
(1994) 08 BOM CK 0095

In the Bombay High Court

Case No : Writ Petition No. 3654 of 1985

Apparao Basavannappa Manore

APPELLANT

Vs

Wandleside National Conductors Ltd. and Others

RESPONDENT

Date of Decision : 05-08-1994

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1995) 1 LLJ 243

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Judgement

B.N. Srikrishna, J.—This writ petition under Article 227 of the Constitution of India impugns an Award dated 27th May, 1985 made by the Second Labour Court, Pune in Reference (DA) No. 151 of 1983 under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), holding that the petitioner was not a workman within the meaning of section 2(s) of the said Act and refusing relief to him.

2. The salient facts are : The Petitioner joined the services of the First Respondent on 26th December, 1963, as a Trade apprentice. He was, thereafter promoted as a Machine Operator and later promoted as a Charge Hand in the Junior Supervisory Staff Grade on 1st April, 1970. By virtue of reclassification made in June 1974, the Petitioner was reclassified as a Production Supervisor and fitted in the appropriate grade applicable to such Supervisors, with effect from 1-1-1974. On 17th July, 1975, the Petitioner was promoted as Senior Supervisor in the Senior Supervisory Management Staff Cadre with effect from 1-4-1975. By this letter the Petitioner was specifically informed that, in view of the nature of petitioner's duties, he would not be regarded as a "workman" under the Industrial Disputes Act. This letter was accepted by the petitioner who continued to work as Production Supervisor till 31st December, 1981. From 1-1-1982 the Petitioner was transferred to the Production Service Department. While working in the Production Service Department, the Petitioner was

instrumental in organising "W. N. C. Senior Staff Association" for ventilating the grievances of Senior Staff. An intimation about the said fact was given to the first respondent by a letter dated 10th February, 1982. In fact, the petitioner was President of the said Association. The Petitioner alleges that, on 23rd August, 1982, the works Manager of the First Respondent had called upon him to tender resignation, but that he declined to do so. On 23rd August, 1982, the Works Manager served the Petitioner with a letter informing him that his services were terminated on the ground that the Management has lost confidence in him. He was paid one month's salary in lieu of the notice period. The Petitioner raised an industrial dispute demanding reinstatement with continuity of service and back wages. The industrial dispute came to be referred by the appropriate Government to the Labour Court, Pune, vide Reference (IDA) No. 151 of 1983.

3. Before the Labour Court, the parties filed their respective pleading and led evidence. After appreciating the evidence on record, the Labour Court by the impugned Award raised the following issues and answered them :

ISSUES FINDINGS 1. Is the second party workmen? No. 2. Is he entitled to reinstatement? No. 3. Is he entitled to back wages? No.

Although, the Labour Court answered the first issue against the Petitioner, the Labour Court has recorded a finding with regard to Issues 2 and 3 by taking the view that if he was a workman, the Petitioner was entitled to reinstatement with back wages. However, having held that the Petitioner was not a workman, the Labour Court held that the reference was not tenable and rejected the reference. It is this Award which is impugned in the present writ petition.

4. I have scanned the impugned Award with the assistance of the learned counsel and it would appear that the findings of the learned Labour Judge are based both on the documentary and oral evidence led before him. The evidence consisted, inter alia, of the letter of promotion given to the Petitioner on 1-4-1970 by which he was promoted from Charge-Head to Junior Supervisor, the letter by which he was reclassified as Production Supervisor and the letter of promotion dated 17th July, 1975, promoting the Petitioner to Production Supervisor in the Senior Supervisor Staff cadre with the direction that in view of the nature of duties, the petitioner would be ceased to be regarded as a workman under the Industrial Disputes Act. Apart from these documents, there are other documents which are of clinching nature. On 12th December, 1978, there was a self-assessment report made by the Petitioner to the Works Manager in which he has emphasised the fact that he was carrying on duties of overall control over several sections and had achieved expertise in problem solving and said,

"During present General Shifts, I am looking after material procurement, man power planning, and labour problems, scrap control,.....

I am also looking after the coordination between electrical/Mechanical/Maintenance Dept. and Production Department, to minimise the idle hours of the

machines, due to maintenance work."

He concluded the self-assessment report by saying,

"I have been serving this company for last 14 years. During that period I have never allowed any labour problem to grip (sil) up during my shifts which I wish to bring to your notice, besides, I have extended all my cooperation in solving major labour problems such as Tool down strikes and lock out."

There is also on record the confidential personal assessment report of the Petitioner by the Works Manager made during the year 1979. A reasonable reading of this report would leave one in no doubt that the substantive capacity in which the Petitioner was working was Supervisory capacity. It is of interest to note that he has been assessed regarding his Supervisory ability to get things done and the Assessing Officer says, "most satisfactory in organizing and planning work; an able leader". Finally, the Assessing Officer remarked that the Petitioner was a good leader who could get the work done from all sorts of workers. Despite these documents on record, Mr. Dharap, learned counsel for the Petitioner, contended with some persistence, that from the word go, the Petitioner had been appointed as a "workman" and was doing technical and/or clerical duties. It is difficult to accept this contention which flies in the face of the evidence on record. The learned Judge has rightly found, and I find no reason to differ from him, that the Petitioner, at any rate from 1st April, 1970, was carrying on Supervisory duties.

5. Mr. Dharap, then contended that, even assuming the Petitioner was carrying on Supervisory duties till 31st December, 1981, the evidence on record shows that on 1-1-1982, when he was transferred to the Production Department, he ceased to be a workman. He particularly invited my attention to the evidence of Vithwanath Vithal Godbole, Manager Engineering, and the Petitioner's own oral evidence before the Court. Here again, it is difficult to accept the contention of Mr. Dharap that the evidence on record suggests that from 1-1-1982 to the date of termination of service, the Petitioner was employed in a capacity other than that of a Supervisor. Doubtless, Godbole has admitted that from January 1982 the Petitioner was transferred to his Department from Production Department. He was entrusted the work of collecting certain data along with his maintenance activities and he was also looking after the work of maintenance personally in the absence of charge Hand. Godbole says that the plant and machinery had become old resulting in frequent break-downs on account of wear and tear and that the Management was studying the causes of break-downs. Beyond his own work, the Petitioner had been entrusted the work of examining the past records of performance of different machines installed in the plant. This work was time consuming and had not been carried out since 1972 till 1982. Before 1972, Manager Shirke was doing this work. Johrapurkar was not doing this work as he was clerk-cum-typist. In fact, Godbole says that even in the year 1982 he was personally filling up some forms particularly of electronic machines and the rest of the work was entrusted to the Petitioner. It is needless to say that this

technical data was required to be collated and assessee for suitable steps to be taken to prevent frequent break-downs of the machines. Merely because the Petitioner was entrusted with the work of collating and assessing data with regard to the machines in the various Department, it would not be possible to say that he was working as a clerk of a workman even during the said period. Mr. Dharap contended that the designation of the Petitioner was deceptive and that the actual work done by the Petitioner was that of a workman. There is no doubt about this proposition of law as such. However, it cannot be gainsaid that what needs to be examined is the predominant capacity or nature of employment. The fact that for a few days, here or there, there is difference in the work done by the Petitioner does not militate against the basic capacity or character of his employment. In the case of the Petitioner, the evidence on record suggests that for an unbroken period of about 12 years, he was working in a supervisory capacity. The work that was entrusted to him for about 8 months from January to August 1982 also cannot be characterised as purely clerical work. It required inputs from the experience he gained in the Supervisory capacity to analyse the data, identify material defects in the machines and suggests remedial stamps. This was not merely clerical work. May be, that during the period of January to August 1982, the Petitioner was not called upon to exercise his supervisory faculties as much as his basic technical faculties. That does not detract from the fact that the character of his employment was essentially supervisory.

6. Mr. Rele, learned counsel for the First Respondent, has rightly relied on the judgment of the Supreme Court in *The State Bank of Bikaner and Jaipur Vs. Shri Hari Har Nath Bhargava*, and the judgment of the Delhi High Court in *Piara Lal Anand, A.P. Rishi, M.L. Arora and Guranditta Mal Kapoor Vs. The State Bank of India (National Bank of Lahore and Others)*, , which support the proposition that marginal variations in nature of duties of a person do not detract from the essential capacity in which he has been employed.

7. In my view, the Labour Court correctly appreciated the evidence on record and came to the right conclusion that the petitioner had never worked as a workman right from the beginning, as he was discharging duties of a Supervisor and, therefore, the Petitioner did not fall in the cadre of "workman" as defined u/s 2(s) of the Act. The Labour Court was, therefore, right in rejecting the reference. Apart from the fact that in writ jurisdiction it is not permissible for this Court to interfere with the findings of fact. I agree with the reasoning of the Labour Court and its conclusions arrived at on the basis of the evidence on record. The petition is without substance and, therefore, deserves to be dismissed.

8. Petition dismissed. Rule discharged with no order as to costs.

9. Certified copy expedited.