SHRI S.K. MAINI

v.

M/S. CARONA SAHU COMPANY LTD. AND ORS.

MARCH 8, 1994

[K. JAYACHANDRA REDDY AND G.N. RAY, JJ.]

Labour Law: Industrial Disputes Act, 1947: Section 2(s)—Workman —Employee appointed as Manager/Incharge of Shop—Also required to do some work of clerical nature—Held, whether or not an employee is a workman under s.2(s) is required to be determined with reference to his principal nature of duties and functions, facts and circumstances of case and materials on record—Determinative factor is main duties of employee concerned and not some work incidentally done—Functions of employee concerned being administrative and managerial in nature, he was not a workman.

The appellant was working as the shop Manager/Incharge of the shop of the respondent-Company. On an allegation of misconduct against the appellant, a domestic enquiry was conducted, as a result of which his services were terminated. The Government referred to the Labour Court the dispute whether the termination of services of the appellant was justified and in order.

The respondent raised a preliminary objection before the Labour Court that the appellant was not a workman within the definition of s.2(s) of the Industrial Disputes Act, 1947 because being a shop Manager/Incharge of the shop, he had been discharging mainly managerial and administrative functions and had been supervising the works of other employees subordinate to him for running the said shop and; even if he was a Supervisor at the relevant time, as he was drawing a salary more than Rs.500 per month, he could not be held to be a workman under the Act.

The Labour Court held that though the appellant was a shop Manager/Incharge of the shop his duties were mainly clerical and he had no independent authority to appoint or discharge the employees and to charge-sheet them; his functions could not be held to be supervisory or managerial. It held that the appellant was a workman under the Industrial Disputes Act, and gave directions for his reinstatement with full back wages.

A The respondent-Company filed a writ petition before the High Court. The Single Judge held that the predominant duties of the appellant were administrative or managerial and to some extent supervisory in nature and as such he was not a workman under s.2(s) of the Act. Appellant's Letters Patent Appeal was dismissed by the Division Bench of the High Court. Hence the appeal by special leave.

B

Dismissing the appeal, this Court

HELD: 1.1. Whether or not an employee is a workman under s.2(s) of the Industrial Disputes Act 1947, is required to be determined with C reference to his principal nature of duties and functions, 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. [343-E-G]

D 1.2. 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.

E [344-C-D]

1.3. 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 work. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that F some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some super supervisory work, the employee will come with in the purview of workman as defined s.2(s) of the Act. A manager or an Administrative Officer is generally invested with the power of supervision in contradistinction to the G Stereo type work of a clerk. [344-D-E, 346-D]

1.4. In view of the amendment of Section 2(s) enlarging the ambit of the classification of various types of workmen except managerial force, entire labour force has been included within the definition of workman under section 2(s). In an earlier decision of this court in *S.K. Verma's* case. H But if the principal function is of supervisory nature, the concerned

employee will not be a workman only if he draws a particular quantum of salary at the relevant time as indicated in Section 2(s). [345-C, D] A

1.5. On a close scrutiny of the nature of duties and functions of the Shop Manager with reference to the admitted terms and conditions of service of the appellant, the High Court was justified in holding that the principal function of the appellant was of administrative and managerial nature, and he was not a workman under Section 2(s) of the Industrial Disputes Act. [346-H, 347-A] B

1.6. Under the terms and conditions of service of the appellant, as the Manager/Incharge of the shop, he was responsible and liable to make good the amount of credit whether the sale on credit had been made by him or by any other member of the staff in employment under him with or without his knowledge; he was responsible and liable for any loss suffered by the Company due to deterioration of the quality of the stock or any part thereof and loss of any of the other article lying in the shop caused by reason of any act of negligence and/or omission to take any precaution by the employees; he would remain fully responsible to the Company for damages or loss caused by acts or commission of the loss of the employees of the shop; he was required to notify to the Company the discovery in the shop of any fire theft, burglary, loot or arson and to investigate into the matter immediately and get the cause and amount of loss established by local authorities. The appellant as Incharge of the Shop was required to keep and maintain proper accounts as approved by the Company indicating the exact amount to be paid from the receipts from the respective staff. The appellant was authorised to take decisions in the matter of temporary appointments and in taking all reasonable steps incidental to the proper running of the shop. Precisely for the said reason he had signed the statutory forms as an employer. Such functions appear to be administrative and managerial. Though the appellant himself was also required to do some works of clerical nature, but by and large the appellant being incharge of the management of the shop had been principally discharging the administrative and managerial work. [345-E-H, 346-A-D] C D E F G

1.7. An employee discharging managerial duties and functions may not, as a matter of course, be invested with the power of appointment and discharge of other employees. It is not unlikely that in a big set up such power is not invested to a local manager but such power is given to some superior officers also in the management cadre at divisional or regional H

level. The unit in a local shop may not be large but management of such small unit may fulfil the requirements and incidences of managerial functions. [346-F-H]

Burmah Shell Oil Storage and Distribution Company of India Ltd. **v.** *Burmah Shell Management Staff Association,* **(1970) II L.L.J. 590 SC;** *All India Reserve Bank Employees' Association* **v.** *Reserve Bank of India,* **(1965) II L.L.J. 175 SC;** *Mcleod and Co.* **v.** *Sixth Industrial Tribunal, West Bengal,* **A.I.R. (1958) Cal. 273;** *National Engineering Industries Ltd.* **v.** *Shri Kishan Bhaveria and Ors.,* **A.I.R. (1988) S.C. 329;** *Vimal Kumar Jain* **v.** *Labour Court,* **A.I.R. (1988) S.C. 384;** *D.P. Maheshwari* **v.** *Delhi Administration & Ors.,* **AIR (1984) SC 153 and** *M/s Anand Bazar Patrika Pvt. Ltd.* **v.** *Its Workmen,* **(1969) 2 LLJ 670 SC, referred to.**

S.K. Verma **v.** *Mahesh Chandra & Anr.,* **[1983] 3 SCR 799, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1581 of 1994.

From the Judgment and Order dated 27.8.92 of the Punjab and Haryana High Court in L.P.A. No. 935 of 1992.

Sarjit Singh, A.S. Chahil and Ms. S. Janani for the appellant.

G.B. Pail, Sanjay Sarin, Pawan Mutneja, Ashok Mathur for the Respondent.

The Judgment of the Court was delivered by

G.N. RAY, J. Leave granted.

This appeal is directed against the judgment dated August 27, 1992 passed by the Division Bench of Punjab and Haryana High Court dismissing *in limine* Letters Patent appeal No. 935 of 1992. The said Letters Patent Appeal was preferred against the judgment dated August 11, 1992 passed by the Single Bench of Punjab and Haryana High Court in C.W.P.No.4410 of 1986. By the aforesaid judgment, the Writ petition moved by the respondent M/s Carona Sahu Company Limited was allowed and the award of the Labour Court Jalandhar dated April 21, 1986 in Reference No.389 of 1981 directing the respondent Company to reinstate the appellant Shri S.K. Maini with full backwages was set aside by the High Court.

The appellant Shri S.K. Maini was working as the Shop Manager/Incharge of the respondent-Company M/s Carona Sahu Company Limited. On an allegation of misconduct against the appellant, a domestic enquiry was caused by the respondent-Company and by order dated March 12, 1981 the service of the appellant was terminated. On September 23, 1981, Government of Punjab referred the following dispute for adjudication to the Labour Court, Jalandhar; "whether the termination of service of Shri S.K. Maini is justified and in order? If not, to what relief and amount of compensation is he entitled?"

Before the Labour Court a preliminary objection was raised by the respondent-Company as to the maintainability of the said reference by contending that Shri S.K. Maini was not a workman within the definition of Section 2 (s) of the Industrial Disputes Act, 1947 because being a shop Manager/Incharge of the shop, he had been discharging mainly managerial and administrative functions and had been supervising the works of other employees subordinate to him for running the said shop and even if he was a Supervisor at the relevant time, Shri S.K. Maini was drawing a salary for more than Rs. 500 per month. Hence, he could not be held to be a workman under the Industrial Disputes Act. Accordingly, the reference was not maintainable and Shri Maini was not entitled to get any relief from the Labour Court.

The Labour Court, Jalandhar, *inter alia* came to the finding that although Shri Maini was a shop Manager/Incharge of the shop but his duties were mainly clerical and he had no independent authority to appoint or discharge the employees and to charge sheet them and his functions could not be held mainly to be supervisory or managerial. Accordingly, Shri Maini was a workman under the Industrial Disputes Act. The Labour Court also came to the finding that the domestic enquiry was not properly conducted against him and reasonable opportunity to defend in the domestic enquiry was not given to Shri Maini by not allowing Shri Maini to be represented by a lawyer. The Labour Court also held that the inquiring Officer Shri Iqbal Singh was the Standing Counsel of the respondent-Company for disciplinary action to be taken against the employees of the Company. The said Iqbal Singh an advocate used to be engaged to contest the claims of the concerned workmen of the company in various legal proceedings. Such Standing Counsel was likely to have a bias in favour of the Company which was his master and consequently prejudice against the concerned employee. It should, therefore, be held that he lacked impar-

A tiality and objectivity to judge the case of the concerned workman. Accordingly, the finding recorded by such officer against Shri Maini was not fair and proper. It may be noted here that the Labour Court refused to grant permission to the management to prove the case of the Company of a *bonafide* action before the Labour Court by leading independent evidence on the ground that such opportunity would tantamount to permitting the management to improve upon its evidence already adduced and the same was bound to cause harassment to the concerned workman. In that view of the matter, the Labour Court directed for reinstatement of Shri Maini with full backwages.

As aforesaid, the Respondent-Company challenged the validity of such award of the Labour Court before the Punjab and Haryana High Court. The learned Single Judge of the Punjab and Haryana High Court *inter alia* came to the finding after analysing the powers and responsibilities of Shri Maini as Shop Manager/Incharge and the evidence on record, that the predominant duties of Shri Maini were administrative or managerial and to some extent supervisory in nature. It was also held by the learned Single Judge that the power to employ or dismiss or even initiate disciplinary action was not the sole criterion to decide the true nature of duties of a Manager or Administrator. Such test was relevant to determine whether the duties were supervisory in nature. The learned Judge was of the view that although some of the duties like maintaining accounts, filling certain proforams were clerical in nature, but the major job of the concerned employee was administrative or managerial. Accordingly, the employee was not workman under Section 2(s) of the Industrial Disputes Act. The learned Judge further held that denial of the assistance of a lawyer to Shri Maini had not vitiated the domestic enquiry and the Labour Court had gone wrong in holding that the Enquiring Officer being a Standing Counsel of the Company had a prejudice against the employee and he had bias in favour of the Company. The learned Judge further held that duties and interest of an employee of the management by holding an enquiry against another employee do not clash and it was well known that one of the employees in the department would hold enquiry against the delinquent employee. It was further held by the learned Single Judge that Shri Maini never raised any objection against the appointment of the said Enquiring Officer who was an Advocate. Accordingly, Shri Maini should not have been permitted to contend that the Enquiring Officer could not have held the enquiry with objectivity and with impartiality. The learned

Single Judge further held that the Labour Court was not right in denying the management to lead evidence on the ground that such opportunity would amount to filling the lacuna in evidence adduced before the Enquiring Officer. The learned Judge held that the management was entitled to lead evidence before the Labour Court in support of the impugned order of termination in case the enquiry was held vitiated on any ground. For the above reasons, the Writ Petition was allowed by the learned Judge and the award of the Labour Court dated September 21, 1981 was set aside. The appellant thereafter preferred the Letters Patent Appeal against the said judgment of the learned Single Judge but the said appeal was dismissed *in limine*. A special leave petition before this Court was filed by the appellant petitioner against the order of dismissal of the Letters Patent Appeal and leave has been granted to such leave petition.

Mr. Surjit Singh, learned counsel for the appellant, has submitted at the hearing of this appeal that the designation of the appellant as Shop Manager/Incharge was of little consequence. He has submitted that the law is well-settled that it is not the designation but the true nature of duties being performed by an employee is the determining factor as to whether or not the concerned employee is a workman under Section 2(s) of the Industrial Disputes Act. Mr. Singh has contended that although under the Punjab Shops and Commercial Establishment Act, the appellant as incharge of the said shop had to fill up certain proformas, which were exhibits before the Labour Court, as employer, such signing of such forms by no stretch of imagination can lead to the conclusion that the appellant was employer of the other workman rendering service in the said shop. Mr. Singh has contended that the appellant was a poor and a humble workman doing mainly the clerical jobs although at occasions he had to supervise the work of one or two employees working in the said shop. He had no independent power to appoint and to dismiss the employees and to initiate disciplinary proceedings against them. He had no authority under the terms and conditions of his service to take independent decisions for the Company and although he was designated as a Shop Manager/Incharge, he was essentially a salesman of the Company. His principal duties were clerical in nature and the Labour Court, by indicating good reason, held that the appellant was a workman and he did not discharge the managerial or administrative service and he also had not discharged mainly supervisory service so that he cannot be held to be a workman within the definition of Section 2(s) of the Industrial Disputes Act. Mr. Singh has referred to the

A decisions of this Court in *D.P. Maheshwari* v. *Delhi Administration and others,* AIR (1984) SC 153; *M/s. Anand Bazar Patrika Pvt. Ltd.* v. *Its workmen,* (1969) 2 L.L.J. 670 SC and *National Engineering Industries Ltd.* v. *Shri Kishan Bhaveria and others,* AIR (1988) SC 329 and contended that in the said decision and in other decisions referred to in those decisions, this Court has clearly laid down that the principal duties being performed by an employee are to be considered for the purpose of determining as to the real status of the employee namely, whether such employee had been discharging administrative, managerial or supervisory work. It has been held in no uncertain terms that even if, at times managerial, supervisory or administrative works were required to be performed by an employee, such occasional performance by itself does not determine the real status of the employer but it is the principal or major duty performed by the employee which determines the employee's real status. Mr. Singh has contended that in the aforesaid decisions various tests have been indicated by this Court for the purpose of determining whether and employee was performing a skilled, unskilled, technical of clerical nature of work or whether such work in pith and substance the work of an administrator or manager or of a supervisor. Mr. Singh has contended that the Labour Court after referring to the terms and conditions of service of the appellant and the actual duties being performed by him, clearly came to the finding that the principal job of the appellant was clerical in nature. Such finding was not required to be reversed by the High Court by reappreciating the evidence on record and substituting its own view point. Mr. Singh has also contended that admittedly, the enquiring Officer was an Advocate having expertise in the industrial cases. It is an admitted position that he used to represent the Company against the employees of the Company in various legal proceedings. When the appellant without any legal background was required to defend himself in the domestic enquiry instituted against him being pitted against an experienced Advocate who was engaged as Enquiring Officer, it was only fair and proper that the poor employee should have been allowed by the Company to be represented by a lawyer but the Company in its jeal to victimise the appellant did not give such permission. The Labour Court was, therefore, justified in holding that a fair and reasonable opportunity to defend in domestic enquiry was denied to the appellant by not allowing him to be represented by a lawyer. Mr. Singh has also contended that the question of bias was also manifest in the facts and circumstances of the case. The Enquiring Officer was admittedly a Stand-

B

C

D

E

F

G

H

ing Counsel of the Company. It was, therefore, quite reasonable that the said Enquiring Officer would have an inclination in favour of the Company and consequently a bias against the concerned employee, namely, the appellant. In view of such facts and circumstances, which speak for themselves, the Labour Court rightly held that the domestic enquiry was not conducted impartially by the Enquiring Officer and the same was vitiated. Mr. Singh has also submitted that in the written statement the respondent-Company did not allege that the principal job of the appellant was supervisory in nature and as he had been drawing a salary of more than Rs.500 per month, he could not be held as workman under Section 2(S) of the Industrial Disputes Act. Mr. Singh has contended that the Company tried to make out a case that Shri Maini was principally discharging the duties of a manager or an administrator. But such case could not be established, for good reasons indicated by the learned Judge of the Labour Court. The Writ Petition therefore should have been dismissed by the High Court without making any attempt to decide the fact by itself. He has, therefore, submitted that the appeal should be allowed by this Court by setting aside the impugned decisions of the High Court in writ petition and in Letters Patent Appeal and the award passed by the Labour Court in favour of the appellant should be affirmed with cost.

Mr. Pai, learned counsel appearing for the respondent-Company however disputes the said contentions of Mr. Singh. He has submitted that although designation of an employee by itself is not the determining factor but the true nature of the duties being performed by such employee, such designation is not altogether irrelevant or unimportant. The designation often gives clue or indication as to the true nature of duties being performed by the concerned employee. Mr. Pai has contended that it has been indicated by the High Court that the question as to whether or not the concerned employee was a workman is a question on which the jurisdiction of the Labour Court to entertain the Reference Case depended. It was, therefore, necessary for the High Court to look into the records of the case and to determine as to whether the jurisdictional fact had been properly determined by the Labour Court. Mr. Pai has contended that the learned Judge of the High Court has referred to the principal duties and functions being discharged by Shri Maini with reference to terms and conditions of his service and on a proper analysis of such duties and functions the learned Judge has come to the finding that Sri Maini had been discharging principally the administrative and managerial works although on occasions

A he had to discharge some clerical works. Mr. Pai has submitted that for discharging a managerial work, it is not necessary that the manager will have the power to dismiss other employees or to suspend such employees. Such power may be exercised by another set of administrative officers. Mr. Pai has contended that admittedly Shri Maini was the manager and In-
B charge of the said shop with the responsibility to open the said shop, to close the same and to conduct the business of the shop. He was required to manage the overall functioning in the shop with the aid of his subordinates. Other employees working in the said shop had no power or authority to do any work independently with the sanction or approval of Sri Maini. Being Incharge of one of selling units of the Company, namely,
C of a shop, Shri Maini had to do some clerical works by keeping accounts and filling up forms but works by themselves were not indicative of the fact that the clerical functions were the main functions of Shri Maini. Mr. Pai has also contended that Shri Maini had to sign the statutory forms under the Punjab Shops and Commercial Establishment Act as an employer. Such
D fact only indicates that he was administratively managing the said shop representing the company itself. Mr. Pai has referred to the decisions of this Court in *Vimal Kumar Jain* v. *Labour Court,* AIR (1988) SC 384 and *Burmah Shell Oil Storage and Distribution Company of India* v. *Burmah Shell Management Staff Association and others*, [1971] 2 SCR 758. Mr.Pai has submitted that whether or not a particular employee has been discharg-
E ing managerial, administrative or supervisory work principally is essentially a question of fact and must be determined with reference to the facts and circumstances of the case. In the instant case from the admitted facts, and with reference to terms and conditions of service of Shri Maini, the High Court has come to the finding that the appellant was not a workman by
F indicating good reasons and such finding of fact concerning jurisdictional question since upheld in Letters Patent Appeal should not be reversed by this Court. Mr. Pai has also submitted that even if the Company had contended before the a Labour Court that the principal job of the appellant was administrative or managerial, there was no bar in holding that the nature of duties which had been performed by the appellant was of a
G supervisory character and not strictly managerial or administrative in character. Mr. Pai has submitted that even if it is held that the appellant had in fact discharged principally supervisory duties and functions and not managerial functions, still then the appellant would not be a workman because at the relevant time he was drawing a salary for more than Rs. 500

H

per month. Mr. Pai has also contended that the question of prejudice is a question of fact. The High Court has rightly indicated that Shri Maini did not raise any objection during the domestic enquiry that the Enquiring Officer was biased because he used to be engaged as a counsel in legal proceedings by the Company. Mr. Pai has also contended that simply because the Enquiring Officer had a legal background, there was no requirement for getting the assistance of a lawyer in the domestic enquiry. No intricate question of law was to be decided in such domestic enquiry and the appellant being an educated person was quite competent to represent his case in the domestic enquiry. Therefore, there was no occasion of the Labour Court to hold that Shri Maini was denied reasonable opportunity to defend his case in the domestic enquiry. Mr. Pai has also submitted that if the Labour Court was of the view that the domestic enquiry had not been properly conducted for any reason whatsoever, it was only desirable that the Company should have been given opportunity to lead fresh evidence before the Labour Court to satisfy that the order of termination was otherwise justified. He has submitted that the High Court has rightly held that the Labour Court had gone wrong in disallowing the prayer of the Company to lead fresh evidence in support of the termination order. Mr. Pai has, submitted that in the aforesaid facts there is no occasion to interfere with the order of the High Court since upheld in the Letters Patent Appeal and this appeal should be dismissed.

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 of 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

A comes within the definition of workman or goes out of it. In this connection, reference may be made to the decision of this Court in *Burmah Shell Oil Storage and Distribution Company of India Ltd.*, v. *Burmah Shell Management Staff Association,* (1970) II L.L.J. 590 SC. In *All India Reserve Bank Employees Association* v. *Reserve Bank of India,* (1965) II L.L.J. 175 SC, it B has been held by this Court that the word 'supervise' and its derivatives are not words of precise import and must often be construed in the light of context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with the power of inspection and superintendence of the manual work of others. It has been rightly contended by both the learned counsel that the designation of employee is not of much C importance and what is important is the nature of duties being performed by the employee. The determinative factor is the main duties of the concerned employee 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 D 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 of only a small fraction of working time devoted to some supervisory works, the employee will come within the E purview of 'workman' as defined in section 2(s) of the Industrial Disputes Act.

In *Mcleod and Co.* v. *Sixth Industrial Tribunal, West Bengal,* AIR (1958) Cal 273, P.B. Mukharji, J. of the Calcutta High Court as the learned F Chief Justice then was, observed that whether a person was a workman within the definition of the Industrial Disputes Act would be the very foundation of the jurisdiction of the Industrial Tribunal. The Court further observed that in order to determine the categories of service indicated by the use of different words like "supervisory", "managerial", and "administrative", it was not necessary to import the notions of one into the interpreta- G tion of the other. The words such as 'supervisory', 'managerial' and 'administrative' are advisedly loose expressions with no rigid frontiers and too much subtlety should not be used in trying to precisely define where supervision ends and management begins of administration starts. For that would be theoretical and not practical. It has to be broadly interpreted H from a common sense point of view where tests will be simple both in

theory and in their application. The learned Judge further observed that a supervisor need not be a workman so long as he did not exceed the monetary limitation indicated in the section and a supervisor irrespective of his salary is not a workman who has to discharge function mainly of managerial nature by reasons of the duties attached to his office or of the powers vested in him. The aforesaid decision of the Calcutta High Court was noted with approval by this Court in *National Engineering Industries Ltd.* v. *Shri Kishan Bhaveria and other,* AIR (1988) SC 329.

It may be noted in this connection that in view of the amendment of Section 2(s) enlarging the ambit of the classification of various types of workmen except managerial force, entire labour force has been included within the definition of workman under Section 2(s) as has been indicated by this Court in *S.K. Verma* v. *Mahesh Chandra and another,* [1983] 3 SCR 799. But if the principal function is of supervisory nature, the concerned employee will not be workman only if he draws a particular quantum of salary at the relevant time as indicated in Section 2(s). In the instant case, it, however, appears to us that Shri Maini as Manager/Incharge of the shop was made responsible and liable to make good such amount of credit whether such sale on the credit had been made by him or by any other member of the Staff in employment under him with or without his knowledge. Under the terms and conditions of service, he was asked to take charge of the shop to which his service was transferred. Mr. Maini, under the terms and conditions of service, was required to be held responsible and liable for any loss suffered by the Company due to deterioration of the quality of the stock or any part thereof and loss of any of the other articles lying in the shop caused by reason of any act of negligence and/or omission to take any precaution by the employees. Mr. Maini was also required to notify to the Company by trunk call and/or telegram not later than three hours after the discovery in the said shop of any fire, theft, burglary, loot or arson. He was required to investigate into the matter immediately and get the cause and amount of loss established by local authorities. Mr. Maini as Incharge of the Shop was required to keep and maintain proper accounts as approved by the Company indicating the exact amount to be paid from the receipts from the respective staff. Under Clause XIII of the terms and conditions of the service, Mr. Maini would remain fully responsible to the Company for damages or loss caused by acts or commission of the loss of the employees of the shop. Under Clause XV of the terms and conditions of service, the shop incharge was required

A to keep himself fully converant with all the regulations in force which may come into force from time to time with regard to Octroi, Sales Tax and Shops and Commercial Establishment Act and/or any other local regulation applicable to the shop. Clause XXI indicates that non-compliance with any of the local or State Acts or Central Acts would be viewed seriously and manager would be held responsible for any fine/penalty imposed and/or prosecution launched against the Company. It also appears that in the event of a salesman being absent, the shop Incharge is empowered to appoint temporary helper for the said period to work as acting salesman. Similarly, in the event of helper being absent, the shop manager is also empowered to appoint part-time sweeper and to entrust the work of a helper to a sweeper. Such functions, in our view, appear to be administrative and managerial. By virtue of his being Incharge of the shop, he was the principal officer in charge of the management of the shop. We therefore find justification in the finding of the High Court that the principal function of the appellant was of administrative and managerial nature. It is true that he himself was also required to do some works of clerical nature but it appears to us that by and large Shri Maini being incharge of the management of the shop had been principally discharging the administrative and managerial work. A manager or an administrative officer is generally invested with the power of supervision in contradistinction to the stereotype work of a clerk. This court in *Lloyds Bank Ltd.* v. *Pannalal Gupta,* (1961) 1 LLJ 18 SC has indicated that a manager or administrator generally occupies a position of command or decision and is authorised to act in certain matters within the limits of his authority without the sanction of is superior. In the instant case within the authority indicated in the terms and conditions of his service, Shri Maini was authorised to take decision in the matter of temporary appointments and in taking all reasonable steps incidental to the proper running of the shop. Precisely for the said reason, Shri Maini had signed the statutory forms as and employer. It should be borne in mind that an employee discharging managerial duties and functions may not, as a matter of course, be invested with the power of appointment and discharge of other employees. It is not unlikely that in big set up such power is not invested to a local manager but such power is given to some superior officers also in the management cadre at divisional or regional level. The unit in a local shop may not be large but management of such small unit may fulfil the requirements and incidences of managerial functions. On a close scrutiny of the nature of duties and

B

C

D

E

F

G

H

functions of the Shop Manager with reference to the admitted terms and conditions of service of Shri Maini, it appears to us that the High Court was justified in holding that the appellant was not a workman under Section 2 (s) of the Industrial Disputes Act. In the aforesaid facts, it is not necessary to go into the question as to whether or not domestic enquiry had been properly conducted or the Enquiring Officer had acted with bias. It is also not necessary to decide for the purpose of the disposal of the appeal as to whether or not the Company was entitled to lead fresh evidence in support of the domestic enquiry before the Labour Court. The appeal is, therefore, dismissed without, however, any order as to cost.

A

B

R.P. Appeal dismissed.