
(1997) 04 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 15102 of 1994

Atam Parkash and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 02-04-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1997) 2 LLJ 959 : (1997) 116 PLR 640

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : Hemant Kumar, for the Appellant; S.S. Khetarpal and 2 and K.K. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

T.H.B. Chalapathi, J.—This writ petition is filed to quash the order of retrenchment of the petitioners dated September 30, 1994.

2. The petitioners were working as Weavers and Wrappers at Bhiwani and Panipat with Haryana State Handloom and Handicrafts Corporation namely the 3rd respondent, which is a production company. The 3rd respondent set up production units by installing handlooms at Panipat and Bhiwani and the petitioners were recruited as weavers, wrappers and winders. The respondent Corporation suffered losses and decided to wind up the production activities in its looms at Panipat and Bhiwani. Accordingly, the Board of Directors of the 3rd respondent-Corporation took a decision in its meeting held on September 30, 1994 to close the units at Bhiwani and Panipat and terminate the contract with weavers engaged on piece rate wage at Panipet and Bhiwani as there was no work with the Corporation to offer them. The petitioners filed this writ petition challenging the said resolution of the Board of Directors to terminate their services. According to the petitioners, though their services were on contractual basis on piece -rate wages, their services cannot be dispensed with without following the procedure under the Industrial Disputes Act (hereinafter referred to

as the Act). The petitioners also contended that they have a right to be adjusted in other Organisations of the State Government.

3. The 3rd respondent-Corporation filed a written statement stating that the petitioners were engaged on piece rate wages from time to time and their nature of work was purely contractual and they have been paid on the basis of the pieces prepared by them at the rate mutually agreed and when the units at Panipat and Bhiwani were running into losses, the Corporation decided to close the said units in the meeting of the Board of Directors held on September 30, 1994 and accordingly in pursuance of the resolution passed by the Board of Directors, the contract of service with the petitioners was accordingly terminated. It is also averred that the reason for stoppage of production activities of the Corporation at these two places is also attributed to the utter inefficiency of the petitioners in meeting with the targets fixed by the Corporation which resulted in huge losses. As the petitioners were engaged only on contractual basis, they are not entitled to any retrenchment compensation u/s 25-F of the Act. It is also contended that the petitioners have an alternative remedy which they have not availed. Therefore, the writ petition is liable to be dismissed.

4. Replication was also filed by the petitioners to the written statement filed by the 3rd respondent in which they have reiterated their contentions in the writ petition. They have also stated that the losses suffered by the Corporation cannot be attributed to them, but the Corporation suffered losses due to its own policies and priorities for the convenience of the higher officers.

5. There is no dispute that the petitioners were engaged by the Corporation as weavers, wrappers and winders on piece rate contract work. It is to be seen whether the petitioners are workmen within the definition of Industrial Disputes Act.

6. Section 2(s) of the Industrial Disputes Act defines "workman" as a person employed in an industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward whether the terms of employment are express or implied and for the purpose of any proceeding under the 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. This Section came to be considered by the Supreme Court in Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, wherein it is observed as follows at p 480:

"The essential condition of a person being a workman within the terms of the definition in Section 2(s) is that he should be employed to do the work in the industry, that there should be, in other words, an employment of his by the employer that there should be the relationship between the employer and him as between employer and employee or master and servant. Unless a person is thus employed, there can be no question of his being a workman within the definition

of the term as contained in the Act."

It is further held that the correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer.

7. In *Chintaman Rao and Another Vs. The State of Madhya Pradesh*, it has been held as follows:- (at p. 256)

"A Contractor is a person who, in the pursuit of an independent business, undertakes to do specific jobs or work for other persons, without submitting himself to their control in respect to the details of the work. This Court in *Dharangadhra Chemical Works Ltd. v. State of Saurashtra* (supra) in the context of the definition of "workman" under the Industrial Disputes Act made the following observations at p480:

"The essential condition of a person being a workman within the terms of this definition is that he should be employed to do the work in the industry, that there should be, in other words, an employment of his by the employer and that there should be the relationship between the employer and him as between employer and employee or master and servant. Unless a person is thus employed, there can be no question of his being a workman within the definition of the term as contained in the Act."

8. In *P.M. Patel and Sons and Others Vs. Union of India (UOI) and Others*, , the Supreme Court held that to be an employee it is necessary that the relationship of master and servant should exist with the employer. The principal question is whether such a relationship exists between the manufacturer and home worker. Their Lordships referred to earlier decision of the Apex Court in *Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another*, with approval as to the criteria which determined the relationship of master and servant, wherein it was observed as follows at p. 502:

"It is exceedingly doubtful today whether the search for a formula in the nature of a single test to tell a contract of service from a contract for service will serve any useful purpose. The most that profitably can be done is to examine all the factors that have-been referred to in the cases on the topic. Clearly not all of these factors would be relevant in all these cases or have the same weight in all cases. It is equally clear that no magic formula can be propounded which factors should be in any case be treated as determining ones. The plain fact is that in a large number of cases, the Court can only perform a balancing operation weighing up the factors which point in one direction and balancing them against those pointing in the opposite direction."

9. Keeping in mind the above tests, it has to be seen whether the petitioners in the present case will come within the definition of "workman" as contained in Section 2(s) of the Industrial Disputes Act.

10. The following facts which emerge from the averments in the writ petition are:

"(i) The Haryana State Handloom and Handicrafts Corporation was established to set up factories, training centres, research institute, quality marking centres, and cooperatives for small, large, medium and cottage industries particularly handicrafts, handlooms, ginning, combing, spinning, dyeing, processing, weaving, shoe making, toy-making, pottery, crockery etc., for the benefit of artisans, weavers, backward classes and Ors. in the State of Haryana.

(ii) to promote, establish, run, aid, assist, finance industrial undertakings of small, medium, large scale within the State of Haryana whether run by Government or any other statutory authority, company, firm, or individuals or co-operatives for ginning, combing, spinning cotton, silk, wool or any other synthetic material for manufacturing and weaving yarn and its processing, dyeing and weaving, tanning, shoe-making, toy-making etc. and any other cottage industry."

11. In furtherance of its objects and in order to encourage the handloom industry and handicrafts, the 3rd Respondent-Corporation was supplying material to weavers for making carpets and providing market facilities and with the material supplied by the 3rd Respondent-Corporation the petitioners weave the carpets and supply the same to the Corporation on "piece rate basis." There is no question of rejecting the carpets woven by the petitioner- weavers. There is no control or supervision over the work of the weavers. The weavers do their work according to their own convenience and supply the carpets woven by them to the 3rd Respondent-Corporation and weavers are paid on "piece rate basis". Therefore, there is no control, whatsoever, over the work of the weavers. Thus, it cannot be said that there exists any master and servant relationship between the Corporation and the weavers. When the Corporation is incurring losses, it wanted to close down certain units and, therefore, unable to provide the material to the weavers. It cannot, therefore, be said that there is any retrenchment of weavers by the Corporation as they do not come within the definition of "workmen" under the Industrial Disputes Act.

12. On a careful consideration of the facts and circumstances of this case, I am of the opinion that the tests laid down by the Apex Court in its various decisions as referred to above, are not satisfied to bring the petitioners within the ambit of Industrial Disputes Act since they do not fall within the definition of "Workmen". I am, therefore, of the opinion that the writ petition is liable to be dismissed.

13. In result, the writ petition fails and is, accordingly, dismissed. However, there will be no order as to costs.