

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7786 OF 2014  
(arising out of SLP (C)No. 19655 of 2013)

ASHIM KUMAR DASS

APPELLANT

VERSUS

M/S AVERY INDIA LTD.

RESPONDENT

WITH

CIVIL APPEAL NO.7787 OF 2014  
(arising out of SLP (C)No. 25158 of 2013)

WITH

CIVIL APPEAL NO. 7788 OF 2014  
(arising out of SLP (C)No. 25604 of 2013)

WITH

CIVIL APPEAL NO. 7789 OF 2014  
(arising out of SLP (C)No. 25889 of 2013)

O R D E R

Leave granted.

This appeal has been preferred by the Appellant - Ashim Kumar

Dass against the judgment dated 19.03.2013 passed by the High

Court of Punjab and Haryana at Chandigarh. By the impugned

judgment, the High Court dismissed the L.P.A. preferred by the  
Signature Not Verified

Appellant in view of the judgment rendered in other similar case

Digitally signed by

Rajni Mukhi

Date: 2014.09.05

10:55:49 IST

i.e.

Reason: LPA 401/10 entitled Ashwani Kumar Kamboj vs. Presiding

Officer, Labour Court -II, Faridabad and Anr.

The Appellant who was employed with Respondent - M/S Avery India Ltd., was discharged from service and he moved before the Labour Court against the order of retrenchment.

The Labour Court

passed award in his favour and the same was reversed by the High Court on the ground that the appellant who was working as Engineer (design), is not a workman.

The aforesaid finding is assailed by the learned counsel for the appellant on the ground that the High Court failed to appreciate the factual aspect that the appellant was in fact working as workman and was paid the wages of workman merely because nomenclature of Engineer given by the management, he cannot be denied the protection under the Industrial Disputes Act, 1947.

The aforesaid submission has been disputed by the learned counsel for the respondent.

Earlier when the matter was taken up the parties informed that they are negotiating to settle the dispute. Today, the learned counsel appearing on behalf of Respondent - M/S Avery India Ltd submits that the appellant can be re-instated to his job without any backwages, but with continuity of service.

The details of

payment to which the appellant is entitled has been shown in an affidavit filed by management, wherein the following statements have been made.

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" I, Ms. Kanchan Gambir, w/o Mr. Yogesh Gambhir, Assistant Company Secretary, Avery India Limited, aged about 38 years, R/o House no. 885, Sector - 7C, Faridabad, Presently at New Delhi do hereby solemnly affirm and state as follow :

1. I say that I am conversant with the facts and circumstances of this case and have been duly authorized to swear this affidavit.

2. I state that Respondent / Management agree that the Petitioner will be re-instated without any back wages, but with continuity of service.

3. I state that none of Assistant Engineer who was working with Petitioner is continuing as Assistant Engineer, either they got promoted with respect to their work performance or they have left the organization.

4. I state that product range of Respondent has changed over

the period of time, Respondent has completely switched to Electronic product range whereas Petitioner has worked on Mechanical product range and needs to be trained according to new product range. The Petitioner will undertake the training and come up to the required levels.

5. I state that salary of employees of Respondent is not based on Grade system, it is purely driven by performance during the year and there is no fixed increase for any employee.

6. I state that Performance Incentive is variable and payable on annual basis, based on performance of employee with regard to key Responsibility Area and Company's performance during the year. Targets for each area are set and the performance of the employee is judged on the basis of the targets achieved.

7. I state that the basis of annual growth and corresponding salary increase which were given to other Assistant Engineers is as under :-

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Average %age increase in Salary - Avery India Ltd

Years	Base Amount	Average Increase %age	%age Hike	
2002-03	100	1.02	102	
2003-04		1.07	109.1	
2004-05		1.06	115.7	
2005-06		1.07	123.8	
2006-07		1.07	132.5	
2007-08		1.07	141.7	
2008-09		1.04	147.4	Global Slowdown years
2009-10		1.03	151.8	Global slowdown years
2010-11		1.07	162.4	
2011-12		1	162.4	Change in Salary Structure, Introduction of Performance Incentive System.
2012-13		1.07	173.8	
2013-14		1.07	186.0	
2014-15		1.07	199.0	
Avg Increase Per Year		1.055	5.50%	

8. I state that on this basis, taking into Account the continuity of service, the salary of the Deponent was proposed to the Hon'ble Court as under :-

Break up of Salary	Salary Per Month	Salary Per Annum
Basic	8,800	1,05,600
HRA	4,400	52,800
Conveyance	800	9,600
Tiffin allowance	-	-
Other Allowance	1,800	21,600

Total 15,800 1,89,600

		4	
Performance Incentive*			36,000
Provident Fund	As per PF rules		
Medical Expenses	As per Rules	Co's	
LTA	As per Rules	Co's	
ESIC	As per rules	ESIC	
Gratuity**	As per Rules	Gratuity	
Total	15,800		2,25,600

\*Performance incentive is payable based on the performance w.r.t. Kra on annual basis as per company's policy.

9. I state that to the above the Petitioners had objections. This Hon'ble Court directed the Respondent Company to again look into the matter and reassess the amount.

10. That accordingly, after taking into account, maximum salary as being paid to Assistant Engineer as on date, it comes to :

Break up of Salary	Salary Per Month	Salary Per Annum
Basic	9,800	1,17,600
HRA	4,900	58,800
Conveyance	800	9,600
Other Allowance	3,500	42,000
Leave	817	9,804
Travel Assistance		
Medical Expenses	1,250	15,000
Total	21,067	2,52,804
Provident Fund	1,176	14,112
Performance Incentive*	3,000	36,000
Total	25,243	3,02,912

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The performance incentive is payable on the performance with regard to Key Responsibility Area. This is paid on an annual basis. Targets for each area are set and the performance of the employee is judged on the basis of the targets achieved. I reiterate that for Calculation Performance Incentive is a part of Gross monthly salary, but as per Company policy, this is paid on Annual basis with regard to performance of Employee and performance of Company as well.

11. Under the rules, Company can offer this salary. This is of course subject to the specific directions given by this Hon'ble Court.

12. That the re-instatement of the petitioner who is to retire on 28th October, 2014 on attaining the age of Superannuation (i.e. sixty years) is with the clear understanding that the petitioner shall remain posted at the

Ballabgarh office of the respondent company till he retires from the services of the Company as aforesaid."

The learned counsel for the appellant submits that the appellant Ashim Kumar Dass will retire on 28 th October, 2014 on attaining the age of superannuation and if no backwages are paid, he will suffer.

In the facts and circumstances of the case and on taking into consideration the stand taken by the respondent in its affidavit, we modify the order dated 31.7.2009 passed by the Single Judge and the order dated 19.03.2013 passed by the Division Bench of the High Court of Punjab and Haryana at Chandigarh and direct the respondent-company to reinstate the appellant(s) with continuity of service with immediate effect. The appellant should join the post within four weeks.

However, considering the fact that the appellant Ashim Kumar Dass will retire from service on 28th October, 2014, we direct the respondent-Company to pay backwages for one year to Ashim Kumar

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Dass i.e. for the period August, 2013 to July, 2014 at the rate as shown in the chart filed by the respondent within two months.

The appeal is allowed with the aforesaid observations and directions.

C.A.No.7787 OF 2014 (@SLP (C)No. 25158 of 2013)

Leave granted.

For the reasons stated in the order in CA No.7786 of 2014 [@ SLP(C) No. 19655 of 2013], the appeal is also allowed and respondent-company shall reinstate the appellant immediate effect, with continuity of service but without paying backwages. Appellant should join the post within four weeks.

C.A.No. 7788 OF 2014 (@SLP (C)No. 25604 of 2013)

Leave granted.

For the reasons stated in the order in CA No.7786 of 2014 [@ SLP(C) No. 19655 of 2013], the appeal is allowed and respondent-company shall reinstate the appellant with immediate

effect, with continuity of service but without paying backwages.

Appellant should join the post within four weeks.

C.A.No. 7789 OF 2014 (@SLP (C)No. 25889 of 2013)

Leave granted.

For the reasons stated in the order in CA No. 7786 of 2014 [ @ SLP(C) No. 19655 of 2013], the appeal is allowed and respondent-company shall reinstate the appellant with immediate

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effect, with continuity of service but without paying backwages.

The Appellant should join the post within four weeks.

.....J.  
[SUDHANSU JYOTI MUKHOPADHAYA]

.....J.  
[PRAFULLA CHANDRA PANT]

NEW DELHI;  
AUGUST 19, 2014

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ITEM NO.47

COURT NO.5

SECTION XV

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).19655/2013

(Arising out of impugned final judgment and order dated 19/03/2013 in LPA No.1567/2011 passed by the High Court of Punjab & Haryana at Chandigarh)

ASHIM KUMAR DASS

Petitioner(s)

VERSUS

M/S AVERY INDIA LTD.  
(With prayer for interim relief and office report)

Respondent(s)

WITH SLP(C)Nos.25158, 25604 & 25889 of 2013  
(With prayer for interim relief and office report)

Date:19/08/2014 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA  
HON'BLE MR. JUSTICE PRAFULLA CHANDRA PANT

For Petitioner(s) Ms. Sonam Sharma,Adv.  
Ms. Ruchi Kohli,Adv.

Mr. R.R. Kumar, Adv.  
Ms. Anuradha Mutatkar, Adv.

For Respondent(s) Mr. Pawan Mutneja, Adv.  
Mr. Ashok Mathur, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.  
The appeals are allowed in terms of the signed  
order.

(Rajni Mukhi)  
Sr. P.A.

(Usha Sharma)  
Court Master

(Signed order is placed on the file)