



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 6943/2020

CNR: RJHC020353032020 | URN: CW / 12196U / 2020

- 1 M/s Fedex Express Transportation And Supply Chain Services (India) Pvt. Ltd., Boomerang, Unit No. 80, Wings A And B8, Chandivali Farm Road, Andheri East, Mumbai 400072. Through Its Managing Director.
- 2 M/s Fedex Express Transportation And Supply Chain Services (India) Pvt. Ltd., Plot No. 9, Vimal Plaza, 3Rd Floor, Polect-4, Sector-2, Dwarika, New Delhi-110075 Through Its Senior Manager.
- 3 M/s Fedex Express Transportation And Supply Chain Services (India) Pvt. Ltd., 3A, 3B, Gopal Bari, Jaipur Through Its Manager.

-----Petitioners

Versus

Devi Lal Bhambhu S/o Jugaram Bhambhu, R/o Plot No. S-1, Plot No. C-3, 258, Sector No. 3, Chitrakoot, Vaishali Nagar, Jaipur-302021.

-----Respondent

|                   |   |                                                                             |
|-------------------|---|-----------------------------------------------------------------------------|
| For Petitioner(s) | : | Mr. J.P. Goyal, Senior Advocate with<br>Ms. Jyoti Swami and Mr. Ronak Banak |
| For Respondent(s) | : | Mr. Vinod Goyal<br>Mr. Suresh Kashyap                                       |

**HON'BLE MR. JUSTICE ASHOK KUMAR JAIN**

**Order**

**09/10/2026**

1. The instant writ petition has been filed by the petitioner-employer to challenge the order dated 01.01.2020 in Case No. RSC/11/2017, titled as **Devi Lal Bhambhu versus M/s Fedex Express TSCS (India) Private Limited and Others**, passed by the Appropriate Authority under the Shops and Commercial Establishments Act, 1958, Jaipur (hereinafter referred to as "the



Appropriate Authority under the Act of 1958"). The instant writ petition has been filed with the following prayer:-

- (i) *quash and set aside the Final Award dated 01.01.2020 passed by the learned Presiding Officer, Rajasthan Shops and Commercial Establishment Act, 1958, Jaipur in case No.R.S.C.11/2017;*
- (ii) *declare the order passed by the learned court as unjust, unfair, and improper;*
- (iii) *any other order which this Hon'ble court deems just and proper in the facts and circumstances of the case.*

2. Learned Senior Advocate appearing on behalf of the petitioners, while placing reliance upon the grounds of the writ petition, has submitted that the respondent was working as a Manager (Operations), with the petitioner organization. He also submitted that the security wing of the petitioners-organization had conducted an investigation based on a complaint, wherein it was found that the respondent was involved in unethical practices while carrying out the business operations of the petitioners-organization. He also submitted that the petitioners had notified disciplinary proceedings and that, on the basis of the disciplinary proceedings conducted by the petitioners, a proper opportunity of hearing was granted to the respondent. He also submitted that the respondent had participated in the process and after participation and fullest opportunity to defend his own case, the disciplinary proceedings were concluded against the respondent. He also submitted that, based upon the concrete evidence and material against the respondent, the management of the petitioners had



decided to terminate the services of the respondent on 26 September 2017 (Annexure-K). He also submitted that the respondent was working as a Manager (Operations), and he was having power to take action against the employees subordinate to him, therefore, he was not covered under the definition of "employee", and the Appropriate Authority under the Act of 1958 had no jurisdiction to entertain the application filed by the respondent, however, without jurisdiction, the application was not only entertained but also allowed against the petitioners. He also referred to the material placed on record and submitted that a total of 77 employees were working under the respondent and that, on the basis of the said job profile and description, the respondent fell within the definition of management, therefore, he had no right to file an application to challenge termination order before the Appropriate Authority under the Act of 1958.

3. Learned Senior Advocate placed reliance upon the judgment in **S.K. Maini versus M/s Carona Sahu Company Limited and Ors.**, reported in **(1994) 3 SCC 510**, and submitted that Section 2(s) of the Industrial Disputes Act defines "workman", and after considering the definition between a manager or Administrative Officer or a clerk, the Hon'ble Supreme Court held that whether or not an employee is a workman is required to be determined with reference to the principal nature of his duties, definitions and functions. He referred to the job description of the respondent (Annexure-E) and submitted that the job description clearly indicate responsibility as a person of management, therefore, the invocation of the authority under the Act of 1958 is per se illegal and against basic fundamentals of the Act of 1958.



4. The aforesaid contentions were opposed by learned counsel appearing on behalf of the respondent-non-petitioner, who submitted that the job description was not sufficient to explain the real nature of the respondent's job profile. He also submitted that the respondent was just an employee of the petitioner and was only discharging his duties as an employee. He also submitted that the Appropriate Authority under the Act of 1958 had considered the objection raised by the present petitioners and, with categorical finding, had rejected the objection of the petitioners and same did not require any reconsideration, as there were no sufficient grounds before this Hon'ble Court to revisit the findings.

5. Learned counsel has further placed reliance upon the judgments in the cases of **Arkal Govind Raj Rao versus Ciba Geigy of India Limited 1986 (52) FLR 19 (SC)**; **Indian Iron and Steel Company Limited and Another versus Their Workmen, AIR 1958 SC 130**; **Pramod Kumar Singh Sishodia versus State of U.P. and Others 2017 (155) FLR 75 (SC)**; **Roop Singh Negi versus PNB (2009) 2 SCC 570**; **Hukam Chand versus Union of India and Ors. 1990 (1) RLR 647 (Raj.) (DB)**; and **I.T.D.C. Limited versus The Authority under Raj. the Shops and Commercial Establishment Act, 1958 and Another RLR 1987 (2) 387 (Raj.) (DB)**, and submitted that the issue as to whether the respondent is a workman or not has to be considered on the basis of the purpose of employment. He also submitted that no document has been filed before the authority under the Act of 1958 to show that the respondent was working as part of the management. He also submitted that the



job description does not give any authority to the respondent for the appointment and termination of subordinates working under him. He also submitted that the entire work assigned to the respondent was only that of a workman and that he cannot be treated as part of the management. He also submitted that a domestic inquiry is required to be conducted by the petitioners before deciding or terminate the services of the respondent and that, in the instant case, no such inquiry was conducted with proper procedure. He referred the documents submitted by the petitioners and submitted that these were sufficient to show that the domestic inquiry suffered from illegality and perversity. He also submitted that there is no scope for interference under Article 226 of the Constitution of India, as no appeal has been provided against the order passed by the appropriate authority.

6. Heard learned Senior Advocate on behalf of the petitioners and learned counsel for the respondent, and perused the material placed on record, and also considered the judgments referred to by both the parties.

7. Admittedly, the respondent was appointed by the petitioners as Manager (Operations), vide offer letter dated 04th October 2013 (Annexure-C). The offer letter contains the conditions of employment, which also provide for salary breakdown and benefits. The petitioners have filed the job description as Annexure-E, and the same has been pressed by learned Senior Advocate. On 16th August 2017, the respondent was notified of a disciplinary hearing by the petitioners, and the investigation conducted by the security of the petitioners mentioned the following findings against him in Annexure-I:-



1. Failure to follow the Operations procedure by allowing shipments of M/s. SOTC to be delivered through PUD vehicle vendor which is against the company policy.
2. You were involved in engaging yourself into unethical financial relationship along with Team leader Dhiraj Gaur with M/s. SOTC by allowing shipments of M/s. SOTC to be delivered through vehicle of PUD vendors and thereby inviting a conflict of interest as per the company's Code of Business Conduct & Ethics policy.
3. You failed to follow the appropriate vendor selection process and did not execute the proper due diligence while shortlisting of FedEx vendor "Air Star Express" at JDHA branch.

8. Thereafter, the respondent was called and examined by Rahul Malik, and observations were made by Prashant Ghag and Annexure-J has been placed on record, which has been signed by all concerned. After taking note of the disciplinary hearing, a letter dated 26th September 2017 (Annexure-K) was issued, and the same has been reproduced as under:-

*This has reference to the notification of Disciplinary hearing dated August 16. 2017 issued to notification of disciplinary hearing. Pursuant to the completion of the hearing, the following 22. 2017 to enquire into the charges of unethical practices leveled against you in the said facts have been revealed:*

1. Failure to follow the operations procedure by allowing shipments of M/S. SOTC to be delivered through PUD vehicle vendor which is against the company policy.
2. You were involved in engaging yourself into unethical financial relationship along with team leader Dhiraj Singh Gaur with



*M/S. SOTC by allowing shipments of M/S. SOTC to be delivered through vehicle of PUD vendors and thereby inviting a conflict of interest as per the Company's Code of Business Conduct and Ethics policy.*

*3. You failed to follow the appropriate vendor selection process and did not execute the proper due diligence while shortlisting of FedEx vendor "Air Star Express" at JDHA branch.*

*The Disciplinary authority has concluded the case holding you guilty of the charges leveled against you, which amounts to the following gross misconducts and breach of Acceptable Performance and Conduct Policy and Code of business conducts and ethics:*

- Non-disclosure of financial relationship with company's vendor thereby creating conflict of interest leading to breach of company's Code of Business Conduct and Ethics policy.*
- Repeated breach of the company's rules, policies and procedures during vendor selection process resulting in serious consequence.*

*The Disciplinary Authority, after going through the entire record of the hearing and all other connected papers, has concurred with the said findings and has come to a conclusion that there no extenuating circumstances whatsoever to take any lenient view in the matter The Disciplinary Authority has accordingly decided to dismiss you from the services of the Company with immediate effect. i.e. from the close of working hours of September 26, 2017. You accordingly stand dismissed from the*



*services of the Company with effect from the close of working hours of September 26, 2017.*

*You are hereby reminded that under the terms of your employment with the Company, you are required to protect and not disclose to any unauthorized person, for any reason, any confidential information about the interest or business of the Company or any affiliated the name of the Company on and from the date of termination.*

*Please find attached the copy of the disciplinary hearing proceedings for your record.*

*Please be informed that the company will settle your full and final settlement due to you within thirty days from the date of this letter.*

*You are required to handover any Company property that may be in your possession, including but not limited to laptop, documents, uniform, records, company badge, mobile phone, etc (with SIM card and other accessories), keys and office access cards and any other documents or records, any confidential information or other FedEx materials or property you may have.*

*We also request you to complete the formalities for release of other statutory payment applicable to you like - Provident fund dues, gratuity settlement etc.*

*The Company hereby reserves all rights and causes of actions it may have against you under applicable laws or otherwise.*

9. The respondent has challenged the termination letter under Section 28A of the Rajasthan Shops and Commercial Establishments Act, 1958, and the Rules of 1959. The petitioners were served with a notice, and after considering the case of the



respondent and the objections raised by the present petitioners, the appropriate authority allowed the application on 1st January 2020 and set aside the termination letter dated 26th September 2017 as illegal and directed the petitioners to reinstate the respondent with all benefits.

10. Section 28A of the Act of 1958 is reproduced as under:-

*"28-A. Notice of dismissal or discharge by employer:-(1) No who has been in such employment continuously for a period of not less than 6 months except for a reasonable cause and after giving such employee at least one month's prior notice or on paying him one month's wages in lieu of such notice;*

*Provided that such notice shall not be necessary where the services of such employee are dispensed with for such misconduct, as may be defined in the rules made by the State Government in this behalf, and supported by satisfactory evidence recorded at an enquiry held for the purpose in the prescribed manner.*

*(2) Every employee so dismissed or discharged may make a complaint in writing in the prescribed manner to a prescribed authority within 30 days of the receipt of the order of dismissal or discharge on one or more of the following grounds, namely:-*

*(a) that there was no reasonable cause for dispensing with his services; or*



*(b) that no notice was served upon him as required by sub-section(1) or*

*(c) that he had not been guilty of any misconduct:*

*Provided that the prescribed authority may condone delay in filing such a complaint if it is satisfied that there was sufficient cause for not making the complaint within the prescribed time.*

*(3) The prescribed authority shall cause a notice to be served on the employer relating to the said complaint, record briefly the evidence produced by the parties, hear them and make such enquiry as it may consider necessary and thereafter pass orders in writing giving reasons therefor.*

*(4) While passing an order under sub-section (3), the prescribed authority shall have power to give relief to the employee by way of reinstatement or by awarding money compensation or by both.*

*(5) The decision of the prescribed authority under this section shall be final and binding both on the employer and the employee."*

11. Section 28A provides that no employer shall dismiss or discharge from employment an employee who has been in such employment continuously for a period of not less than six months, except for a reason or cause and after giving such employee at



least one month's prior notice or paying him one month's wages in lieu of such notice. An exception is also provided, which indicates that if the employee is charged with misconduct, then he may be discharged on the basis of satisfactory evidence. In case of a violation, the employee may approach the authority. Section 28A empowers any employee under the Act of 1958 to challenge his termination if the same is in violation of the provisions of law.

12 Section 2(5) defines an employee, and Section 2(6) defines an employer, and we are reproducing both definitions as under:-

*(5) "employee" means a person wholly or principally employed in, or in connection with any establishment and includes an apprentice but does not include a member of the employer's family; it also includes any clerical or other staff of a factory or industrial establishment who falls outside the purview of the Factories Act, 1948 (Central Act LXIII of 1948);*  
*(6) "employer" means a person having charge or owning or having ultimate control over the affairs of an establishment and includes the manager, agent or other person acting in the general management or control of an establishment;*

13. Now comes the question whether the respondent is an employee or an employer. For this purpose, we have to consider the job profile and job description of the respondent. Admittedly, the respondent was appointed as Manager (Operations), in the regular scope in Grade M12, with total annual compensation of ₹7,50,001/- on 04.10.2013. The job description, as mentioned in Annexure-E, is reproduced as under:-



| SPECIFIC RESPONSIBILITIES AND DETAILS |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|---------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CENTRAL JOB TITLE                     | Manager Operations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| FUNCTION                              | OPERATIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| SUB-FUNCTION                          | HUB & GATEWAY OPERATION, GROUND OPERATIONS, ROAD NETWORK, STORAGE, FASHION & SOLUTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| REPORTS TO                            | Can report to Senior Manager or above                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| CENTRAL JOB CODE                      | To be assigned                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| JOB LEVELS                            | Not applicable                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| TYPE DESCRIPTION                      | Manager: Involves management responsibility for a team of people or a specific location(s) within the business. Teams may include contractors and all categories of employees: Operational. Clerical, Mechanical/Electrical, Supervisory, Secretarial, Professional, Advisory and Deputy Management. Management responsibilities include disciplinary action up to and including                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| JOB SPECIFIC RESPONSIBILITIES         | Admin & Support, Air Operations. Aircraft Handling, Clearance & Brokerage Operations, Clearance Admin Inbound/ Outbound, Commercial Airline Management, Contract Management, Contract Management/ Sourcing, Cross Border Linehaul, Cross Border Linehaul, Cross Border Trucking Operations Control, Customer Service, Customer Services, Dangerous Goods, Dispatch, Dispatch (Heavy Weight), Domestic Special Services, Export Controls, Feeder Operations, Flight Operations, Handling, Hub & Gateway Operations, Hub Control Center, In Country Linehaul, Lift, Manifesting, Network Control, On Road, Operations, Operations Support, Quality & Process Improvement, Ramp Operations, Reporting & Analysis, Service Assurance, Spot Management, Supplemental Aircraft Operations, Transport Scheduling, Vendor Management, Weight & Balance, Weight & Balance (Ramp Operations), Air Hub, Gateway or Ramp Operation (Excludes Station Operations), Manages Ground Hub, Manages Ground/ Road Hub |
| OTHER DUTIES                          | May be required to perform other duties as assigned                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| GEOGRAPHIC REMIT                      | Can be up to Activities at regional level (APAC, MEISA, EU, LAC)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| VENDOR RESPONSIBILITIES               | Manages/Supervises Work of Vendors                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| FORWARD PLANNING RESPONSIBILITY       | Plans and organizes own work on weekly/monthly basis                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| PROCESS RESPONSIBILITY                | Implements existing and new processes and procedures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| INTERNAL CONTACTS                     | Regular interaction with First Line Management.<br>Regular interaction with Senior Management.<br>Occasional interaction with Directors.<br>Limited interaction with Officers (VP and above).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| EXTERNAL CONTACTS                     | Occasional interaction with External Customers.<br>Occasional interaction with Suppliers and Vendors.<br>Limited interaction with Consultants.<br>Occasional interaction with Government agencies/ authorities, Trade Associations or similar.<br>Occasional interaction with Works' Councils, Unions and Official Employees Groups.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| EXPERIENCE                            | A moderate level (3-5 years)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| SKILLS                                | Leadership Skills, Planning & Organizing Skills, Judgement & Decision Making Skills, Presentation skills, Analytical Skills                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| QUALIFICATIONS/ LICENCE(S)            | Language: Proficiency in English                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| POSITION RESTRICTIONS                 | Not applicable                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |





14. In the case of **Arkal Govind Raj Rao (supra)**, the Hon'ble Supreme Court considered Section 2(s) of the Industrial Disputes Act for the purpose of definition of workman and held that:-

*The test is what is 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 may have to be understood in their proper connotation and their mere use should not detract from the trust.*

15. In the case of **S.K. Maini (supra)**, the Hon'ble Supreme Court considered the case of an applicant who was working as Shop Manager/In-charge of the respondent company and observed as under:-

*9. 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. In this connection, reference may be made to the decision of this Court in *Burmah Shell Oil Storage and Distribution Co. of India Ltd. v. Burmah Shell Management Staff Assn.* In *All India Reserve Bank Employees' Assn. v. Reserve Bank of India* it 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 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 f 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 defined in Section 2(s) of the Industrial Disputes Act.*

**10.** *In Mcleod and Co. v. Sixth Industrial Tribunal, W.B. P.B. Mukharji, J. of the Calcutta High Court as the learned 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 interpretation 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 or administration starts. For that would be theoretical and not practical. It has to be broadly interpreted 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 manager or an administrator and a supervisor can 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 Bhageria.*

**11.** *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 d within the definition of workman under Section 2(s) as has been indicated by this Court in S.K. Verma v. Mahesh Chandra. But if the principal function is of supervisory nature, the employee concerned 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/In-charge of the shop was made responsible and liable to make e good such amount of credit whether such 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. 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 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 the cause and amount of loss established by local authorities. Mr. Maini as in-charge 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 in-charge was required to keep himself fully conversant 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 Establishments 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 in-charge 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 in-charge 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 in-charge 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. Panna Lal Gupta 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 his superior. In the instant case within the authority indicated in the terms and conditions of his service, Shri Maini 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, Shri Maini had signed the statutory forms as an 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 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 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 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.*

16. Having considered the principles of law referred to hereinabove, it is apparent on the face of the record that the job description and job profile of the respondent were managerial in nature, and he was having control over the selection of vendors and was further managing the business affairs within his area of work. The same is evident from the questions that were asked to him during the disciplinary proceedings. The material on record



clearly indicates that the respondent was not an employee falling within the definition of Section 2(5) of the Act of 1958. Thus, he has no right to invoke the jurisdiction of the appropriate authority under the Act of 1958 to challenge his order of termination before the appropriate authority.

17. Since the respondent is not an employee as per the definition, the impugned order passed by the authority under the Act of 1958 is without any jurisdiction and is liable to be set aside. This Court can interfere under Article 226 of the Constitution of India, when there is illegal exercise of jurisdiction by any authority under the jurisdiction.

18. In view of the discussion made hereinabove, the writ petition under Article 226 of the Constitution of India is hereby allowed, and the order dated 1st January 2020 in RSC/11/2017, passed by the appropriate authority under the Rajasthan Shops and Commercial Establishments Act, 1958, Jaipur, is hereby quashed and set aside. The application preferred by the respondent before the authority is not maintainable and is, therefore, dismissed. The respondent is at liberty to avail himself of the alternative remedy available under the law.

19. Misc. application, if any, stands disposed of.

(ASHOK KUMAR JAIN),J

25/GAURAV (S-A)