



\$~5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 11179/2005**

SUSHIL KUMAR

.....Petitioner

Through: Counsel (Appearance not
given)

versus

TELANGANA STATE HANDLOOM WEAVERS

HOUSING SOCIETY CO-OP. LTDRespondent

Through: Ms. Raavi Birbal, Adv.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

%

08.07.2026

1. By way of the present petition, the petitioner is seeking issuance of a writ of certiorari quashing the award dated 26.03.2004 (hereafter '**impugned award**') passed in I.D. No. 37/1998, whereby the learned Industrial Tribunal held that the petitioner was not entitled to regularization in regular pay scale of Assistant Salesman from the initial date of appointment.

2. Briefly stated, the petitioner joined the respondent establishment as a daily rated/muster roll employee w.e.f. 13.06.1985. On 02.03.1987, the services of the petitioner were terminated, however, the termination order was set aside by the learned Labour Court on 21.10.1995 with directions to reinstate the petitioner with full back wages and continuity of service. The respondent management preferred a writ petition before this Court against the award, which was ultimately withdrawn on 06.08.1996 as the dispute was settled whereby the petitioner was reinstated w.e.f. 28.08.1996



with 50% back wages. Pursuant to the same, the petitioner raised the demand for regularization of his services on the post of Assistant Salesman from initial date of appointment, and the dispute came to be referred for adjudication to the learned Tribunal. The petitioner examined himself while the management produced its Manager–Ravi Awasthi (MW-1).

3. After appreciating the evidence led by the parties as well as the material on record, the Tribunal found that the petitioner was not entitled to any relief. The relevant observations are as under:

*“8. To appreciate the evidence and the pleadings of the parties I have gone through the documents relied upon by the parties. The workman as his own relied upon the award Ex.WW1/3. As per the award dated 21.10.95 the termination of the workman was held to be illegal and he was ordered to be reinstated with continuity of service, it is matter of record that at the time of alleged termination Sushil Kumar was working as daily wages worker and by the virtue of the award he was taken back in the same capacity. **The stand taken by workman that there was a regular vacancy of Asstt. Salesman still lying vacant, has been controverted by the management when MW-1 Ravi Awasthi has categorically stated that there is no regular vacancy of Asstt. Salesman other than the regular Asstt. Salesman working with the management. It is also established by the management on the record that the work of Asstt. Salesman and the workman was altogether different. The regular Asstt. Salesman was responsible about the entire working including the accounts and other matters, whereas the workman happened to be helper and just used to help the Asstt. Salesman. The above mentioned discussion culminates into the inference that neither the workman was looking offer the work of Asstt. Salesman nor there was any permanent vacancy of Asstt. Salesman against which he was working. The workman himself has admitted that he was recruited as daily wages and continued to be same.**”*

(emphasis supplied)

4. It is the case of the petitioner that the learned Trial Court failed to appreciate that the petitioner was not working as a daily wages worker. Much emphasis is also laid on the evidence of the Management Witness. It is contested that the said witness has



admitted that the petitioner's work was of regular nature and the same was similar to the work being performed by the witness himself. It is also stressed that the witness has admitted that there are no sanctioned posts of Assistant Salesmen in other showrooms, but Assistant Salesmen were working there.

5. The learned counsel for the respondent has opposed the present petition and stressed that there is no vacant post of Assistant Salesman. She argued that there is no proof of receipt of salary of wages for 240 days and nothing to show that the petitioner was employed as an Assistant Salesman on regular basis. She further submitted that the nature of work of the petitioner is substantially different from that of an Assistant Salesman.

6. Having heard the counsel and perused the record, this Court is not persuaded by the arguments agitated on behalf of the petitioner.

7. At the outset, it is relevant to note that the jurisdiction to issue a writ of certiorari is limited and the Court is not entitled to act as an Appellate Court. This Court cannot review or reweigh the evidence and jurisdiction to issue a writ of certiorari is essentially a supervisory jurisdiction to ensure that the inferior Tribunals have acted within their jurisdiction. Writ of certiorari will not lie where the decision of the Tribunal is wrong in matter of facts or merits [Ref. ***Central Council for Research in Ayurvedic Sciences v. Bikartan Das*** : (2023) 16 SCC 462].

8. Perusal of the impugned order indicates that the learned Tribunal was rightly weighed to decide against the petitioner on finding that there were no regular vacancies of the post of Assistant Salesmen and since the scope of the petitioner's work was altogether different from that of an Assistant Salesmen.



9. Pertinently, a daily wager can only be absorbed if there is availability of duly sanctioned posts. Reference can also be made to the decision of the Hon'ble Apex Court in the case of ***Vibhuti Shankar Pandey v. The State of Madhya Pradesh & Ors. : 2023 INSC 105***. In that case, a Division Bench of Madhya Pradesh High Court had set aside the benefit of regularization granted to the appellant by the Single Judge on finding that the principle of law as expounded in ***Secretary, State of Karnataka v. Umadevi : (2006) 4 SCC 1*** had not been followed as initial appointment must be done by the competent authority and there must be a sanctioned post on which the daily rated employee must be working. On finding that the said conditions were missing in the case of the appellant therein, the Hon'ble Apex Court upheld the decision of the Division Bench.

10. As appreciated by the learned Tribunal, the Management Witness has maintained that there were no available sanctioned posts of Assistant Salesmen other than the regular Assistant Salesmen working with the management. Even otherwise, the petitioner's claim cannot be allowed as the respondent had also been able to establish that the work of an Assistant Salesman which involved responsibility of the entire working including accounts was different from that of the petitioner, who was only a helper. The Management Witness has deposed in his evidence affidavit that a regular Assistant Salesman has stock responsibility with the obligation to maintain regular account and the petitioner was only a helper. Though the said witness deposed in his cross-examination that the petitioner used to attend to customers and handle cash in his absence, he has also stated that the routine work of the petitioner involved *safai*, cleaning counter and running errands



to bank and post office. Although there is admittedly some inconsistency in the deposition of the management witness as he had stated at one instance that the nature of his job and that of the petitioner is similar, while iterating that their nature of duties is different at another instance, the view taken by the learned Tribunal is a plausible one, which does not warrant interference. Even the petitioner in his deposition has maintained that he used to attend to customers and keep saree in counters, with no mention of any accounting responsibilities.

11. Furthermore, in the present case, as rightly pointed out by the respondent, the petitioner has been unable to show that he was appointed against a vacant post of Assistant Salesman.

12. Though the petitioner had named certain juniors in his written submissions, who had already been regularized in service, pertinently, no such ground was raised before the learned Tribunal and the respondent has contested the said assertion. Furthermore, the petitioner has already withdrawn his application by way of which he was seeking to bring additional documents in this regard on record, whereby this Court does not consider it apposite to examine the said aspect.

13. Reliance is also placed on the judgment in the case of ***Shripal & Anr. v. Nagar Nigam, Ghaziabad : 2025 INSC 144***. Pertinently, in that case, the Hon'ble Apex Court was inclined to grant relief as it was of the opinion that the appellant workmen were performing the same tasks as regular Gardeners and there was a consistent need for permanent staff. As held by the learned Tribunal, the petitioner's scope of work was different from that of an Assistant Salesman. Thus, the said judgment does not further the case of the petitioner.



14. In view of the aforesaid discussion, this Court finds no reason to interfere with the impugned award.

15. The present petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

JULY 8, 2026/ 'KDK'