



PUNJAB AND HARYANA HIGH COURT
Hon'ble Mr. Harsimran Singh Sethi, J.
CWP No. 20464/2018 (O&M), Dt/-14-7-2025

Campari Exports Pvt. Ltd.

v.

Presiding Officer, Industrial-cum-Labour Court-II, Gurgaon and Anr.

A. INDUSTRIAL DISPUTES ACT, 1947 – Section 2(s) – Production Manager drawing salary of Rs. 70,000/- per month – Whether workman – A reference was raised by the respondent-workman wherein it was claimed that he was appointed as a Production Manager and was drawing a salary of Rs. 70,000/- – The workman's services were terminated and the Labour Court set aside the same and he was reinstated – It was contended by the management that he was not a 'workman' under the ID Act – Held, it is the duty of the Labour Court to ensure that the claim of the workman is within the parameters of the ID Act, especially the definition of a 'workman' – A Manager who is having Rs. 70,000/- as salary and is Working on a supervisory post, cannot be treated as a 'workman' under the ID Act – Nothing has come on record to show that he was not discharging supervisory duty while working as a Production Manager so as to claim that he was 'workman' so as to invoke the jurisdiction of the Labour Court – The Labour Court has missed the facts and not recorded any finding before applying the provisions of the ID Act – The impugned award is set aside and is remanded back to the Labour Court for fresh adjudication upon merits to decide whether the respondent falls under the definition of 'workman' or not – Writ petition is disposed of. Paras 6, 7, 10 to 13

B. CONTINUOUS SERVICE OF 240 DAYS – Whether enough – Once, no finding has been given with regard to the fact that the respondent is a workman, merely working of 240 days in service in a calendar year prior to his termination will not give jurisdiction to the Labour Court so as to allege violation of provisions of ID Act. Para 8

C. EX-PARTE PROCEEDINGS – Automatic grant of relief – Even if the petitioners were proceeded *ex-parte* in the proceeding before the Labour Court, unless and until the averments made by the claimant along with the facts show that necessary requirements of the ID Act are proved, no relief can be granted – Merely by recording the statement of the respondent without giving requisite finding of whether he is covered under the definition of 'workman' or not, no relief can be granted. Para 9

For Petitioner: Ms. Chahat for Mr. Anurag Jain, Advocates.

For Respondent No. 2: Proceeded *ex-parte*.

IMPORTANT POINTS

- It is the duty of the Labour Court to ensure that the claim of the employee is within the parameters of the ID Act, especially the definition of a 'workman'.
- A Manager who is having Rs. 70,000/- as salary and is working on a supervisory post, cannot be treated as a 'workman' under the ID Act.
- The employee has to show that he was not discharging supervisory duty while working as a Manager so as to claim that he was 'workman' so as to invoke the jurisdiction of the Labour Court.
- Once, no finding has been given with regard to the fact that the employee is a workman, merely working of 240 days in service in a calendar year prior to his termination will not give jurisdiction to the Labour Court so as to allege violation of provisions of ID Act.



- Even if the management was proceeded *ex-parte* in the proceeding before the Labour Court, no relief can be granted merely by recording the statement of the employee without giving requisite finding of whether he is covered under the definition of 'workman' or not.

JUDGEMENT (Oral)

Harsimran Singh Sethi, J.-1. In the present petition, the challenge is to the Award passed by the Labour Court, dated 25-04-2018, a copy of which has been appended as Annexure P-4.

2. Learned counsel appearing on behalf of the petitioner argues that the reference was raised by the respondent-workman, namely, Phool Chand Mishra, wherein, he claimed that he was appointed as a Production Manager with the petitioner herein on 28-11-2014 and he was drawing a salary of ` 70,000/- per month and his services were illegally terminated on 15-05-2016. The said Phool Chand claimed that his services were wrongly terminated in violation of Industrial Disputes Act, 1947 (hereinafter referred to as '1947 Act') hence, the said termination be set-aside and he be treated in service for all intents and purpose along with consequential benefits.

3. Learned counsel for the petitioner submits that though, the Management was proceeded *ex parte* during the proceeding before the Tribunal but still, on the basis of the facts and evidence brought on record, the Labour Court was required to furnish the finding on solid grounds that the respondent is a workman and is entitled for the benefit under 1947 Act and there was a violation of the provisions of 1947 Act while terminating the services of the workman. Learned counsel further submits that no such finding has been recorded in the said impugned Award and in the absence of fulfillment of necessary requirement for claiming relief under 1947 Act including that the respondent is a workman and should have completed 240 days in service in Calendar year prior to termination so as to claim that there is a violation of the provisions of 1947 Act, yet the benefit has been granted by the Labour Court in its order impugned, which is incorrect.

4. Learned counsel further submits that unless and until a categoric finding is given that the claimant who has approached the Court comes within the definition of the workman and there is a violation of the provisions of 1947 Act, the claim of the claimant could not have been allowed and, therefore, the impugned Award may kindly be set-aside. It may be noticed that despite notice, the respondent-workman has not appeared and was proceeded *ex parte*, vide order dated 13-09-2023.

5. I have heard learned counsel for the petitioner and have gone through the record with her able assistance.

6. The Award under challenge starts with the wording that the claim raised by the respondent-workman is that he was appointed as a Production Manager with the salary of ` 70,000/- per month. Once, such averment had been made by the workman, it became the duty of the Labour Court to ensure that such claim is within the parameters of the provisions of 1947 Act, especially the definition of workman. A Manager who is having ` 70,000/- as a salary and is working on a Supervisory post, cannot be treated as a workman for the purpose of 1947 Act. The definition of workman as envisaged under 1947 Act is as under:—

"2(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

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(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.”

7. Nothing has come on record to show that the workman was not discharging the Supervisory duty while working as a Production Manager with the petitioner-Management so as to claim he was covered under definition of workman so as to invoke the jurisdiction of the Labour Court to allege violations of 1947 Act. The Labour Court has totally missed the facts and has not recorded any finding before applying the provisions of 1947 Act upon the respondent-workman.

8. Once, no finding has been given with regard to the fact that the respondent is a workman, merely working of 240 days in service in a Calendar year prior to his termination will not give jurisdiction to the Labour Court so as to allege violation of provisions of 1947 Act.

9. Even if, the petitioners were proceeded ex parte in the proceeding before the Labour Court, unless and until on the basis of the averments made by the claimant along with the fact show that necessary requirements of the provisions of 1947 Act are proved, the relief cannot be granted whereas in the present case, merely by recording the statement of the workman without giving the requisite finding that whether the respondent is covered under the definition of workman or not, the relief has been granted.

10. Keeping in view the totality of the circumstances, the impugned Award passed by the Labour Court is set-aside and the case is remanded back to the Labour Court for fresh adjudication on merits to decide upon the issue that whether the respondent falls under definition of workman or not and whether there is a violation of the provisions of 1947 Act or not so as to make the respondent entitled for the benefits admissible to him.

11. Parties are directed to appear before the Labour Court on 18-08-2025.

12. Writ petition is disposed of in above terms.

13. Pending miscellaneous application, if any, also stands *disposed of*.

Ref: LLR

If you have any questions, feel free to reach out to us on WhatsApp at Jay Shah - +91 9167121333