
(1989) 08 MP CK 0069
In the Madhya Pradesh High Court
Case No : M.P. No. 251 of 1987

Babulal Dhanotlya

APPELLANT

Vs

M.P. Electricity Board and Others

RESPONDENT

Date of Decision : 31-08-1989

Acts Referred:

Madhya Pradesh Industrial Relations Act, 1960 — Section 2(13)

Citation : (1989) 59 FLR 767 : (1994) 3 LLJ 330

Hon'ble Judges : V.D. Gyani, J;S.D. Jha, J

Bench : Division Bench

Advocate : V.S. Kokje, for the Appellant; G.M. Chaphekar, for the Respondent

Final Decision : Allowed

Judgement

V.D. Gyani, J.—By this petition under Article 226/227 of the Constitution of India, the petitioner challenges the order dated January 13, 1987, passed by the Industrial Court, filed as Annexure-E to the petition.

2. It is not in dispute that the petitioner was working as Supervisor at O & M Division of the M.P. Electricity Board (for short, "the Board") at Dhamnod, when his services were terminated by the respondents, vide order dated April 4, 1981 (Annexure - A), which was received by the petitioner on June 20, 1981. The petitioner challenged this order u/s 31(3) of the M.P. Industrial Relations Act, 1961 (for short, "the Act") before the Labour Court, Indore. The Labour Court by its order dated June 1, 1985 (Annexure - D), allowed his application and ordered petitioner's reinstatement with full back wages.

3. The respondents preferred an appeal before the Industrial Court. Allowing the appeal, the Industrial Court by its order dated January 13, 1987 (Annexure-E) holding that the petitioner was not an "employee" within the meaning of Sub-section (13) of Section 2 of the Act reversed the Labour Court's order, which is the subject-matter of challenge in this petition.

4. The short question that arises for consideration is whether the petitioner is an

"employee" within the meaning of Sub-section (13) of Section 2 of the Act. The Labour Court has held so, but the Appellate Court does not agree. It is strictly to this respect of the matter that the arguments were confined.

5. The term "employee" has been defined under Sub-section (13) of Section 2 of the Act. In order that the petitioner ceases to be an "employee", the contention advanced by the respondents is that he does not answer the description of an "employee" as given in Section 2(13) of the Act. It has been contended by Shri Chaphekar, learned counsel for the respondents that being in the supervisory capacity, the petitioner goes out of the category of an "employee" as defined under Sub-section (13) of Section 2 of the Act. In this connection he has placed reliance on a decision of the Supreme Court in *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others*, .

6. In deciding the status of an employee, the designation of the employee is not decisive. What determines the status is the consideration of nature of duties and the function assigned to the employee concerned. The essence of the matter lies in determining what the primary duty of the employees is, if it is clerical or manual work, he falls within the purview of the definition and on the other hand, if his duties are mainly of supervisory nature, he goes out of the definition. In deciding this aspect of the matter it should be seen as pointed out by the Supreme Court in *Llyods Bank Ltd. v. Pannalal Gupta*, 1961-I Lab LJ I 8 whether the supervisor or officer 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 the Manager or other supervisors. It is ultimately a question of fact and will really depend on the nature of the industry and type of work in which he is engaged, the organisational set up of the particular unit of Industry and like factors.

7. Shri Kokje, learned counsel referred to paragraph 5 of the impugned order, Annexure-E and submitted that the finding recorded by the Industrial Court that the petitioner's employment was "mainly and materially in technical and supervisory capacity", is wholly without any basis. In this connection the Industrial Court referring to the contract of employment observed that there was no dispute about this point that both the parties intended that the employment should be in supervisory capacity. A copy of the appointment order dated June 6, 1977 has been tiled by the respondents as Annexure-R/2. It reads as follows:

"Shri B.L. Dhanotia is offered fresh appointment as Supervisor W/C establishment on initial pay of Rs. 250 (Rs. Two Hundred Fifty Only) plus usual allowances sanctioned by the Board from time to time. He is posted to Sagar Division of the M.P. Electricity Board and directed to report to the Divisional Engineer, O & M. Division, M.P.E.B. Sagar within 75 days from the date of receipt of this order. His continuance in employment under this order shall be subject to satisfactory performance".

As has been noted above, for determining the status of an employee, the designation of the employee is not decisive. Going through the petitioner's application u/s 31(3) of the Act, it is abundantly clear that he did not claim any supervisory duties being assigned to him. On the other hand the case as pleaded by him in his application, Annexure-B, was that of doing electrical works, like maintenance of accounts, actual field survey, material transport and has further averred that no employee was working under him. Therefore, he had not to supervise the work of any one. In face of these pleadings, the Industrial Court was palpably wrong to observe -- "There is no dispute about this point that both parties intended that the employment should be in supervisory capacity". In such circumstances and in face of such admitted facts, it will not be proper to hold that really the respondent was doing the clerical work and as such he may be reinstated as a clerk.

8. Shri Kokje, strenuously urged that the Court below was basically wrong in its approach that actual work and its nature was of no importance when there was no dispute between the parties about the nature of employment. Firstly, on the pleaded case of the petitioner, it cannot be said that there was no dispute about the nature of employment, and secondly, it is contrary to the settled principles as laid down by the Supreme Court in series of decisions that it is actual work which is of no importance. Shri Chaphekar, learned counsel for respondents pointed out from paragraph 6 of the impugned order, Annexure-E, that the petitioner in his cross-examination had admitted that he supervised the work of other Linemen. Assistant Linemen and Assistant Inspectors and Clerks.

9. The Labour Court in its order, dated June 1, 1985, Annexure-D, has found with reference to respondents evidence that there was no clerk working under the petitioner. Laxminarayan, who was examined as a witness on behalf of the respondents, in his evidence has admitted that the petitioner had no right to sanction leave of the muster-roll employee, nor could he take any action against them and no duty chart was issued to him. The finding recorded by the Labour Court has been reversed by the Appellate Court mainly for the reason that the petitioner admitted that "he was getting wages and benefits as a Supervisory gets". The Appellate Court at the end of paragraph 6 concludes as follows:

"Thus it becomes clear that the respondent was employed in supervisory capacity and was also doing the work of supervisor".

Now, this question is based on an admission, as noted by the Appellate Court that - "he also admitted that he was getting wages and benefits as a Supervisor gets". An admission should not be viewed and appreciated out of context. The Labour Court has found that the petitioner was doing clerical work. The Appellate Court on a mathematical calculation of time consumed in writing certain Registers, has reversed the trial Court's finding that the nature of work assigned to the petitioner was essentially clerical.

10. It is evident from paragraph 7 of the Appellate Court order that while

considering the question of maintenance of a number of Registers by the petitioner has essentially confined it to the date of issuance of the termination order, Annexure-A. We cannot appreciate this approach on the part of the Appellate Court while determining the nature of the duties. The Appellate Court has completely overlooked the evidence of the other side. In the circumstances, the finding arrived at by the Appellate Court on reversal of the Labour Court's finding, cannot be maintained. It is liable to be set aside and is accordingly set aside. The petitioner is held to be an "employee" within the meaning of Sub-section (13) of Section 2 of the Act.

11. In the result, the matter is remanded back to the Industrial Court for deciding the appeal in accordance with law.