6995.85 drawn on UT1 Bank Ltd, Bhubaneswar, towards one month salary in lieu of notice, as per the rules of company and in terms of clause 14 of the appointment order issued by the management. It is an admitted fact that without any objection, the employee accepted the said cheque and encashed the same. Hence, there is no violation of procedure on the part of the management in terminating the services of the employee. As already held above, the employee is not a "workman" as covered under section 2(s) and hence, the provisions of the I.D. Act do not apply to him. Resultantly, the contention of the learned senior counsel for the employee *qua* violation of section 25F coupled with sections 25G and 25H of the I.D. Act, ordering reinstatement with full back wages as normal rule, *etc.*, cannot be countenanced by us. Though we are in agreement with the principles laid down in the citations relied on by the learned counsel for the employee, they do not come to rescue the employee as the facts of the same are distinguishable. Thus, we do not find any infirmity or illegality in the order of the High

Court setting aside the award of the Labour Court which directed reinstatement of the employee along with payment of compensation in lieu of back wages and hence, the same does not call for any interference by us.

18. In the light of the foregoing findings, we set aside the order of the High Court confirming the finding of the Labour Court to the extent that the employee was a "workman" within the meaning of section 2(s) of the I.D. Act; and we affirm the same, insofar as setting aside the award of the Labour Court to reinstate the employee in service and pay compensation of Rs.75,000/- in lieu of back wages.

19. Accordingly, the Appeal filed by the employee stands dismissed and the Appeal filed by the management stands allowed. There is no order as to costs. Pending application(s), if any, shall stand disposed of.

.....J.
[Pankaj Mithal]

.....J.
[R. Mahadevan]

NEW DELHI
OCTOBER 21, 2024