Delhi High Court K.H. Pandhi vs The Presiding Officer, Addl. ... on 5 February, 2004 Equivalent citations: 110 (2004) DLT 101, 2004 (73) DRJ 249, 2004 (101) FLR 518, (2004) IILLJ 877 Del, 2004 (3) SLJ 88 Delhi Author: M B Lokur Bench: M B Lokur JUDGMENT Madan B. Lokur, J. 1. The Petitioner is aggrieved by an Award dated 20th December 1977 passed by the Additional Labour Court in ID No. 150 of 1977 wherein it was held that the Petitioner is not a "workman". Consequently, it was held that there was no industrial dispute between the Petitioner and the Respondent-Management. 2. During the pendency of the writ petition, the Petitioner reached the age of superannuation and, therefore, even if the Award is set aside, in view of the long lapse of time, it would be an unnecessary burden on both parties to remand the controversy for a decision on merits, that is on the question whether the Petitioner's services were validly terminated or not. Since reinstatement of the Petitioner in service with the Respondent-Management cannot be ordered, at best, the only question that can arise, even if the Petitioner succeeds in the Labour Court on remand, is about the quantum of compensation or back wages that may be due to him. It is on this basis that I heard learned counsel for the parties, and proceed to decide this writ petition. 3. The issue referred for adjudication to the learned Additional Labour Court was as follows: – "Whether dismissal of Shri K.H. Pandhi is illegal and/or unjustified and if so, what relief is he entitled and what directions are necessary in this respect." 4. At the relevant time, the Petitioner was working as an accountant on a salary of about Rs.715.00 per month. He was employed on or about 15th April 1974 and was dismissed from service by a letter dated 5th November 1975. In other words, the Petitioner, who had done his B.Com., was employed with the Respondent-Management for about a year and a half. 5. Notice of the reference was sent to the Petitioner as well as to the Respondent-Management but the Respondent-Management refused to accept the notice and was, therefore, proceeded against ex parte under Rule 22 of the Industrial Disputes (Central) Rules, 1957. 6. It appears that while the Petitioners evidence was being recorded, a Court question was asked regarding his nature of work. The learned Additional Labour Court has paraphrased his reply and the relevant portion of the Award delivered by the learned Additional Labour Court in this regard reads as follows: – "... he says that he has not passed any other course of accountancy but his duties were to write accounts and to prepare related statements of accounts. He used to make entries of the vouchers in the account books. He was the only accountant in Delhi. He says that Chief Accountant and Chartered Accountant used to come in Delhi periodically from Patna and he used to perform accountancy work at Delhi according to their guidelines. He also used to deal with cash. He used to keep cash with him. This used to be under the supervision of Technical Director. He also used to deposit money in the Bank and take out money from the Bank. But cheques were issued by Technical Director. He used to prepare daily account of cash in hand that is cash received and cash spent and to send this daily report to the head office. The Technical Director used to check these daily reports and sign them. Technical Director used to authorise the issue of all the vouchers for payments and then only they could be entertained by him."

7. The learned Additional Labour Court noted in the impugned Award that the Petitioner also used to handle stationery and keep its stock and receipt. 8. On these facts, and relying on the decision of a learned Single Judge of this Court in M/s 'Kirloskar Brothers Ltd. vs. The Presiding Officer, 1976 Lab. I.C. 918, the learned Additional Labour Court came to the conclusion that the Petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (the Act) and, therefore, the dispute raised by the Petitioner is not an industrial dispute, thereby making the reference incompetent. 9. The first question that has to be decided is whether the Petitioner was in fact a workman or not, as defined in Section 2(s) of the Act. During the relevant period the definition of the word "workman" as amended by Amending Act 36 of 1956, which came into force from 29th August 1956, was as follows: "(s) 'workman' means any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed 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 Army Act, 1950, or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934; or (ii) who is employed in the police service or as an officer or other employee of 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 five 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." 10. While interpreting this provision, the Constitution Bench of the Supreme Court in H.R. Adyanthaya and Others Vs. Sandoz (India) Ltd. and Others, held that an employee is a workman under the Act if he is employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. In the other words, if the work of a person did not fall within any of the categories of manual, clerical, supervisory or technical, he would not qualify to be workman. (Para 24 of the Report). 11. What has therefore, to be seen is whether the Petitioner was carrying on any work of a manual, supervisory, technical or clerical nature. According to learned counsel for the Petitioner, his client was basically doing clerical work as is apparent from a narration of his duties. 12. What is the scope of the word "workman" as defined in the Act and whether an accountant is a workman or not has come up for consideration by the Supreme Court on more than one occasion. 13. In South Indian Bank Ltd. vs. A. R. Chacko, of the questions considered was whether the Respondent therein, an accountant with a bank, was a workman or not. The admitted position was that his mere designation as an accountant would not take him out of the category of workman (paragraph 9 of the Report). The Supreme Court then observed in paragraph 11 of the Report that "The Labour Court appears to have taken proper note of this distinction between accountants who are really officers and accountants who are merely senior clerks with supervisory

duties and on a consideration of the evidence on the record as regards the duties actually performed by the Respondent Chacko has come to the conclusion that he was merely a senior clerk, doing mainly clerical duties, and going by the designation of accountant and was in reality a workman as defined in the Industrial Disputes Act and doing an element of supervisory work." 14. Adverting to the multifarious nature of duties of a workman, the Supreme Court in Arkal Govind Raj Rao vs. Ciba Geigy of India Ltd., held in paragraph 6 of the Report as follows: – "Where an employee has multifarious duties and a question is raised whether he is a workman or someone other than a workman the Court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to do some other work, may not necessarily be in tune with the basic duties these additional duties cannot changes the character and status of the person concerned. In other words, the dominant purpose of employment must be first taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of the person." It was further held in paragraph 8 of the Report that: – "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." And in paragraph 16 of the Report, it was held: – "The test that one must employ in such a case is what was the primary, basic or dominant nature of duties for which the person whose status is under enquiry was employed. A few extra duties would hardly be relevant to determine his status. The words like managerial or supervisory have to be understood in their proper connotation and their mere use should not detract from the truth." 15. In Ananda Bazar Patrika (P) Ltd. vs. The Workmen, it was held in paragraph 3 of the Report that: – "The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity." 16. After examining the evidence relating to the nature of the work done by the Respondent workman therein, the Supreme Court observed in paragraph 6 of the Report that: – "The principal work that Gupta was doing was that of maintaining and writing the cash-book and of preparing various returns. Being the senior-most clerk, he was put in-charge of the Provident Fund Section and was given a small amount of control over the other clerks working in his section. The only powers he could exercise over them was to allocate work between them, to permit them to leave during office hours and to recommend their leave applications. These few minor duties of a supervisory nature cannot, in our opinion, convert his office of senior clerk in-charge into that of a supervisor. The Labour Court was, therefore, right in holding that Gupta was

a workman on the date of his retirement and that an industrial dispute did, in fact, exist." 17. Similarly, in S.K. Maini Vs. M/s Carona Sahu Co. Ltd., the Supreme Court held in paragraph 9 of the Report: – "After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it appears to us that whether or not an employee is a workman under Section 2(s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any strait-jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of workman under Section 2(s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the complexity of industrial or commercial organisations quite a large number of employees are often required to do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it." Thereafter, in the same paragraph, it was said: – "... 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 Section 2(s) of the Industrial Disputes Act." 18. On a review of the above decisions of the Supreme Court, it is quite clear that the designation of an employee is of no consequence. To determine whether an employee is a workman or not, what is of consequence is his main or primary duties. If the employee performs some duties which are incidental or even in addition to his main or primary duties, that by itself will not take away his status as a "workman" provided, as a result of his main or primary duties, he falls within the definition of workman under the Act. 19. Viewed in this background of the legal position, it is necessary to determine whether the Petitioner performed duties of a clerical nature as contended by his learned counsel or not. A perusal of the duties performed by the Petitioner, as stated by him in response to a Court question suggests that his duties were only, if not primarily, clerical in nature. He was required to write accounts and prepare related statements of accounts. He was also required to make entries of the vouchers in the account books. While he was performing accountancy work in Delhi, it was only on the basis of and according to the guidelines issued by the Chief Accountant and the

Chartered Accountant who used to come from Patna. The activities that the Petitioner performed in relation to cash, that is, to deposit cash in the bank or to withdraw it, were under the supervision of the Technical Director. The daily accounts of the cash in hand prepared by the Petitioner were checked and signed by the Technical Director. It was only after the Technical Director authorised the issue of vouchers for payments that they were entertained by the Petitioner. In other words, there was little work that the Petitioner could do on his own. Most of the accounting work was done by him on the basis of guidelines issued by the Chief Accountant or the Chartered Accountant. The day-to-day work in relation to cash or cheques was done by the Petitioner under the supervision of the Technical Director. Quite clearly, the work done by the Petitioner fell in the category of clerical work and nothing more. 20. Learned counsel for the Petitioner brought to my notice that the learned Additional Labour Court concluded that the Petitioner was not a workman on the basis of a decision rendered by a learned single Judge of this Court referred to above and that this judgment has since been set aside by the Division Bench in Atma Prakash Goel vs. The Presiding Officer and another, (LPA No.29 of 1976 decided on 30th April 1985). The Division Bench found that the facts available on record were not sufficient to come to the conclusion whether the Appellant therein was a workman or not. Accordingly, the Division Bench remanded the matter to the Labour Court to hold a further inquiry to determine the answer to that question. In the present case, however, it is not necessary to have any further inquiry conducted into the matter because the facts, as mentioned above, are sufficient for coming into the conclusion that the Petitioner was a workman within the meaning of Section 2(s) of the Act. 21. Learned counsel for the Respondents contended that the question whether the Petitioner is a workman or not is a question of fact and therefore this Court, in exercise of its jurisdiction under Article 226 and 227 of the Constitution should not interfere with this finding of fact. Reliance in this regard was placed on Essen Deinki vs. Rajiv Kumar, where, in paragraph 2 of the Report the Supreme Court said: – "Generally speaking, exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature. It is so exercised in the normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of natural justice, to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders on even wrong decisions made within the limits of the jurisdiction of the courts below. The finding of fact being within the domain of the inferior tribunal, except where it is a perverse recording thereof or not based on any material whatsoever resulting in manifest injustice, interference under the article is not called for." 22. There is no dispute, as indeed there cannot be, with the proposition of law laid down by the Supreme Court. However, the question whether an employee is a workman or not is a mixed question of fact and law. Moreover, if the very jurisdiction of the Labour Court is in question, it can certainly be looked into by the High Court under Article 226 and 227 of the Constitution. 23. In Lloyds Bank Ltd. Vs. Panna Lal Gupta and Others, one of the questions considered by the Supreme Court was whether the employees in that case were supervisors or not. In paragraph 4 of the Re-

port, it was observed:- “It is, however, clear, and it is not disputed, that even if the three workmen do not by name or designation fall in the said category they would nevertheless be entitled to claim the special allowance if it appears that the duties performed by them and the functions discharged by them are similar to, or the same as, the duties or functions assigned to persons falling in that category.” 24. While dealing with a preliminary objection on behalf of the employees that the finding of the Appellate Tribunal was a finding of fact which ought not to be interfered with, the Supreme Court held in paragraph 5 of the Report:- “The status of the three workmen has to be inferred as a matter of law from facts found, and there can be little doubt that if the question involved is one of drawing a legal inference as to the status of a party from facts found that is not a pure question of fact. If the inference drawn by the Tribunal in regard to the status of the three workmen involved the application of certain legal tests that necessarily becomes a mixed question of fact and law and the respondent would not be justified in raising a preliminary objection that the appellant should not be allowed to urge his contention against the correctness of the finding of the Tribunal on such a mixed question of fact and law. We would, however, like to add that even if the question raised is one of mixed fact and law we would not readily interfere with the conclusion of the Tribunal unless we are satisfied that the said conclusion is manifestly or obviously erroneous.” 25. Similarly, in All India Reserve Bank Employees’ Association and Another Vs. Reserve Bank of India and Another, the Supreme Court approved (in paragraph 25 of the Report) the view expressed by the Labour Appellate Tribunal in Ford Motor Co. of India Ltd. Vs. Ford Motors Staff Union, (1953) 2 Lab LJ 444 that:- “. . . . . the question whether a particular workman is a supervisor within or without the definition of ‘workman’ is”ultimately a question of fact, at best one of mixed fact and law. . . .." and “will really depend upon the nature of the industry, the type of work in which he is engaged, the organisational set up of the particular unit of industry and like factor.” 26. While upsetting the finding of the Labour Court in Ciba Geigy, the Supreme Court observed in paragraph 6 of the Report that “Appreciation of evidence by Labour Court cannot be faulted but it landed itself into an erroneous conclusion by drawing impermissible inference from the evidence and overlooking the primary requirement of the principal and subsidiary duties of the appellant.” Similarly, in Ananda Bazar Patrika in paragraph 3 of the Report, it was said that “In the present case, we have, therefore, to examine the evidence to see whether the Labour Court is right in holding that because of the main work of Gupta being clerical in nature, he was not employed in supervisory capacity.” The Supreme Court has used words to more or less the same effect in S.K. Maini (paragraph 9 of the Report). 27. In my opinion, the present case is one in which the learned Additional Labour Court drew an impermissible inference from the evidence on record so as to warrant interference under Article 226 and 227 of the Constitution. In any event, the learned Additional Labour Court relied upon a judgment of a learned single Judge of this Court, which judgment has since been overruled by the Division Bench. The error of law committed by the learned Additional Labour Court is such that it falls within the permissible limits laid down by

the Supreme Court in Essen Deinki. 28. Having decided the issue in favor of the Petitioner, the next question that remains to be considered is whether the services of the Petitioner were validly terminated. Prima facie, it appears to be so, because no enquiry was held against the Petitioner and the Respondent-Management allowed the case against it to go ex parte. Consequently, in the absence of any contrary finding from the Labour Court, on the facts of this case, I have to proceed on the assumption that termination of the services of the Petitioner was not in accordance with law. 29. As already mentioned above, reinstatement is not possible. The only question that, therefore, survives is of payment of back wages or compensation payable to the Petitioner. Learned counsel for the Respondent-Management has brought to my notice the fact that the Petitioner worked with the Respondent-Management for only 1 1/2 years. During this period, his salary was about Rs.715.00 per month. From the affidavit filed by the Petitioner, it appears that he reached the age of 60 years sometime in 2001. The Petitioner was removed from service sometime in 1975, which means that if the Petitioner is granted back wages, he will be entitled to the same for a period of about 26 years, even though he was employed for only 1 1/2 years. 30. Learned counsel for the Respondent Management submitted that it would be extremely inequitable if his client is asked to pay back wages to the Petitioner for almost a quarter of a century for work that he has not done. This is all the more so considering the fact that the Petitioner had worked with the Respondent Management for only 1 1/2 years. He submitted that, at worst, his client can only be asked to pay adequate compensation in lieu of back wages. 31. The quantum of compensation in lieu of reinstatement came up for consideration in O.P. Bhandari vs. Indian Tourism Development Corporation Ltd., 1993 Supp (4) SCC 468. In that case, the Supreme Court was of the view that compensation equivalent to 3.33 years salary was adequate. In paragraph 7 of the Report, it was said as follows: – "The decretal order to which we have adverted to, is in the nature of a decree made in the appeal. The decretal order does not say that if Bhandari is paid 3.33 years' salary in lieu of his reinstatement he should, along with that salary, be paid salary which would have become payable to him from the date of his termination order till the date of the order of this Court. Indeed, the decretal order does not envisage the payment of arrears of salary from the date of termination of service of Bhandari till the date of the order of this Court independently of the amount of compensation to be paid in lieu of his reinstatement becomes clear, from the fact that clause II of the decretal order specifically states that the amount of compensation equal to 3.33 years' salary including allowances made payable there under covers the full period commencing from the date of termination of his service till the date of payment. Thus the first submission made on behalf of Bhandari as to the separate claim for his arrears of salary from the date of termination of his service to the date of the order of this Court, is devoid of merit." 32. In Syed Azam Hussaini vs. Andhra Bank Ltd., 1996 Supp (1) SCC 557, the Supreme Court awarded compensation in lieu of back wages. The quantum was fixed on the basis of the salary being paid to the Appellant therein at the time when his services were terminated. However, the Supreme Court did not

indicate what was the salary of the Appellant therein when his services were terminated; but it appears from the decision that the Appellant in that case was working in the clerical grade in a bank, perhaps performing duties slightly akin to the Petitioner in the present case; but this is only a guess. In paragraph 14 of the Report, it was said: – "The next question which requires consideration is whether in the facts and circumstances of the case it would be appropriate to direct reinstatement of the appellant or he may be awarded compensation in lieu of back wages and reinstatement. The services of the appellant were terminated with effect from 2-1-1971. More than 24 years have elapsed since then. In the circumstances it would not be conducive to the proper functioning of the respondent-Bank to direct the reinstatement of the appellant. Having regard to the facts and circumstances of the case, we consider it appropriate that a lump sum amount may be awarded to the appellant by way of compensation for reinstatement as well as back wages. Keeping in view the salary that was being paid to the appellant at the time when his services were terminated, we are of the opinion that a sum of Rs 75,000 would be an adequate amount for such compensation." 33. In Virender Singh vs. General Manager, 1998 (1) CLR 1134, a learned single Judge of this Court awarded compensation on the following basis: – "The petitioner, at the time of his termination of his services was drawing a salary of Rs. 5,800/- per month and therefore, if it is ordered that he should be paid a compensation of Rs. 4 lakhs instead of reinstatement in service he would be able to invest the said amount in a fixed deposit whereby he would be able to earn interest of about Rs. 48,000/- per annum going by the present rate of interest, which would mean that he would be getting Rs. 4,000/- per month, which would be the amount he would be receiving every month apart from being able to take up any other job or venture into some other business of his own." 34. In the present case, if the principle laid down in O.P. Bhandari were taken into account, the Petitioner would receive compensation of Rs.30,000.00, which appears on the facts of the present case to be quite inadequate. However, if the formula as adopted by the learned single Judge in Virender Singh is considered, then the Petitioner would be entitled to compensation of about Rs.1,00,000.00 which at the current rate of interest of about 9% would yield about Rs.9000 per annum which is slightly more than the annual salary that the Petitioner was getting at the time of his termination from service. This figure of Rs.1,00,000.00 is more or less in consonance with the amount of Rs. 75,000.00 awarded by the Supreme Court in Syed Azam Hussaini. 35. Accordingly, I think it would be appropriate on the facts of the present case to award to the Petitioner compensation of Rs.1,00,000.00 payable by the Respondent-Management within a period of four weeks. The Respondent-Management should deposit this amount in the Registry of this Court, which amount the Petitioner will be entitled to withdraw. It is ordered accordingly. 36. The writ petition stands disposed of in the above terms. However, there will be no order as to costs.