



Samyukta Prabhakar
Associate

ALLAHABAD HC ON DETERMINATION OF ‘WORKMAN’

A. Introduction

Allahabad HC (“**All HC**”) in *Leayan Global Private Limited* case¹ held that a person cannot be treated as ‘manager’ or ‘supervisor’ if he, along with his principal clerical duties performed tasks such as allocation of work or permitting leave to other workmen in his department.

B. Facts

1. Luxmi Kant Tiwari (“**Tiwari**”) was a ‘workman’ in Leayan Global Private Limited (“**Leayan**”). Tiwari was in-charge of maintaining and writing the cash book and preparing various returns.
2. Tiwari was put in-charge of the Provident Fund section and was allowed small amount of control on employees in his section in relation to allotment of work between co-workers, approving leaves and recommending leave applications as he was the senior-most clerk in Leayan.
3. He was terminated from services treating his position as that of a supervisor/ manager and not workman.
4. The Labour Court (“**LC**”) ruled in favour of Tiwari and had granted reinstatement with 25% back wages.
5. Aggrieved, Leayan approached the All HC. The matter under consideration was whether Tiwari’s termination was valid in the eyes of law.

C. Contentions before the All HC

Leayan contended that:

1. Tiwari was not a ‘workman’ under the UP Industrial Disputes Act, 1947² and was rather performing managerial or supervisory work.
2. Tiwari did not prove he had worked for 240 days in the calendar year.
3. The shop in which Tiwari worked closed down and hence the reinstatement was inequitable.

¹ *Leayan Global Private Limited v. Presiding Officer and Ors.* (24.02.2022 – All HC): MANU/UP/1569/2022.

² Section 2(z)(iv) states that any person who is in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises functions of a managerial nature does not fall within the category of a workman.

D. Reasoning & Judgment

All HC:

1. Relied on *Ananda Bazar Patrika* case³ which decided that the employment of a person in supervisory or clerical capacity depends on the nature of principal duties carried on by the person. If the person is mainly involved in supervisory duties but undertakes clerical works occasionally, the person is said to be in a supervisory position and vice versa.
2. Relied on *S.K. Maini* case⁴ holding that the salary band of the employee cannot be considered while determining the nature of role undertaken in the organization. If the employee is earning a salary of a workman but performs duties of a supervisory nature, the employee will be considered a supervisor and not a workman.
3. Also relied on *Ashok Kumar* case⁵ which held a similar stance and further described the nature of work in a supervisory position holding that: “*The essence of supervisory work is the supervision by one person over the work of others and it embraces within its fold the authority to control and give directions, occupying a position of command or authority to take a decision and act within the limit of his authority in an independent manner. Having regard to the various categories of the services the use of different words like "supervisory," "managerial" and "administrative," it is not necessary to import the notions of one into the interpretation of others.*”
4. Opined that the burden to prove the nature of work of Tiwari is on Leayan and mere oral statements cannot be presumed as evidence in this regard.
5. Held that any additional work in furtherance to the principal clerical duties bestowed on Tiwari by way of his position in the organization, *i.e.*, senior-most clerk, such as preparation of bills for sale, allocation of work to other clerks, leave permissions and recommendation of leave applications cannot be termed as supervisory or managerial works.
6. Upheld LC’s decision to reinstate Tiwari with payment of 25% back wages.

This *Counselence Connect* contains information in a nutshell on a recent change in law. This is not legal advice and must not be treated so. For legal advice, please contact us at: info@counselence.com.

Past issues of *Counselence Connect* are available on the ‘Newsletters’ page of our website (www.counselence.com)

³ *Ananda Bazar Patrika (P) Ltd. v. The Workmen* (07.02.1969 - SC): MANU/SC/0306/1969.

⁴ *S.K. Maini v. Carona Sabu Company Limited and Ors.* (08.03.1994 - SC): MANU/SC/0429/1994.

⁵ *Ashok Kumar and others Vs. Managing Director, U.P. Leather Development and Marketing Corporation and Another* (21.05.1997 – All HC): MANU/UP/0591/1997.