

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

OWP No. 1126/2014  
IA No. 1519/2014  
c/w  
OWP No. 1229/2014  
IA No. 1665/2014

M/s Manu Mohit Industries

....Petitioner(s)/Appellant(s)

Through :- Mr. R. K. Jain, Sr. Advocate with  
Mr. Pranav Jain, Advocate for Petitioner in  
OWP No. 1126/2014 and  
respondent No. 3 in OWP No. 1229/2014

V/s

State of J&K and others

....Respondent(s)

Through :- Mr. Dewakar Sharma, Dy. AG for R-1 & 2 in both  
the petitions  
Mr. Parminder Singh, Advocate for R-3 in  
OWP No. 1126/2014 and  
petitioner in OWP No. 1229/2014

**Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JAMMU**

**JUDGMENT**

**OWP No. 1126/2014**

1. The petitioner has filed the present petition under Article 226 of the Constitution of India for issuance of an appropriate writ, order or direction quashing the award dated 11.07.2014 passed by respondent no. 2-Presiding Officer, Industrial Tribunal/Labour Court, Jammu (for short, the Tribunal) under the Industrial Disputes Act, 1947 (for short, the Act of 1947) whereby an amount of Rs. one lac has been awarded as compensation in favour of respondent No. 3.

Before advertng to the grounds of challenge in the aforesaid petition, it would be apt to give brief factual background of the case.

2. It has been averred by the petitioner that respondent No. 3 was engaged as a Foreman Incharge Repair and Maintenance work at the petitioner's unit to supervise and look after the production, repair and maintenance of the machinery. It is specific stand of the petitioner that since the respondent No.3 failed to perform his duties as Foreman, his services were terminated in terms of order dated 27.04.2002 w.e.f. 18.04.2002. Pursuant thereto, the respondent No. 3 raised a demand notice dated 18.05.2002 wherein he admitted the fact of his employment with the petitioner as Foreman and was drawing salary of Rs. 4200/- per month at the time of termination of his services.

3. Feeling aggrieved of the same, respondent No. 3 filed a claim before the Labour-cum-Conciliation Officer, Jammu in terms of Section 10 of the Industrial Dispute Act, 1947 and finally vide SRO No.14 dated 20<sup>th</sup> January, 2003, respondent No. 1-State Government in exercise of its power conferred by clause (c) of Sub Section (1) of Section 10 of the Act of 1947 referred the dispute for adjudication to respondent No. 2 on the following points:

- a. Legality or otherwise of the action of the management of M/s Manu Mohit Industries, Dhiani, Samba in terminating the services of its employee, Sh. Sukhwant Singh, Foreman;
- b. Award appropriate relief to the said employee in case the illegality of the action of the management of the said industry is established.

4. It is also stated that the petitioner while contesting the aforesaid reference before the learned Tribunal categorically pleaded and filed a supplementary affidavit to the effect that the respondent No. 3 does not fall within the definition of workman in terms of section 2(s) of the Act of 1947 and the claim lodged by the respondent No. 3, as such, was not maintainable, besides taking other pleas with regard to drawing of the salary. It is also averred that the learned Tribunal constituted under the Act of 1947, after completion of the pleadings and

appreciating the evidence as well as the material placed on record, passed a detailed award dated 11.07.2014 directing the petitioner to pay a lump sum compensation of Rs. One lac to the Workman-respondent No. 3 herein.

5. A perusal of the order passed by the learned Tribunal reveals that evidence of the petitioner therein (respondent No. 3 herein) was closed by it on 04.04.2005 and thereafter respondent therein (petitioner herein) was directed to lead the evidence. After availing numerous opportunities to lead the evidence, only one witness namely Ram Murti was recorded on 22.10.2007 besides the proprietor. The learned Tribunal, while deciding the aforesaid reference, has specifically observed that since respondent therein remained absent and on his continuous absence from the proceedings, ex-parte proceedings were initiated and ex-parte award was passed on 13.10.2008, which was set aside subsequently on 04.07.2011 and the case was kept for evidence of the respondent therein. Subsequently, at the request of learned counsel for the respondent therein, the evidence of the respondent was closed and the case was kept for arguments. Learned Tribunal, after reproducing the relevant provisions of the Act of 1947 with particular reference to section 25F declared the termination of the service of the petitioner as illegal and accordingly the same was set aside by deciding the said issue in favour of the petitioner therein.

6. Since the termination of the petitioner was set aside by the learned Tribunal, the second issue which was framed by the learned Tribunal was with regard to the consideration as to what extent the petitioner was entitled to the relief. The learned Tribunal, after referring to the various judgments and considering the facts and circumstances of the case, directed that it would be appropriate to award lump sum compensation of Rs. One lac in lieu of the reinstatement and back wages to the workman i.e. respondent No. 3 herein and

accordingly a direction was issued to the management to pay the said amount to the workman by answering the reference in favour of the workman.

7. Feeling aggrieved of the same, the petitioner has filed the present petition by invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India by disputing the salary component besides challenging the eligibility of the petitioner as Workman in terms of Section 2(s) of the Act of 1947. It has also been projected by the petitioner that the Tribunal has failed to appreciate the true meaning of the workman in terms of Section 2(s) of the Act of 1947 and has also failed to appreciate section 25F of the Act of 1947 in its right perspective. The petitioner has also challenged the jurisdiction of the learned Tribunal for passing the said award.

8. Having gone through the award passed by the learned Tribunal dated 11.07.2014 by way of reference under Section 10 of the Industrial Disputes Act, I do not find any infirmity with regard to the same and accordingly this court is not inclined to interfere with the award passed by the respondent No. 2 which is a reasoned and has been passed after appreciating all the material facts on record and adducing the evidence.

9. The law is settled at naught that by challenging an award under the Act of 1947, the Labour Court exercises the power and jurisdiction of a civil court and that orders passed by a civil court can only be challenged before the High Court by way of a writ petition under Article 227 of the Constitution of India and pursuant thereto from such challenge no *intra* court appeal would lie. A writ petition which assails the order of a civil court in the High Court has to be understood, in all circumstances, to be a challenge under Article 227 of the Constitution. When such is the case, the court has to examine the allegations/averments made in the petition and the relief claimed therein as to

whether petitioner wants the court to exercise its supervisory power under Article 227 or its writ jurisdiction under Article 226 of the Constitution. If the challenge is limited only to the correctness or otherwise of the award, then it has to be considered that the power under Article 227 of Constitution has been invoked because the cause has not been initiated for the first time before the High Court. If in addition to the correctness of the award, the petitioner seeks to challenge the vires of any other provision of Industrial Disputes Act or of any other provision or the very jurisdiction of the labour court to pass the award or on the ground that same has suffered from error or law apparent on the face of record, then it has to be considered that powers under Article 226 has been invoked.

10. In a catena of decisions, the Hon'ble the Supreme Court culled out the principles governing difference between petitions under Article 226 of the Constitution of India and supervisory jurisdiction under Article 227 of Constitution of India.

11. In **State of Maharastra v. Labour Law Practitioners Assn.** reported in 1998 (2) SCC 688, the Hon'ble Supreme Court has held as under:



*“5. That there is not much difficulty in holding that the Labour Court performs judicial functions and is a Court. The Labour Court adjudicates upon disputes that, had it not been for the Industrial Disputes Act, the Bombay Industrial Relations Act and the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, would have been within the jurisdiction of the ordinary civil courts to decide, although the ordinary civil courts may not be able to grant all the reliefs that are contemplated by these Acts. The Labour Courts are, therefore, courts and decide disputes that are civil in nature.....”*

12. Again in **Ram Krishan Fauji v. State of Haryana** reported in 2017 (5) SCC 533, the Hon'ble Supreme Court has held that it is beyond any shadow of doubt that the order of the civil court can only be challenged under Article 227 of the

Constitution and from such challenge no intra court appeal would lie and in other cases, it will depend upon the other facts as have been enumerated therein. In paragraph 41, the Hon'ble Supreme Court has held as under:

*“41. We have referred to these decisions only to highlight that it is beyond any shadow of doubt that the order of civil court can only be challenged under Article 227 of the Constitution and from such challenge, no intra-court appeal would lie and in other cases, it will depend upon the other factors as have been enumerated therein.”*

13. In the instant case, it is not the case of the petitioner that he has questioned the award by invoking the powers under Article 227 of the Constitution rather he has filed the present petition under Article 226 of the Constitution and inter alia sought the following reliefs:

*“It is, therefore, respectfully prayed that an appropriate, writ, order or direction may kindly be issued quashing the award dated 11<sup>th</sup> July, 2014 passed by respondent No. 2 in File No. 750/LC titled "Sukhwant Singh V/s Manu Mohit Industries", under the Industrial Dispute Act 1947, whereby an amount of Rs. 1.00 lac [Rupees One lac only) has been awarded as compensation in favour of the respondent No. 3, despite the fact that the respondent No. 3 was not performing duties as workman and was not entitled to invoke the provisions of Industrial Dispute Act, 1947 and with further prayer for dismissal of the claim petition filed by the respondent No. 3.”*

14. It is also established principle of law that the Court while exercising writ jurisdiction under Article 226 of Constitution of India cannot go into the disputed questions of fact. Since the present petition raises the disputed question of fact with regard to the salary component and the eligibility of the petitioner as Workman in terms of Section 2(s) of the Act of 1947, this Court while exercising the writ jurisdiction cannot go into the disputed question of fact as all the questions of facts have been gone in detail by the learned Tribunal by adducing the evidence by passing a reasoned order. Reference in this regard can be made

to **U.P. State Bridge Corporation v. U. P. Rajya Setu Nigam reported in 2004 (4) SCC**

268. Hon'ble the Supreme Court in paragraph 14 has held as under:

*“14. Finally, it is an established practice that the Court exercising extra-ordinary jurisdiction under Article 226 should have refused to do so where there are disputed questions of fact. In the present case, the nature of the employment of the workmen was in dispute. According to the appellant, the workmen had been appointed in connection with a particular project and there was no question of absorbing them or their continuing in service once the project was completed. Admittedly, when the matter was pending before the High Court, there were 29 such projects under execution or awarded. According to the respondent-workmen, they were appointed as regular employees and they cited orders by which some of them were transferred to various projects at various places. In answer to this the appellants' said that although the appellant corporation tried to accommodate as many daily wagers as they could in any new project, they were always under compulsion to engage local people of the locality where work was awarded. There was as such no question of transfer of any workman from one project to another. This was an issue which should have been resolved on the basis of evidence led. The Division Bench erred in rejecting the appellants submission summarily as also in placing the onus on the appellant to produce the appointment letters of the respondent-workmen.”*

15. In my considered view, all actions with regard to the eligibility of the petitioner as Workman, his termination and the salary component have been gone in detail by the appropriate authority under the Act of 1947 and this Court cannot exercise its powers under judicial review by acting as a court of appeal while exercising writ jurisdiction under Article 226 of the Constitution as the appropriate forum to deal with such like cases would be Industrial Tribunal which has granted the relief to the Workman in view of the evidence before it after considering all the statutory provisions in vogue.

16. In light of what has been stated above coupled with the law laid down by Hon'ble the Supreme Court, the nomenclature of the petition or the nature of relief sought for by the petitioner is the determining factor to exercise the power and accordingly would determine the jurisdiction exercised by the High Court.

Thus, the challenge thrown by the petitioner to the award impugned by invoking the provisions under Article 226 of the Constitution of India is held not maintainable and, accordingly, the present petition is liable to be dismissed and the order passed by the Industrial Disputes Tribunal is, accordingly, upheld.

17. With the aforesaid observations, the present petition is, accordingly, dismissed.

**OWP No. 1229/2014**

18. The respondent No. 3 has filed the present writ petition for enhancement of award dated 11.04.2014 passed by respondent No. 2.

19. Heard learned counsel for the parties and perused the record.

20. This Court is also not inclined to interfere with the award passed by the respondent No. 2 in favour of the petitioner for the reasons stated in OWP No. 1226/2014. Hence, the present petition is dismissed and the award passed by the learned Tribunal is upheld accordingly.

**Jammu**  
08.07.2022  
Paramjeet

