SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Shri Mamraj Vs. Management of Shanti Developers and Promoters (i) Ltd. and anr.

Shri Mamraj Vs. Management of Shanti Developers and Promoters (i) Ltd. and anr.

SooperKanoon Citation : sooperkanoon.com/692381

Court : Delhi

Decided On : Mar-01-2005

Reported in : 119(2005)DLT355; [2005(106)FLR703]; (2005)IIILLJ114Del; 2006(1)SLJ369(Delhi)

Judge : Mukul Mudgal, J.

Acts : Industrial Disputes Act - Sections 2; Air Force Act, 1950; Army Act, 1950; Navy Act, 1957; Constitution of India - Article 226

Appeal No. : WP(C) No. 3308/2003 and CM No. 5669/2003

Appellant : Shri Mamraj

Respondent : Management of Shanti Developers and Promoters (i) Ltd. and anr.

Advocate for Def. : S.N. Bhandari, Sr. Adv. and ; Amit Seth, Adv.

Advocate for Pet/Ap. : H.K. Chaturvedi and; B.K. Pandey, Advs

Disposition : Petition dismissed

Judgement :

Mukul Mudgal, J.

1. Rule. With the consent of the learned counsel for the parties, the writ petition is taken up for final hearing.

2. The petitioner was a Site Engineer working with the respondent. Upon termination of his services, he approached the Labour Court, who by the impugned award dated 7th February, 2003 was pleased to hold that the reference was not maintainable as the claimant/petitioner herein was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act (hereinafter referred to as the 'Act'). Section 2(s) of the Act reads as follows:-

'Workman' means by 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 or 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 one thousand six hundred 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.]'

3. The Labour Court has found that in 1985, the petitioner had been appointed in a managerial and supervisory capacity on the wages of Rs. 4,150/- per month. The Labour Court had examined various documents showing that the petitioner was the site in charge of the construction sites undertaken by the respondent No. 1

company. The petitioner had written several letters in his capacity as a site Engineer. Certification of measurement was also issued by him. Even the workmen were paid by him as per the documents exhibited by the petitioner before the Labour Court. The petitioner has sought to rely upon the measurement books filled in by the petitioner by hand to contend that his nature of work performed by him was manual and clerical and considering the voluminous nature of the register filled in by him, the petitioner was performing clerical and manual duties and hence was a 'workman' falling under Section 2(s) of the Act. The Labour Court has found that the nature of work performed by the petitioner was to look after the construction at site as a managerial capacity and to supervise the subordinate staff with regard to day-to-day work of payment etc. This is a finding of fact and thus inference under Article 226 of the Constitution of India is not called for.

4. The petitioner has relied upon the judgment of the Hon'ble Supreme Court in Arkal Govind Raj Rao v. Ciba Geigy of India Ltd., : (1985)IILLJ401SC , and particularly paragraph 8 thereof to contend that the Hon'ble Supreme Court has held that on mere incidental performance of supervisory work, the person concerned would not cease to be the workman and he must be a person who is engaged for supervisory capacity. The relevant portion of the aforesaid judgment reads as follows:-

'The definition of the expression workman hereinbefore extracted clearly shows that the person concerned would not cease to be a workman if he performs some supervisory duties but he must be a person who must be engaged in a supervisory capacity. Even as a Group Leader of the Group II, the evidence produced would show that primarily he continued to work and perform the same duties which have been found to be clerical but along with others in the group he also incidentally looked after the work of other members of the group who were only two in number.'

5. In my view this judgment does not support the case set up by the petitioner itself for the reason that the petitioner was performing supervisory duties as Site Engineer though he may have incidentally performed the duty of filling up the site registers. The dominant nature of his work being managerial and supervisory,

even if the filling up of the registers was manual and clerical it was only incidental to his managerial and supervisory capacity. Accordingly, there is no reason for interference in the finding of the Tribunal that the petitioner was working as a site Engineer and doing managerial/supervisory work.

4. The writ petition is thus dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com