

**Divyash Pandit Vs. the Management of National Council for Cement and Building Materials**

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**Court :** Delhi

**Decided On :** Mar-29-2012

**Judge :** Badar Durrez Ahmed & V.K.Jain

**Appeal No. :** LPA No. 297 OF 2009

**Appellant :** Divyash Pandit

**Respondent :** The Management of National Council for Cement and Building Materials

**Judgement :**

**V.K. JAIN, J.**

1. This appeal is directed against the judgment dated 24.4.2009 passed by a learned Single Judge of this Court in WP(C) 8451/2009. The brief facts of the case can be summarized as under:

The appellant was employed as a Graduate Engineer Trainee with the respondent in February, 1982. On completion of training he was appointed in the category of "NCB Cadre Official Level M". A charge-sheet dated 21.7.1986 was issued to the appellant and pursuant to the finding returned by the Inquiry Officer, he was removed from the service on 29.1.1987. The appeal filed by him having been dismissed on 29.4.1989, an industrial dispute was raised by him which was

referred to the Labour Court. Vide order dated 8.4.1996 an award was passed declaring the domestic inquiry invalid and directing reinstatement of the appellant with full back wages. WP(C) 3724/1996 was filed by the respondent challenging the award passed by the Labour Court. Vide order dated 2.12.2002, this Court remanded the matter to the Labour Court for recording fresh evidence on all the issues. Vide order dated 25.7.2008 the Labour Court held that the appellant was not a „workman?and was in fact a Scientist. Being aggrieved, the appellant filed WP(C) 8541/2009 which came to be dismissed vide impugned order dated 24.4.2009.

2. The only issue involved in this appeal is as to whether the appellant was a „workman?or not? A perusal of the award passed by the Labour Court on 25.7.2008 would show that it was contended on behalf of the respondent that the appellant was a qualified engineer, engaged to carry out research work and he was not doing unskilled, semi-skilled or skilled, technical and/or clerical work. The appellant on the other hand submitted that he was not doing any supervisory or managerial work, his work being only clerical, manual or technical.

3. On going through the record, we notice the following evidence:

a) In his deposition before Labour Court, the appellant inter alia stated as under:

“I joined the management in February 1982 as a graduate engineer trainee after completion of one year of training I was appointed as regular officer cadre as Cadre Official Level Li. Copy of my appointment is Exh. WW1/1. My nature of duties was research work in process Engg. Field related to cement industry. I was a member of projects in various projects namely RandD 49 i.e. development statistical methods of quality central (b) development and data base. (3) beneficiation of low grade lime stone. My duties were confined only as a research work which involved technical scale for which I have special knowledge. I did not exercise any supervisory or managerial functions. No employee was working under me.”

b) AW-1 Shri K.Suryanarayana, working as Scientist, Grade E.II at Hyderabad Centre of the respondent, inter alia, stated as under:

“That I know Mr Divyash Pandit who was earlier working with the management as a Scientist in Grade E2. I have worked with him during the period from 1986 to 1987 when I was posted as laboratory assistant in Grade A10 in the pay scale of Rs.1640-2900 (pre revised) at Chennai. At present the revised pay scale of Grade A10 is Rs.5500-9000. That during the period between May 1985 to May 1994 when I was working as laboratory assistant, at NCB IIT (Madras), Sh Divyash Pandit was working in the said unit as scientist in Grade E2 (earlier called as level M) in the pay scale of Rs 2200-4000 (pre revised) Rs 8000-13500 revised. The duties of a scientist in E2 Grade is to generate, develop manage and protect new knowledge/techniques by research, design, development and extension etc. He performs the work of imaginative and creative in nature.

That Sh Divyash Pandit who was working as scientist Grade E2 with the management was engaged in the above stated scientific activities as mentioned hereinabove. As a scientist he used to impart advise/guidance to the team working under him. He was my superior officer also. His activities were of research/education/delivering lectures, collecting scientific data for research etc. He used to supervise the employees working on projects which included supervising manual and other routine jobs assigned to them. He was not performing stereotype of functions.” (emphasis supplied)

c) Shri R.P.Sharma, Secretary of National Council for Cement Building Materials, inter alia, stated as under:

“That Shri Divyash Pandit while working as scientist as stated hereinabove as the other scientists working in the said category was doing research, intellectual, imaginative, creative work i.e. do deliver lectures, prepare scientific reports, collection of different scientific data and other related innovative work. A sample copy of publication of the Management containing Shri Divyash Pandit’s work is marked herewith EX MW2/2. Shri Divyash Pandit as scientist Grade E2 was supervising the employees working for routine manual and stereotype of work.

x x x x Shri Divyash Pandit was working with the management as scientist E2 and therefore stood in the category of E i.e. the Executive category and it was a senior position among employees.”

We also notice that in the cross examination of Shri K.Suryanarayana no suggestion was given to him that he was not working with the appellant from 1986 to 1987, as a Laboratory Assistant. No suggestion was given to him that the appellant was not imparting advice/guidance to the team working under him. No suggestion was given to the witness that the appellant was not his superior officer. No suggestion was given to him that the appellant did not supervise the employees working on the projects.

In **JS Bhalla v. G.J.Bhawnani: 23(1983) DLT 125** the owner of the property had appeared in the Court and deposed that he was the owner and the lease deed was executed in his favour. He, while in the witness box, was not cross examined about the ownership of the property in question. It was observed that in the absence of cross-examination it must be held that the appellant had admitted the facts deposed by the respondent.

In **Mahant Mela Ram Chela Mahant Inder Dass v. Shiromani Gurudwara Parbandhak Committee, Amritsar: AIR 1992 Punjab and Haryana 252**, it was observed that a party should put to each of its opponents witnesses so much of his case as concerns that particular witness and if no such questions are put, the court presumes that the witness account has been accepted.

By not giving any suggestion to the contrary, the appellant is deemed to have accepted that part of the deposition of Shri K.Suryanarayana where he stated that he had worked with the appellant when posted as a Laboratory Assistant and at that time, the appellant used to impart advice/guidance to the team working under him.

Similarly, the appellant is deemed to have admitted that part of the deposition of Shri R.P.Sharma where he stated that the appellant was supervising the employees working for routine, manual or stereotype work.

4. It was contended by the learned Counsel for the appellant that since in his cross examination Shri K.Suryanarayana has stated that his knowledge of the appellant's work was based on what others told him and he did not know the pay-scale of the appellant, this witness had no knowledge with respect to the functions being

discharged by the appellant. In our view, this part of the deposition of the witness cannot be interpreted to mean that he had absolutely no knowledge even about the functions, which the appellant was performing with the respondent. The deposition of the witness has to be read as a whole instead of picking out one particular sentence from his cross examination. The witness having clearly stated that the appellant was his superior officer as well and that he had worked with the appellant from 1986 to 1987, the harmonious and reasonable interpretation which we should give to his deposition is that the witness did not have personal knowledge with respect to the whole of the functions performed by the appellant during his tenure with the National Council for Cement and Building Materials though he did have personal knowledge with respect to the functions which the appellant was performing at the time the witness was working with him and that the appellant was also his superior officer. In any case, the deposition of Mr. R.P.Sharma also indicates that the appellant, as a Scientist Grade E.II was supervising the employees working for routine, manual and stereotype work, therefore, it cannot be said that the appellant was not performing supervisory work, while working as a Scientist. In any case, a finding of fact having been returned by the Labour Court with respect to the status of the appellant and that finding having been affirmed by the learned Single Judge, it will not be open to us to interfere with that finding and take a contrary view while sitting in appeal over the judgment of the learned Single Judge.

5. Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) which defines „workman?, to the extent it is relevant reads as under:

“ “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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(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 LPA 297/2009 Page 8 of 15 reason of the powers vested in him, functions mainly of a managerial nature.”

6. In **May and Baker (India) Ltd. v. Their Workman**: AIR 1961 SC 678, the question which came up for consideration before Supreme Court was as to whether a person employed by a pharmaceutical firm as a representative, whose duties consisted mainly of canvassing was a „workman?or not. The Supreme Court held that the representative was not a „workman?and, inter alia, observed as under:

“x x x x duties consisted mainly of canvassing orders and any clerical or manual work that he had to do was only incidental to his main work of canvassing could be considered as a workman as defined in the Act.

As "workman" was then defined as any person employed in any industry to do any skilled or unskilled manual or clerical work for hire or reward. Therefore, doing manual or clerical work was necessary before a person could be called a workman. This definition came for consideration before industrial tribunals and it was consistently held that the designation of the employee was not of great moment and what was of importance was the nature of his duties. If the nature of the duties is manual or clerical then the person must be held to be a workman. On the other hand if manual or clerical work is only a small part of the duties of the person concerned and incidental to his main work which is not manual or clerical, then such a person would not be a workman. It has, therefore, to be seen in each case from the nature of the duties whether a person employed is a workman or not, under the definition of that word as it existed before the amendment of 1956. The nature of the duties of Mukerjee is not in dispute in this case and the only question, therefore, is whether looking to the nature of the duties it can be said that Mukerjee was a workman within the meaning of Section. 2(s) as it stood at the relevant time. We find from the nature of the duties assigned to Mukerjee that his main work was that of canvassing and any clerical or manual work that he

had to do was incidental to his main work of canvassing and could not take more than a small fraction of the time for which he had to work. In the circumstances the tribunal's conclusion that Mukerjee was a workman is incorrect. The tribunal seems to have been led away by the fact that Mukherjee had no supervisory duties and had to work under the directions of his superior officers. That, however, would not necessarily mean that Mukerjee's duties were mainly manual or clerical. From what the tribunal itself has found it is clear that Mukerjee's duties were mainly neither clerical nor manual. Therefore, as Mukerjee was not a workman his case would not be covered by the Industrial Disputes Act and the tribunal would have no jurisdiction to order his reinstatement.”

(emphasis supplied)

Subsequent to the aforesaid decision, Section 2(s) of the Industrial Disputes Act was amended by including in its ambit persons doing technical work as well as supervisory work. Subsequent to the amendment, in **Miss A.Sundarambal v. Government of Goa, Daman and Diu And Others: AIR 1988 4 SCC 1700**, the Supreme Court was called upon to examine whether a teacher in a school was a „workman?or not. Holding that even after amendment of the definition of the „workman?the teacher cannot be stated to be a workman, the Supreme Court, inter alia, observed as under:

“The question for consideration is whether even after the inclusion of the above two classes of employees in the definition of the expression 'workman' in the Act a teacher in a school can be called a workman. We are of the view that the teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or post graduate education cannot be called as 'workmen' within the meaning of Section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any they may do, is only incidental to their principal work of

teaching. We agree with the reasons given by the High Court for taking the view that teachers cannot be treated as 'workmen' as defined under the Act. It is not possible to accept the suggestion that having regard to the object of the Act, all employees in an industry except those falling under the four exceptions (i) to (iv) in Section 2(s) of the Act should be treated as workmen. The acceptance of this argument will render the words 'to do any skilled or unskilled manual, supervisory, technical or clerical work' meaningless. A liberal construction as suggested would have been possible only in the absence of these words. The decision in *May and Baker (India) Ltd. v. Their Workmen*, (supra) precludes us from taking such a view. We, therefore, hold that the High Court was right in holding that the appellant was not a 'workman' though the school was an industry in view of the definition of 'workman' as it now stands."

In **Jamia Hamdard v. Delhi Administration And Others**: 44 (1992) DLT 210 (DB) respondent No.3 before this Court was a highly qualified person who applied to be appointed as a research fellow with the petitioner Jamia Hamdard which was a deemed University. The letter of appointment stipulated that he would be responsible for doing his own research work during the tenure of fellowship and will also be guiding research and helping administration of the Department and publication of the Department's quarterly under the direction of Head of the Department. On his services being terminated, the question which came up before the Court was as to whether he was a „workman“ within the meaning of Section 2(s) of the Act. It was contended on behalf of the respondent No.3 before this Court that he was discharging functions which were not supervisory in nature and he was a skilled workman. Rejecting the contention this Court, inter alia, observed as under:

“Research of course is usually for the benefit of mankind but when it is successfully carried out it primarily and essentially brings credit to the researcher various Nobel Laureates have achieved distinction in sciences through research which was carried out by them in the very nature of things research means bringing out a creative work. It is difficult for us to comprehend as to how a highly qualified post graduate research fellow can possibly be regarded as a workman within the meaning of Section 2(s) of the Act.”

The above referred observations made by this Court do tend to support the view taken by the Labour Court as well as by the learned Single Judge.

7. A Constitution Bench of the Supreme Court in **H.R.Adyanthaya And Others v. Sandoz (India) Ltd. And Others**: 1994 (5)SCC 737, inter alia, held as under:

“We thus have three Judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz, manual, clerical, supervisory or technical and two two-judge Bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three three-judge Bench decisions which have without referring to the decisions in May and Baker, WIMCO and Bunnah Shell cases (supra) have taken the other view which was expressly negated, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the ID Act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the LA Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation.”

8. The appellant before us admittedly is an engineering graduate. As per his own statement before the Tribunal he had been carrying out research work in process engineering field related to cement industry. He claims to have special knowledge in research work. It has also come in the deposition of Shri K.Suryanarayana and Shri R.P.Sharma that the appellant was supervising the employees working for routine, manual and stereotype work. The appellant was receiving wages of Rs.1600 p.m. even in the pre-revised scale. It has been noted by the Labour Court that the appellant was placed in the pre-revised scale of Rs.2200-4000 (revised pay scale of Rs.8000-13500). Therefore, we see no reason to interfere with the view taken by the Labour Court and the learned Single Judge in this regard. Considering the nature of the work which the appellant was performing, it cannot be said that he was doing any manual, unskilled, skilled, technical, operational or

clerical work within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. The very nature of scientific research, which the appellant was carrying out, runs counter to his being a manual, unskilled, skilled, technical, operational or clerical worker within the meaning of Section 2(s) of the Act. We fail to appreciate how a scientist, who is a qualified engineering graduate and, is engaged in research work as well as supervising the work of other employees can be said to be a „workman?when a teacher has been held not to be a „workman?. We, therefore, are in complete agreement with the view taken by the learned Single Judge with respect to the status of the appellant.

9. The learned Counsel for the appellant had relied upon **National Engineering Industries Ltd. v. Shri Kishan Bhageria and Others: AIR 1988 SC 329, S.K.Maini v. M/s Carona Sahu Company Limited And Others: AIR 1994 SC 1824, Sharad Kumar v. Government of NCT of Delhi And Others: AIR 2002 SC 1724 and Heavy Engineering Corporation Ltd. v. Presiding Officer, Labour Court AndOthers: (1996) 11 SCC 236.**

In **National Engineering** (supra) the employee concerned was working as an internal auditor whose duties were mainly reporting and checking up on behalf of the management. It was held that a checker on behalf of the management is not a supervisor. Considering the nature of the work which was being performed by the appellant, this judgment is of no help to him. In **S.K.Maini** (supra), the person concerned was working as the Shop Manager/In-charge of a local shop of a large company. It was held that the employee concerned was not a workman within the meaning of Section 2(s) of the Act. During the course of the judgment it was observed that the determinative factor in such matters is the main duty of the concerned employees and not some works incidentally done by him. Again this judgment does not help in establishing that a person such as the appellant, who was engaged in research work besides supervising the work of other persons, working with the respondent can be a workman. In **Heavy Engineering Corporation Limited** (supra) it was held that a doctor who had male nurse, nursing attendant, sweeper and ambulance driver working under him was not a workman. In **Sharad Kumar** (supra) the appellant was holding the post of Area Sales Executive when his service was terminated. The court was of the view that

the question required examination of factual matters for which oral evidence would have to be considered and accordingly directed the government to refer the dispute raised by the appellant to the Industrial Tribunal/Labour Court for adjudication. Neither of these judgments is of any help in deciding whether a person discharging functions as appellant before this Court had been performing can be said to be a workman or not.

For the reasons stated hereinabove the appeal is hereby dismissed without any order as to costs.

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