



A.F.R.
Reserved

Chief Justice's Court

Case :- WRIT - C No. - 12468 of 2002

Petitioner :- Duncans Industries Ltd.

Respondent :- State Of U.P.And Others

Counsel for Petitioner :- S. Chatterjee,J.N. Tiwari,Sudeep Harkauli,Yashwant Varma

Counsel for Respondent :- C.S.C.,Bushra Mariyam,K.P. Agrawal,Ms.Bushra Maryam,R.P. Agarwal,S. Sirohi

with

Case :- WRIT - C No. - 37147 of 1996

Petitioner :- S.D. Gupta

Respondent :- Labour Court Iv And Others

Counsel for Petitioner :- Km. Mahima Maurya,K.P. Agarwal,Ms.Bushra Maryam

Counsel for Respondent :- C.S.C.,Rohan Gupta,S. Chatterjee,S.Chatterji,Sudeep Harkauli,Yashwant Varma

with

Case :- WRIT - C No. - 39403 of 1999

Petitioner :- I.E.L.Supervisors Association

Respondent :- State Of U.P And Others

Counsel for Petitioner :- Hina Rizvi,Anuradha Sunderam,Bushra Maryam,K.P. Agarwal,Ms.Bushra Maryam

Counsel for Respondent :- S.C.,J.N. Tiwari,Rohan Gupta,S. Chatterji,Sudeep Harkauli,Yashwant Varma

with

Case :- WRIT - C No. - 32788 of 2000

Petitioner :- I.E.L.Supervisor Association

Respondent :- State Of U.P. And Others

Counsel for Petitioner :- Bushra Maryam,K.P.Agarwal

Counsel for Respondent :- C.S.C.,J.N. Tiwari,P.K. Mukherjee,P.K. Sinha,Rohan Gupta,S. Chatterjee,Sudeep Harkauli,Yashwant Varma

with

Case :- WRIT - C No. - 44848 of 2000

Petitioner :- Duncans Industries Ltd.

Respondent :- State Of U.P.And Others

Counsel for Petitioner :- S. Chatterjee,J.N. Tewari,Rohan Gupta,Sudeep Harkauli,Yashwant Varma

Counsel for Respondent :- C.S.C.,Bhushra Maryam,K.P. Agarwal,M.K. Mishra,Miss. S. Jhingan,Ms.Bushra Maryam

with

Case :- WRIT - C No. - 53016 of 2000

Petitioner :- I.E.L. Supervisors Association And Others

Respondent :- Industrial Tribunal And Others

Counsel for Petitioner :- M.K.Misra,Bhushra Mariyam,K.P. Agarwal,Ms.Bushra Maryam,Sarita Jhingan

Counsel for Respondent :- C.S.C.,J.N. Tiwari,Rohan Gupta,S. Chatterji,Sudeep Harkauli,Yashwant Varma

with

Case :- WRIT - C No. - 16447 of 2006

Petitioner :- Duncans Industries Limited

Respondent :- State Of U.P. And Others

Counsel for Petitioner :- S. Chatterji,V.R. Agarwal

Counsel for Respondent :- C.S.C.,Kailash Kumar

Hon'ble Govind Mathur,Chief Justice

Hon'ble Saurabh Shyam Shamsery,J.

(Delivered by Hon'ble Saurabh Shyam Shamsery, J.)

1. These writ petitions were earlier decided by a common judgment and order dated 24.2.2016 passed by the Division Bench of this Court whereby the matters were remanded back to Industrial Tribunal for fresh adjudication.

2. Being aggrieved, the Supervisors Association preferred Special Leave Petition No.1206-1208 of 2017 (Civil Appeal No(s) 9382-9384 of 2017) before the Hon'ble Supreme Court which were decided on 23.2.2018 with the request to the High Court to heard the writ petitions on merit. The relevant part of the order is reproduced hereinafter :- .

“The only dispute remaining to be decided is whether the Supervisors/Deputy Superintendents would be workmen or not. There are already two conflicting views of the Labour Courts. In the above circumstances, we do not find any justification for the High Court remitting the matter again to the Labour Court on the issue. Accordingly, these appeals are allowed. The impugned judgment is set aside. We direct the High Court to decide the issue finally in the true spirit of the order dated 14.9.2010, as explained by us above on the basis of the materials available on record.

3. The facts in brief which are necessary to decide the issue involved in all these writ petitions are as follows :-

(a) The petitioner - Duncan Industries Ltd. is a company registered under the Companies Act, having its factory at Kanpur, which manufactures fertilizers commonly known as UREA. The company has different categories of employees comprising of Management staff, Deputy Superintendents/Supervisors and workman. In the year 1978, the age of retirement of workman of the petitioner-company was raised to 60 years subject to their being medically fit, in pursuance of settlement/agreement dated 7.2.1978 entered between the Management and the Union of Workman. As per the case of the petitioner-company, the said settlement/agreement was not made applicable to Supervisors/Deputy Superintendents of the company on the ground that they were not workman.

(b) The Management of the company took decisions on various issues after meeting with the representatives of IEL Supervisors Association, Kanpur on 28.5.1985 including the decision regarding the retirement age of the Supervisor which remained unaltered at 58 years.

(c) The IEL, Supervisors' Association claimed that their age of superannuation should be fixed as 60 years as done in the case of workman and raised a industrial dispute which finally referred under Section 4-K of the U.P. Industrial Disputes Act, 1947 (*hereinafter referred as 'the Act of 1947'*) to the Industrial Tribunal (III) U.P. Kanpur and was registered as Adjudication Case no.11 of 1988. The term of the reference of the said industrial dispute was as follows :-

*“Kya Sevajokon Dwara Apne Pratishtan Ke Sabhi
Deputy Superintendents Evam Supervisors Ki Seva*

Nivriti Aayu 58 Varsha Ke Sthan Par Shramikon Ki Bhanti 60 Varsha Na Karna Uchit Tatha Vaidhanik Hai ? Yadi Nahin to Sambhandhit Shramik Kya Laabh/Anutosh Relief Pane Ke Adhikari Hai Tatha Anya Kis Vivran Sahit ?”

(d) The industrial dispute was contested by the rival parties and written statements, rejoinder affidavits were also exchanged. Statements of witnesses of both side were recorded and they were cross-examined also. The Industrial Tribunal after considering the material and submissions, passed an award dated 29.4.1999, whereby it was held that the Deputy Superintendents/Supervisors are also entitled for increase of their retirement age from 58 years to 60 years as done in the case of workman.

(e) The Industrial Tribunal (III) sent the award for the publication on 30.7.1999 to the State, however the same was recalled by the Tribunal before publication and the matter was posted for re-hearing.

(f) Being aggrieved, the IEL Supervisory has filed Writ Petition No.39403 of 1999 with the prayer for publication of the award dated 23.4.1999 passed by the Industrial Tribunal. Apparently, no interim order was passed by this Court in the said writ petition.

(g) The Industrial Tribunal again heard the parties and passed the fresh award and sent the same for publication on 16.6.2000 to the State Government.

(h) The IEL Supervisor Association again approached this Court by way of filing Writ Petition No.32788 of 2000 with the prayer for restraining the State Government from publishing the fresh award dated 16.6.2000. Apparently, no interim order was granted by this Court in the said writ petition also.

(i) The State Government instead of publishing the award sent for publication on 16.6.2000, referred the same dispute which was earlier registered as Adjudication No.11 of 1988 in Industrial Tribunal (VIII) Lucknow, vide order dated 30.9.2000.

(j) The Duncan Industries Ltd. being aggrieved by the order dated 30.9.2000 preferred Writ Petition No.44848 of 2000 before this Court wherein the following order was passed on 18.10.2000.

“Heard Sri J.N. Tewari, Senior Advocate assisted by Sri S.Chatterjee learned counsel for the petitioner.

The grievance of the petitioner is that the State Government has made a second reference in the Industrial Disputes Act. The Original reference was made on 14th March, 1998 which gave rise to I.D. case No.11 of 1998.

In this case the evidence of the parties was recorded and the award was prepared. The award was not a convenient approach and made a second reference on the same term and condition on 30.9.2000. The learned counsel for the petitioner urged that the State Government was not empowered to make second reference and to withdraw the award made earlier. The matter requires scrutiny.

Issue notice to respondent no.4 who may file counter affidavit within six weeks. The learned standing counsel may also file counter affidavit on behalf of respondent no.1, 2 and 3 within the same period.

List thereafter.

In the meantime further proceedings pursuant to the reference dated 30.9.2000 shall remain stayed.”

(k) I.E.L. Supervisor also challenged the reference order dated 30.9.2000 by way of filing Writ Petition No.53016 of 2000.

(l) Meanwhile, the State Government published the award dated 29.4.1999 passed in Adjudication Case No.11/1988 which was sent for publication on 30.7.1999 on 7.1.2002 whereby Supervisors were also held to be workmen. The Duncan industries then approached this Court by way of filing another Writ Petition No.12468 of 2002. During the pendency of abovementioned writ

petitions, the Industrial Tribunal (I) U.P. at Allahabad in another Adjudication Case No.32 of 2001 wherein the industrial dispute 'whether the concerned employee of the Duncan Industries who was employed in the capacity of a Supervisor, was a workman or not, and if so then, whether denial of increment of Rs.10,000/- to him was justified and legal and if not, then whether the workman was entitled to the said relief? was referred, held that the employee was a workman and he was not discharging managerial functions and held that Supervisor was entitled to receive increment. The said award dated 21.5.2005 is under challenge in Writ Petition No.16447 of 2006 by the Duncans Industries.

(m) Earlier the Labour Court (IV), U.P. Kanpur in Industrial Dispute No.146/1991 between the Management and IEL Supervisor Associations has passed award dated 26.9.1996 wherein it was held that Deputy Superintendent working in the Duncan Industries are not liable for increment as they are not workmen. The said award was also challenged by individuals in Writ C No.37147 of 1996.

(n) A Single Bench of this Court decided the Writ Petition No.39403 of 1999, 32788 of 2000, 4484 of 2000 and 53016 of 2000, vide order dated 7.9.2004, wherein it was held that employer could not place on record any fact which might authorize the Supervisor to do managerial and supervisory functions. In the other writ petition bearing Writ Petition No.37147 of 1996 wherein the petitioners therein have challenged the finding that they were not declared workmen was however dismissed.

(o) The abovementioned orders dated 7.9.2004 and 22.7.2010 were challenged before the Hon'ble Supreme Court by

way of filing Civil Appeal Nos.351-355 of 2006 and Civil Appeal No.8023 of 2010, which were allowed by the Hon'ble Supreme Court vide order dated 14.9.2000 and the matter was remanded back to High Court for fresh consideration. The relevant part of the order is quoted hereinbelow :-

“In the circumstances, therefore, and keeping in view the fact that the Labour Court has taken two different views in the two references made to it as regards the status of Supervisors and Deputy Superintendents, we are of the view that the matters need to be remanded back to the High Court to enable both the sides to argue the matter afresh and also the High Court to examine the issues that arise for determination.

We, accordingly, allow these appeals, set aside both the impugned orders and remit the matters back to the High Court for a fresh disposal in accordance with law.”

(p) After remand, abovementioned writ petitions were finally decided by this Court vide order dated 24.2.2016 whereby the adjudication cases were remanded back to the Tribunal to decide afresh two different views were taken regarding the working of Supervisor and Deputy Superintendent. One being declaring Supervisor/Deputy Superintendent as workman and other being not a workmen by the Labour Tribunal. The operative part of the order dated 24.2.2016 is quoted hereinafter :-

“Writ Petition No.44848 of 2000 was dismissed earlier by judgment and order dated 17 September 2004. Learned Counsel for the parties have not made any submissions. Thus, for all the reasons stated in the judgment and order dated 17 September 2004, Writ Petition No.44848 of 2000 is liable to be dismissed and is, accordingly, dismissed.

Writ Petition No.12468 of 2002, Writ Petition No.37147 of 1996 and Writ Petition No.16447 of 2006 are disposed of. The Tribunal concerned shall now proceed to hear the adjudication cases bearing Adjudication Case No.11 of 1998, Adjudication Case No.146 of 1991 and Adjudication Case No.32 of 2001 afresh. It shall, however, be open to the parties to bring on record the subsequent facts that may have taken

place. This should be done within one month. The Tribunal concerned shall proceed to make the award(s) expeditiously and within a period of four months from the date a certified copy of the order is produced before the Tribunal by either of the parties.

Writ Petition No.39403 of 1999 and Writ Petition 32788 of 2000 are dismissed as having become infructuous.

*Learned counsel for the parties also did not make submissions in **Writ Petition No.53016 of 2000**. The said writ petition was earlier allowed by judgment and order dated 17 September 2004 and the reference order dated 30 September 2000 was quashed. This petition, therefore, stands allowed for the reasons contained in the judgment and order dated 17 September 2004.”*

4. As mentioned earlier, the order passed by this Court on 24.2.2016 was challenged by way of filing Civil Appeal No.9382-9384 of 2017 arising out of S.L.P. (Civil) Nos.1206-1208 of 2017 titled as *I.E.L. Supervisors' Association Etc. Etc. vs. Duncan Industries Ltd. & Another*, whereby the Apex Court vide order dated 23.2.2018 has remanded the matter back to this Court to decide afresh on the basis of the material available on record.

5. In this background, this Court has heard learned counsel for the parties at length and perused the record and considered the various judgments placed before this Court by the parties.

6. The issue before this Court is “Whether the Deputy Superintendents/Supervisors working in company would fall under the definition of workmen as contemplated under Section 2(Z) of the U.P. Industrial Disputes Act, 1947 on the basis of evidence produced before the Labour Tribunal to show that they were functioning in a managerial or administered capacity or not”?

7. We have scanned the entire records and the materials placed before the Labour Tribunal by the parties, which are as

follows :-

(i) Written statement on behalf of M/s. I.E.L. Ltd. (Fertilizers Division), Panki, Kanpur - By way of this written statement, the company has submitted that there is no industrial dispute as contemplated in the Act of 1947. The age of retirement of Supervisor/Deputy Superintendent fixed as 58 years which is specifically incorporated in their appointment letters, duly accepted by them, and as such, they are bound by the same.

The note prepared after the discussion between the Company and the Supervisor Association on 24.5.1985 which is on record, the demand of Association regarding the change of age of retirement from 58 to 60 years has already been rejected. Some of the Deputy Superintendent have already moved to civil court for the similar relief, and therefore, the reference is bad in eye of law.

(ii) Written statement on behalf of workmen - The workmen were initially started working under designations of Foreman and General Staff Grade A, however, in or around 1974 they were re-designated as Technical Supervisors/Office Supervisors. However, the basic nature of their job remain unchanged and they remained working as workmen. It was further mentioned that there are only three categories of employees in the company namely managerial cadre, lady secretaries and non-managerial cadre and the employees concerned in the present dispute are put under the category of non-managerial cadre as reflected in the medical claim policy of the Company. The employees are undertaking their duties in different shifts and doing general duties like any other workmen.

In the rejoinder affidavit, the employees reiterated that they are born on the muster-roller of the company just as other

categories of workmen, whereas in the case of managerial staff, they are not born on the muster-rolls. No definite or distinct job assignment for the workmen concerned in the present dispute.

(iii) Rejoinder statement on behalf of the company - In the rejoinder affidavit, it has been mentioned that time to time certain general staff have been promoted to the post of Deputy Superintendent and some have been upgraded also and their jobs and responsibilities have been enlarged. It was denied that drawing of similar pay or drawing more salary by the workman than Supervisor does not mean that Deputy Superintendent/Supervisor are workmen as grade and scale of pay of workers were decided by way of bipartite negotiations. Additional rejoinder affidavit was also filed on behalf of the workmen to which company has also filed reply.

(iv) Witnesses produced on behalf of the employees :-

(a) Mr. N.K. Nigam (EW-1) mentioned that subsequent to his re-designation as Supervisor in the year 1975 and subsequently as Deputy Superintendent in the year 1983, he continued to perform same or similar duties has been performed by him with the designation of general staff which were essentially of clerical in nature such as maintaining personal files, preparing annual increment letters, promotion letters etc. It was also mentioned by him that he does not have power to sanction leaves to any employee and similarly did not have power to suspend or charge sheet any employee and he does not exercise any supervisory functions. He was cross-examined by the Employer side wherein he has stated that the pay scale of Office Assistant and Deputy Superintendent are different and they are members of different Union. He has also denied that he had signed Non-Managerial

Staff Assessment Form as an Assessor.

(b) Kailash Kumar (EW-2), the second witness examined on behalf of the employees' Association submitted that normally he worked as Clerk, however, sometimes he has also worked under the supervisory capacity. He stated that he was appointed as Technical Supervisor and not as a Superintendent. He has also stated that he look after security of the entire department.

(v) Witness on behalf of the employe :-

(a) Shri V.C. Srivastava, who was working as Work Shop Manager stated that Deputy Superintendents/Supervisors are sanctioning leaves, authorizing material requisition and signing material requisition as authorized signatures. Superintendents are performing supervisory administrative and managerial nature of duties which includes sanction of leave of workmen working under them, to appraise performance of workmen and even they are authorized to issue gate pass to the workmen. He was cross-examined by the employees side wherein he has stated that the work of the general staff was neither managerial nor administrative nor supervisory in nature.

(b) P.C. Jha, who was working as Manager Security Transport, appeared as E.W.2 has stated in his evidence that the cadre of Deputy Superintendents/Superintendents workmen are separate and distinct. He also relied upon certain documents to show that the nature of the duties undertaken by the Supervisor/Deputy Superintendent are supervisory and administrative in nature. He was also cross-examined.

8. The terms and conditions of the employment and nature of work of Workmen *vis-a-vis* Supervisors/Deputy Superintendents

and Workmen placed on record, in the form of a Superintendents chart, which is as follows :-

Terms and conditions of employment of Superintendents Vs. Workmen :-

<i>Items</i>	<i>Supervisors</i>	<i>Workmen</i>
Basic Pay	Rs.800/- to Rs.5000/- (Increments based on actual performance Appraisal System.)	Grade A1 225-25-375-30-555-35-1395 Grade A 200-20-320-24 464-29-1160 Grade B 171-16-267-20 387-24-915 Grade C 140-13-218-16-314-19-675 Grade D 110-12-182-14 266-16-586
Dearness Allowance	25% OF BASIC + VDA + Fixed DA of Rs.700/- p.m. As per neutralization formula agreed with the DS ASSOCIATION through Record Note of Discussion.	As per provisions of settlement.
House Rent	15% Basic + DA	Rs.400/- per month w.e.f. 1/10/91
Special allowance	Rs.375/-	-
Additional Special Allowance	Rs.1520/-	-
Factory Allowance	Rs.200/-	-
Leave Travel Allowance per year Medical Entitlement	Basic upto Rs.2000/-p.m.....Rs.4000/- p.a. Basic > Rs.2000/-p.m.....Rs.4500/- p.a. <u>Self</u> – Unlimited based on Actuals <u>Family Medical</u> - Basic upto Rs.2000/-p.m.....Rs.5000/- p.a. Basic > Rs.2000/-p.m.....Rs.5500/- p.a.	Rs.2000/-p.a (w.e.f. 5/11/93) Self – 2 months Basic + DA/Year Family Rs.750/- per year Additional 1.For chronic case - 3 months (Basic + DA) 3 times in service career). 2. For Extensive treatment Claim minus one month Basic+DA but, subject to maximum 3 months. (Basic+DA)

Loans	Housing Rs.50,000/- Hardship..... Rs.8,000/- Car..... Rs.35,000/- Car Repair Loan.....Rs.5,000/- Scooter..... Rs.10,000/- Furniture.....Rs.10,000/-	Housing.....Rs.40,000/- Hardship.....Rs.10,000/- Scooter.....Rs.10,000/-
Standing Orders	Not Covered under certified standing orders.	Covered under certified standing orders.

<i>Nature of Work</i>	<i>Supervisors (Superintendents)</i>	<i>Workmen</i>
Nature of work	Supdt. Primarily Supervise the work of the workmen.	Perform skilled & semi skilled manual work as directed by supervisory staff.
Leave	Approve leave of workmen working under them.	Not applicable.
Performance Appraisal	Appraises the performance of workmen working under them.	Not applicable.
Allocation of work	Allocates work of the Workmen under them.	Not applicable.
Intending Authority	Have authority to indent material inspect and draw material.	Not applicable.
Work Permits	Are authorised to issue and receive work permits as per Factories Act, Section 36, sub-section 2A.	Not applicable.
Attendance	Decides attendance, wage deductions if any of workmen authorises overtime work of Workmen.	Not authorised.
Gate Pass	Authorised to issue gate passes of workmen.	Not applicable.

Disciplinary Action	Initiates disciplinary action against delinquent workmen.	does not apply
Shift timings	7 am to 3 pm 3 pm to 11 pm 11 pm to 7 am	6 am to 2 pm 2 pm to 10 pm 10 pm to 6 am
Transportation	Are picked up by special vehicles from their residence to work and back.	Comes to Factory and back by the bus Service that piles throughout the city.
Canteen Facility	Authorised to avail food items from the canteen on free vouchers.	Have to pay at subsidised rate to avail food items from the canteen.

9. Certain documents such as investigation report investigated regarding theft by some workmen submitted by Deputy Superintendent, recommendation made on the issue of apprehension of miscreant to be a contractor, Non-Management Staff Assessment Forms wherein assessment has been conducted by the Supervisor, application for car loan etc. have been placed on record in order to show that the Supervisor/Deputy Superintendent were not workmen and are working under Supervisory capacity.

10. The labour Tribunal on the basis of the material on record passed award dated 29.4.1999 and come to the conclusion that :-

“सेवायोजको पक्ष के गवाहों के बयानों एवं दाखिल अभिलेखों से यह साबित नहीं होता है कि वादीगण प्रतिष्ठान में कोई प्रशासनिक या प्रबन्धकीय, परिवेक्षण सम्बन्धी कार्य करते हैं या ऐसे कार्य करने के लिए उन्हें अधिकार प्रदत्त किये गये हैं। इस सम्बन्ध में सेवायोजकों के गवाह ई/ डबलू/ 2 ने स्वयं माना है कि वे अपने विभाग के सुपरिन्टेन्डेन्ट कैटेगरी के कर्मचारियों का कार्ड देखते हैं और आवश्यकता पडने पर सुपरिन्टेन्डेन्ट कैटेगरी के लोगो को कार्य के निर्देश देते हैं और उनसे कार्य कराते हैं और जो वे निर्देश देते हैं और उनसे कार्य कराते हैं और जो वे निर्देश देते हैं उसी के अनुसार कार्य होता है इससे यही प्रमाणित होता है कि वादीगणों के

उपर भी अनेक उच्च अधिकारी प्रतिष्ठान में कार्यरत है जिनके अधीन और उनके निर्देशानुसार ही डिप्टी सुपरिन्टेन्डेन्ट/ सुपरिन्टेन्डेन्टस कार्य सम्पादित करते है और इनके कार्य का परिवेक्षण भी उनके द्वारा किया जाता है।

Thereafter, finally held that the employees are entitled for increase in their retirement age from 58 to 60 years. The Award was published on 7.1.2002.

11. In another industrial disputes (Industrial Dispute No.146/ decided on 26.9.1996), the Labour Tribunal IV U.P., Kanpur on the basis of the material produced before it come to the conclusion that the Deputy Superintendents and Supervisors are not workmen. The Labour Tribunal specifically come to the conclusion that -

“ स्पष्ट है कि श्री एस० के० मिश्रा के स्वैच्छिक सेवानिवृत्ति से लेने तथा श्री भट्टाचार्य द्वारा विवाद पर बल न दिये जाने की स्थिति मे एक मात्र संदर्भादेश मे निहित बिन्दु श्री एस० डी० गुप्ता के सम्बन्ध में निस्तारित किया जाना शेष रह जाता है। प्रश्न यह है कि क्या डी० एस० का पदनाम परिवर्तित पदनाम है जिसमें पूर्व नामित पदों के कार्य कलापों से कोई भिन्नता नहीं आई है अथवा यह पद प्रोन्नति का है। वादी यह प्रमाणित नहीं कर सके है कि जी० एस० ग्रेड – ए/ फोरमैन, टी० एस०/ ओ० एस० के कार्य की प्रकृति डी० एस० के कार्य की प्रकृति के समरूप रही है। इसके विपरीत प्रदर्श ई – 1 के 29.2.84 के पत्र से स्पष्ट है कि वादी श्री गुप्ता को डी० एस० के पद हेतु चयनित एवं प्रोन्नत किया गया था। अतः यह कहना कि यह प्रकरण पदनाम परिवर्तन का है, सही नहीं है। पत्र मे उल्लेख है कि प्रोबेशन की अवधि में असंतोषजनक कार्य होने पर उन्हें मूल पद पर प्रत्यावर्तित किया जा सकता है। यह शब्दावली भी प्रमाणित करती है कि उन्हें डी० एस० के पद पद प्रोन्नत किया गया। पत्र में स्पष्ट उल्लेख है कि डी० एस० का पद सुपरवाइजरी श्रेणी का है तथा सामूहिक सौदेबाजी की परिधि के बाहर समझा जायेगा। नियुक्ति/ प्रोन्नत पत्र मे मूल वेतन, महंगाई भत्ते व अन्य सेवा शर्तों का विशद विवेचन है जिसे वादी ने स्वीकार कर अपने हस्ताक्षर किये है।

12. Learned counsel for the rival parties have relied upon following judgments in order to substantiate their rival submissions :-

(a) In the matter of *Anand Regional Coop. Oil Seedgrowers' Union Ltd. vs Shaileshkumar Harshadbhai Shah* reported at

2006 SCC (L & S) 1486; 2006 (6) SCC 548, the Hon'ble Supreme Court has held that :-

“13. The ingredients of the definition of 'workman' must be considered having regard to the following factors:

(i) Any person employed to do any skilled or unskilled work, but does not include any such person employed in any industry for hire or reward.

(ii) There must exist a relationship of employer and employee.

(iii) The persons inter alia excluded are those who are employed mainly in a managerial or administrative capacity.

14. For determining the question as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.

15. Supervision contemplates direction and control. While determining the nature of the work performed by an employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a small one and relating to quality control would not answer the test.”

(b) In the matter of S.K. Maini vs M/s Carona Sahu Company Ltd. and Others reported at **(1994) 3 SCC 510** the Hon'ble Supreme Court has held that :-

“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 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 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 get 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 8 (1983) 4 SCC 214: 1983 SCC (L&S) 510: (1983) 3 SCR 799 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 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. 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 work-man 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 (1961) 1 LLJ 18 : AIR 1967 SC 428 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.”

(c) In the matter of *Management of M/s Sonepat Co-operative Sugar Mills Ltd. vs. Ajit Singh* reported at 2005 LLR 309; 2005 (3) SCC 232, the Hon'ble Supreme Court has held that :-

“21. It is now trite that the issue as to whether an employee answers the description of a workman or not has to be determined on the basis of a conclusive evidence. The said question, thus, would require full consideration of all aspects of the matter.

22. The jurisdiction of the Industrial Court to make an award in the dispute would depend upon a finding as to whether the concerned employee is a workman or not.

When such an issue is raised, the same being a jurisdictional one, the findings of the Labour Court in that behalf would be subject to judicial review.

23. The High Court furthermore applied wrong legal tests in following S.K. Verma (supra) in upholding the views of the Labour Court which itself approached the matter from a wrong angle. The Labour Court as also the High Court also posed a wrong question unto themselves and, thus, misdirected themselves in law.

24. In Cholan Roadways Limited Vs. G. Thirugnanasambandam [2004 (10) SCALE 578], this Court held:

"34.... In the instant case the Presiding Officer, Industrial Tribunal as also the learned Single Judge and the Division Bench of the High Court misdirected themselves in law insofar as they failed to pose unto themselves correct questions. It is now well-settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer. In this case, furthermore, the misdirection in law committed by the Industrial Tribunal was apparent insofar as it did not apply the principle of Res ipsa loquitur which was relevant for the purpose of this case and, thus, failed to take into consideration a relevant factor and furthermore took into consideration an irrelevant fact not germane for determining the issue, namely, the passengers of the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in relation to a domestic enquiry, which in "preponderance of probability" and applied the standard of proof required for a criminal trial. A case for judicial review was, thus, clearly made out."

(d) In the matter of **Bennett Coleman and Co. Limited (M/s) vs. Shri Yadeshwar Kumar** reported at **2007 LLR 62**, the Delhi High Court has held that :-

"9. A perusal of the Award and evidence shows that duties of the respondent were to supervise chowkidar and sweepers. He used to mark attendance of the chowkidars and security staff working under him. He used to forward leave and overtime slips to the security officer although he was not sanctioning authority but he was recommending authority. Documents with his recommendations were placed on record. It was his duty to report to administrative manager or security officer about any untoward incident.

On the other hand the workman relied upon certificate issued by the management that he was a skilled printer. This certificate was of the period when he was working as a printer. Respondent produced another certificate issued by the Labour Officer of the management wherein it is mentioned that workman is a good workman. He alleged that he was doing 8 hours duty being a workman whereas the administrative and officers category persons were working six and a half hours in a day. Because of some supervisory work, apart from doing his main work of a manual/ clerical or technical in nature, he does not become a supervisor.

10. The Tribunal on the basis of the fact that one Chander Kant was a senior officer to the respondent and the work of respondent was being over seen by Chander Kant concluded that respondent was not a supervisor. The Tribunal further observed that management had placed on record the leave applications of persons working under respondent and handled by him, but these were not proved as per rule of evidence. The same could not be relied upon. The Tribunal thereafter concluded that " in the light if the evidence led by the workman is analysed, it is clear that he was simply supervising the work of other persons and his functions were not of managerial or administrative in nature. No doubt certain applications have been sanctioned by Sh. Yadeshwar Kumar as departmental head but there were two persons who were working above him and so he cannot be said to be working in a supervisory capacity.

11. Obviously, the approach of the Labour Court has been contrary to the law laid down by the Supreme court in a series of judgments. In order to decide whether a person is a workman or not, the dominant and main functions are to be considered. A person can be called a supervisor if he is entrusted with the job of supervising other workmen who work under him. There is no dispute that the respondent was not only designated as Night Supervisor but he was having job of supervision over security guards, chowkidars and sweepers. He used to forward over time claims of the persons working under him after verifying the same. He used to recommend leave of the persons working under him. He was in charge of the security of the property of petitioner and used to supervise the work of security guards etc. It is not necessary that a supervisor has to be top cadre management person. A supervisor may occupy a lower position in the organisation chart of the company where in the descending order may be CMD, MD, General Managers, Deputy Managers, Managers, Administrative Officer and supervisor etc. It has been laid down by the Supreme Court

that in order to be a workman a person must be performing one of the functions as specified in Section 2(s) of the Act and it was not sufficient that he was not performing administrative or managerial function. Tribunal also went in wrong in law by observing that strict principles of rules of evidence are required to be followed by the Tribunal. While weighing the material placed before the Tribunal, a Tribunal is not to follow the strict rules of evidence and neither has to arrive at a conclusion by considering the proof beyond reasonable doubt. A Tribunal has to weigh the material placed before it by both sides. All materials which are logically probative for a prudent mind are liable to be considered. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility.”

(e) In the matter of **Vijay Dattatraya Kale vs. Peico Electronics and Electricals Ltd.** reported at **2009 (121) FLR 577**, the High Court of Bombay has held that :-

“Coming to the observation of the Labour Court in the present case, it appears that the Labour Court has rightly referred to the main attributes of the petitioner's function which were supervisory in nature. The work of appraisal of C-4 category staff and recommendation of their leave have been taken into account by the Labour Court. Moreover, the Labour Court has rightly pointed out that the power to recommend, assess and verify the work done by the subordinate staff was supervisory work and not clerical. In fact, interestingly, the petitioner has not stated anywhere that the nature of his work was clerical. On the other hand, the petitioner admitted that he belongs to M-1 category, which is meant for Manager, and was not covered by any settlement or agreement entered into between the Union and the management. In making these observations, the Labour Court has referred to oral and documentary evidence in the matter. The tasks mentioned earlier in paragraph 5 supra, referred to by the learned Counsel for the respondent No. 1 are also supervisory in nature since they involve the overseeing of actions. In any case, they are not tasks which are performed by the labour force. In this view of the matter, I find no error of law apparent on the face of the record.”

(f) In the matter of **H.R. Adyanthaya and Others vs.**

Sandoz (INDIA) Ltd. and Others reported at (1994) 5 SCC 737,
the Hon'ble Supreme Court has held that :-

“18. The legal position that arises from the statutory provisions and from the aforesaid survey of the decisions may now be summarised as follows.

19. Till 29-8-1956 the definition of workman under the ID Act was confined to skilled and unskilled manual or clerical work and did not include the categories of persons who were employed to do 'supervisory' and 'technical' work. The said categories came to be included in the definition 9 (1992) 1 SCC 281: 1992 SCC (L&S) 263 w.e.f. 29-8-1956 by virtue of the Amending Act 36 of 1956. It is, further, for the first time that by virtue of the Amending Act 46 of 1982, the categories of workmen employed to do 'operational' work came to be included in the definition. What is more, it is by virtue of this amendment that for the first time those doing non-manual unskilled and skilled work also came to be included in the definition with the result that the persons doing skilled and unskilled work whether manual or otherwise, qualified to become workmen under the ID Act.

20. The decision in May & Baker case was delivered when the definition did not include either 'technical' or 'supervisory' or 'operational' categories of workmen. That is why the contention on behalf of the workmen had to be based on the manual and clerical nature of the work done by the sales representatives in that case. The Court had also, therefore, to decide the category of the sales representative with reference to whether the work done by him was of a clerical or manual nature. The Court's finding was that the canvassing for sale was neither clerical nor manual, and the clerical work done by him formed a small fraction of his work. Hence, the sales representative was not a workman.

21. In WIMCO case, the dispute had arisen on 18-8-1961 under the U.P. Industrial Disputes Act and at the relevant time the definition of the workman in that Act was the same as under the Central Act, i.e., the ID Act which had by virtue of the Amending Act 36 of 1956 added to the categories of workmen, those doing supervisory and technical work. However, the argument advanced before the Court was not on the basis of the supervisory or technical nature of the work done by the employees concerned, viz., inspectors, salesmen and retail salesmen. The argument instead, both before the Industrial Tribunal and this Court was based on the clerical work put in by them, which was

found to be 75 per cent of their work. This Court confirmed the finding of the Tribunal that the employees concerned were workmen because 75 per cent of their time was devoted to the writing work. The incidental question was whether the sales-office and the factory and the factory-office formed part of one and the same industrial establishment or were independent of each other. The Court observed that it would be unreasonable to say that those who were producing matches were workmen and those who sold them were not. In other words, the Court did hold that the work of selling matches was as much an operational part of the industrial establishment as was that of manufacturing.

22. In *Burmah Shell* case the workmen involved were Sales Engineering Representatives and District Sales Representatives. The dispute had arisen on 28-10-1967 when the categories of workmen doing supervisory and technical work stood included in the definition of workman. The Court found that the work done by the Sales Engineering Representatives as well as District Sales Representatives was neither clerical nor supervisory nor technical. An effort was made on behalf of the workmen to contend that the work of Sales Engineering Representatives was technical. The Court repelled that contention by pointing out that the amount of technical work that they did was ancillary to the chief work of promoting sales and the mere fact that they possessed technical knowledge for such purpose, did not make their work technical. The Court also found that advising and removing complaints so as to promote sales remained outside the scope of the technical work. As regards the District Sales Representatives, the argument was that their work was mainly of clerical nature which was negated by the Court by pointing out that the clerical work involved was incidental to their main work of promoting sales. What is necessary further to remember in this case is that the Court relied upon its earlier decision in *May & Baker* case¹ and pointed out that in order to qualify to be a workman under the ID Act a person concerned had to satisfy that he fell in any of the four categories of manual, clerical, supervisory or technical workman.

23. However, the decisions in the later cases, viz., *S.K. Verma*, *Delton Cable*, and *Ciba Geigy* cases did not notice the earlier decisions in *May & Baker*, *WIMCO* and *Burmah Shell* cases and the very same contention, viz., if a person did not fall within any of the categories of manual, clerical, supervisory or technical, he would qualify to be workman merely because he is not covered by either of the four exceptions to the definition, was canvassed and though

negated in earlier decisions, was accepted. Further, in those cases the Development Officer of the LIC, the Security Inspector at the gate of the factory and Stenographer-cum-Accountant respectively, were held to be workmen on the facts of those cases. It is the decision of this Court in *A. Sundarambal* case which pointed out that the law laid down in *May and Baker* case was still good and was not in terms disowned.

24. We thus have three three-Judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz., manual, clerical, supervisory or technical and two two-Judge Bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three three-Judge Bench decisions which have without referring to the decisions in *May & Baker*, *WIMCO* and *Burmah Shell* cases have taken the other view which was expressly negated, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the ID Act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation.”

(g) In the matter of *Ashok Kumar And Ors. vs Managing Director, U.P. Leather Development and Marketing Corporation and Another* reported at 1998 ILLJ All, the Allahabad High Court has held that :-

24. It may be noticed that as provided under the Industrial Disputes Act the term 'workman' does not include any such person who being employed in a supervisory capacity, exercises either by the nature of the duties attached to the officer or by reason of the powers vested in him functions mainly of a managerial nature.

25. The word 'supervise' and its derivatives have to be construed in the light of the context. What determines the question as to whether a person is doing supervisory work mainly of a managerial nature or not depends

much on the nature of the duties and functions assigned to him. The absence of supervisory work is the supervision by one person over the work of others and it embraces within its fold the authority to control and give directions occupying a position of command or authority to take a decision and act within the limit of his authority in an independent manner. Having regard to the various categories of the services the use of different words like 'supervisory', 'managerial' and 'administrative' it is not necessary to import the motions of one into the interpretation of others. Dealing with the disputes with respect to the nature of the work performed by an employee as to whether it was of supervisory nature or otherwise the industrial adjudication generally considers the essence of the matter and does not attach undue importance to the designation of the employee. It is always a matter of determining what the primary duties of an employee were and the emphasis is not on the injunctions in-cidental to his main duties.

(h) In the matter of **Arkal Govind Raj Rao vs Ciba Geigy Of India Ltd. Bombay** reported at **1985 AIR SC 985; 1985 (3) SCC 371**, the Hon'ble Supreme Court has held that :-

“16. The test that one must employ in such a case is what was 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 have to be understood in their proper connotation and their mere use should not detract from the truth.”

(i) In the matter of **Ananda Bazar Patrika Private Ltd. vs The Workmen** reported at **1970 SCC 3 248**, the Hon'ble Supreme Court has held that :-

“3. The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to

be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the more fact that some supervisory duties are also carried out, incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity. This principle finds support from the decisions of this Court in *South Indian Bank, Ltd. v. A.R. Chacko* 1964-I.L.L. J. 19 and *May & Baker (India), Ltd. v. their workmen* 1961-II L.L J. 94. In the present case, we have, therefore, to examine the evidence to see whether the labour court is right, in holding that, because of the main work of Guptas being clerical in nature, ho was not employed in supervisory capacity.

6. On these facts, we are unable to hold that the labour court committed any error in arriving at the decision that Gupta was employed on clerical work and not in supervisory capacity. The principal work that Gupta was doing was that of maintaining and writing the cash book and of preparing various returns. Being the senior most clerk, he was put in charge of the provident fund section and was given a small amount of control over the other clerks working in his section. The only powers he could exercise over them was to allocate work between them to permit them to leave during office hours, and to recommend their leave applications. These few minor duties of a supervisory nature cannot, in our opinion, convert his office of senior clerk in charge into that of a supervisor.”

(emphasis supplied)

13. On the basis of abovementioned submissions and judgments, in order to determine 'whether an employee is a workman or Supervisor', following factors are relevant for consideration :-

(i) According to Section 2(z) of the U.P. Industrial Disputes Act, 1947 which is para materia to Section 2(s) of the Industrial Disputes Act, workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in

relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge, or retrenchment has led to that dispute, but does not include any such person —

(a) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(b) who is employed in the police service or as an officer or other employee of a prison; or

(c) who is employed mainly in a managerial or administrative capacity, or

(d) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

(ii) Mere designation of the post is not decisive of nature of the employment.

(iii) An employee employed mainly in a capacity of a Supervisor discharging the duties of allocation of jobs, assessment of work, recommendation of leave, carried out promotional appraisals but incidentally discharging other technical work would not fall within the definition of workman.

(iv) Whether an employee is working on any particular capacity as workman or as a Supervisor is a mixed question of fact and law, which has to be decided on the basis of conclusive evidence only, which includes oral as well as documentary.

(v) Whether a person is doing supervisory work mainly of a managerial nature or not will depend much on the nature of the duties and the functions assigned to him.

(vi) If a person is merely doing supervisory work but incidentally or for a fraction of time also does some clerical work, it would have to be held that he is employed in supervisory capacity and in case, if the main work is done of clerical nature and some supervisory duties are also carried out incidentally the work done by the employee will not convert his employment as a workman into one in supervisory capacity.

14. We have considered the oral as well as documentary evidence, submissions made by the parties, judgments cited and the material available on record.

15. It is well settled principle of law that he who asserts must prove. Burden of proof is the obligation to adduce evidence in support of the claim asserted. The obligation to lead evidence to establish an fact is on the party making the said fact or is relying upon the said fact. In the present case, the initial burden is on employees to place evidence that they are 'Workmen', however, they have failed to produce such evidence, which is sufficient to discharge their initial burden. The employees have failed to prove their nature of duties being of Workmen, therefore, we are unable to hold on the basis of evidence brought on record that they are undertaking work of a workman.

16. In the matter of *Workmen of Nilgiri Co-operative Marketing Society Ltd. vs. State of U.P. and others* reported at (2004) 3 SCC 514, the Hon'ble Supreme Court has held in para 47, 48 , 49 and 50 that :-

“BURDEN OF PROOF :-

47. It is a well-settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him.

48. In *N.C. John Vs. Secretary Thodupuzha Taluk Shop and Commercial Establishment Workers' Union and Others* [1973 Lab. I.C. 398], the Kerala High Court held:

"The burden of proof being on the workmen to establish the employer-employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer-employee relationship."

49. In *Swapan das Gupta and Others Vs. The First Labour Court of West Bengal and Others* [1975 Lab. I.C. 202] it has been held:

"Where a person asserts that he was a workmen of the Company, and it is denied by the Company, it is for him to prove the fact. It is not for the Company to prove that he was not an employee of the Company but of some other person."

50. The question whether the relationship between the parties is one of the employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse."

17. In view of above discussion, we are of considered view that the employees have failed to bring on record conclusive evidence that they are employed mainly as a 'Workmen'. As the employees have failed to discharge their initial burden, we have not considered the evidence brought on the record by the employer to contradict the stand of the employees.

18. Accordingly, these writ petitions are finally decided in the following terms :-

(i) WRIT C No.12468 of 2002 (Duncans Industries Ltd. vs. State Of U.P.And Others) – Impugned award dated 29.4.1999 (published on 7.1.2002) whereby Supervisors/Assistant Supervisors were held to be Workmen, passed by the Industrial

Tribunal – III, U.P. Kanpur in Adjudication Case No.11 of 1998 is *set aside* and the writ petition is allowed.

(ii) *WRIT C No.37147 of 1996 (S.D. Gupta vs. Labour Court IV and Others)* – Impugned award dated 26.9.1996 passed by Labour Court IV Kanpur in Industrial Dispute No.146/1991 wherein it has been held that Supervisors/Superintendents are not Wokmen is upheld. Accordingly, this writ petition is *dismissed*.

(iii) *WRIT C No.39403 of 1999 (I.E.L.Supervisors Association vs. State Of U.P And Others)* - This writ petition has been filed with the prayer for publication of award dated 23.4.1999 which was subsequently published on 7.1.2002 and has been challenged in Writ Petition No.12468 of 2002. Therefore, this writ petition is *dismissed* as rendered infructuous.

(iv) *WRIT C No.32788 of 2000 (I.E.L.Supervisor Association vs. State Of U.P. And Others)* – This writ petition has been filed for restraining the State Government from publishing the fresh award dated 16.6.2000. This petition is rendered infructuous as subsequently, award passed earlier was published on 7.1.2002 and has been challenged in Writ Petition No.12468 of 2002. Therefore, this writ petition is *dismissed* as rendered infructuous.

(v) *WRIT C No.44848 of 2000 (Duncans Industries Ltd. vs. State Of U.P.And Others)* – This writ petition has been filed against the order dated 30.9.2000 whereby the State Government has referred the Adjudication No.11 of 1988 again for adjudication. This writ petition is rendered infructuous as award has been passed and published on 7.1.2002 which is under challenge in Writ Petition No.12468 of 2002. Therefore, this writ petition is *dismissed* as rendered infructuous.

(vi) WRIT C No.53016 of 2000 (I.E.L. Supervisors Association and Others vs. Industrial Tribunal And Others) – This writ petition has been filed challenging the reference order dated 30.9.2000. This writ petition is also **dismissed** as infructuous, as subsequently, the award has been passed and published on 7.1.2002 which is under challenge in Writ Petition No.12468 of 2002.

(vii) WRIT C No. - 16447 of 2006 (Duncans Industries Limited vs. State Of U.P. And Others) – This writ petition has been filed challenging the award dated 21.5.2005 whereby Supervisors were held to be Workmen. The award dated 21.5.2005 is hereby **set aside** and the writ petition is **allowed** accordingly.

Order Date :- 16.08.2019

Rishabh

(Saurabh Shyam Shamsbery, J.) (Govind Mathur, C.J.)