
(1971) 09 CAL CK 0003

In the Calcutta High Court

Case No : Appeal from Original Order No. 79 of 1971

Baldev Singh

APPELLANT

Vs

Indian Explosives Ltd.

RESPONDENT

Date of Decision : 16-09-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 10(1), 2, 25FF, 33A

Citation : (1972) 2 ILR (Cal) 296

Hon'ble Judges : P.B. Mukharji, C.J;B.C. Mitra, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant;P.P. Ginwalla, M. Mukherjee and Avijit Chowdhury, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Mitra, J.—The Appellant was an employee of a company known as Simon Carves (India) Limited and was engaged as a maintenance engineer for maintaining an aircraft of the employer. In 1962, the first Respondent purchased an aircraft for transport of its officers from one place to another in India. The aircraft of the first Respondent was kept at hangar No. 7 at Dum Dum Airport which was hired by Simon Carves (India) Limited, who entered into an agreement with the first Respondent for maintenance of the latter's aircraft. Titaghur Paper Mills Company Ltd. (hereinafter referred to as Titaghur) also had an aircraft which was kept at hangar No. 10, which was hired by Bird and Company Pvt. Ltd. but was made available to Titaghur for keeping the latter's aircraft there.

2. An agreement was entered into between Titaghur, Simon Carves and the first Respondent to the effect that from June 1, 1962, the first Respondent would undertake the maintenance of its own air-craft as well as the aircraft of Simon Carves and Titaghur, and that from July 1, 1962, the first Respondent and the said two other companies would constitute a Syndicate for that purpose. It was

also agreed that all the three aircrafts would be kept at hangar No. 10 and? that the first Respondent would take over from Simon Carves the services of the Appellant as maintenance engineer as well as the crew of mechanics employed by Simon Carves. It was further agreed that the three members of the Syndicate would share the expenses of maintenance of the aircraft.

3. Under the terms of the agreement the first Respondent became responsible for the maintenance of the aircrafts of all the three members of the Syndicate, and for this purpose the first Respondent employed the Appellant and the maintenance crew of seven persons who were previously the employees of Simon Carves. Later on, Simon Carves ceased to be a member of the Syndicate, and in March 1964 the first Respondent and Titaghur agreed with another company known as Ganges Manufacturing Company Ltd., that this company would become a member of the Syndicate, and that the first Respondent would also maintain its aircraft at hangar No. 10. The first Respondent continued to be in charge of maintenance of the aircraft on behalf of the Syndicate until September 6, 1966, when the management of the Syndicate for maintenance of the aircraft was transferred to Titaghur. According to the first Respondent, since it was no longer carrying on the undertaking of the maintenance of the aircraft, the employment of the Appellant was terminated by a notice dated September 20, 1966, terminating the Appellant's service from May 1, 1967, in terms, of Clause 11 (c) of the contract of employment of the. Appellant! Titaghur offered employment to ten members of the maintenance crew who, however, did not accept the offer of employment made by Titaghur. According to the Appellant again, as it was no longer carrying on its undertaking of maintenance of aircraft, the employment of the ten members of the crew was also terminated by a letter dated October 11, 1966, with one month's pay in lieu of notice and compensation under the Industrial Disputes Act, 1947. An industrial dispute was raised by the union with regard to the termination of the employment of the ten crew members, and the State Government by an order of Reference dated November 18, 1966, referred the dispute for adjudication to the Third Industrial Tribunal. It is to be noticed that a junior engineer named Kulwant Singh was offered alternative employment at the head office of the first Respondent, and this offer was accepted by the said Kulwant Singh. The transfer of Kulwant Singh from hangar No. 10 to the head office of the Respondent was also one of the disputes referred by the State Government to the Tribunal. The issues before the Tribunal were whether the retrenchment of the members of the maintenance crew was justified and whether the transfer of Kulwant Singh from hangar No. 10 to the head office of the Respondent No. 1 was justified. The Tribunal by its award held that since the first Respondent was not looking after the maintenance of the aircraft, no reinstatement could be ordered, but it was held that the first Respondent should pay the said ten crew members compensation equal to the wages they would have drawn from October 11, 1966, to the date of the award. No relief was granted to the said Kulwant Singh. This award was the subject-matter of challenge in a writ petition in Matter No. 368 of 1968 to which I will

refer later.

4. Another industrial dispute was raised with regard to the termination of employment of the Appellant and by an order dated March 30, 1967, the State Government referred this dispute for adjudication to the Third Industrial Tribunal. The issue framed in the order of Reference was:

Is the termination of the service of Shri "Baldev Singh justified ? To what relief, if any, is he entitled ?

5. By an order dated July 8, 1969, the State Government withdrew the Reference from the Third Industrial Tribunal and transferred the same to the Fourth Industrial Tribunal. This transfer order was one of the subject-matters of challenge in the writ petition filed by the first Respondent out of which this appeal arises.

6. The Tribunal made an award which was published in the Calcutta Gazette on March 12, 1970. By this award it was held that the Appellant was a workman within the meaning of the Industrial Disputes Act, 1947. It was also held that there was no transfer of the management of the undertaking of the maintenance of aircraft and there was, no closure of such undertaking of the first Respondent. It was held that the Appellant was entitled to reinstatement with full back wages. Being aggrieved by this award the first Respondent filed a writ petition and obtained a Rule nisi which was made absolute by a judgment and order dated February 5, 1971. This appeal is directed against this order.

7. Before proceeding any further it is to be noted that in the Reference to the Tribunal pursuant to the order of Reference dated November 18, 1966, relating to the termination of employment of the ten crew members of the maintenance staff, the first Respondent moved an application under Article 226 of the Constitution and obtained a Rule nisi (Matter No. 368 of 1968). In this Rule an order was made by K. L. Roy J. on June 3, 1970. By this order the impugned award was set aside, and it was held that the closure of the Syndicate's business of maintenance was genuine and real and no dispute regarding the motive of such closure could be raised before the Tribunal.

8. In the trial Court the counsel appearing for the first Respondent canvassed three points. The first of these three contentions was that the order transferring the case from the Third Industrial Tribunal to the Fourth Industrial Tribunal and the award made by the latter was bad in view of the provisions in Section 33B of the Industrial Disputes Act, 1947. The second point argued on behalf of the first Respondent was that the Appellant was not a workman, as his work was of a supervisory nature, and he could not therefore come within the definition of workman in the Industrial Disputes Act, 1947. The third point urged on behalf of the first Respondent was that there was a closure of the business carried on by the Petitioner, in respect of maintenance of the aircraft, with other members of the Syndicate, and therefore there could be no industrial dispute in respect of which a Reference could be sustained.

9. The first two points mentioned above were rejected by the trial Court and the Appellant's contentions were accepted. It was held, that the order of transfer of the Reference from the Third Industrial Tribunal to the Fourth Industrial Tribunal was valid and lawful. It was also held in favour of the Appellant and against the contentions advanced on behalf of the first Respondent, that the Appellant was a workman within the meaning of the Industrial Disputes Act, 1947. On the third point, namely, the question of closure it was held that there was a closure of the business of aircraft maintenance and, therefore, there could be no industrial dispute which could be referred to a Tribunal for adjudication.

10. I will first turn to the question of closure. On this question the Tribunal (Respondent No. 3) came to the conclusion that the Aircraft Maintenance Syndicate still existed with the same aircraft and the same members who were partners -in the Syndicate. It also held that the transfer of management of the said Syndicate to Titaghur Paper Mills Ltd. was fictitious and mala fide, and the only purpose of the transfer of management of Maintenance Syndicate to Titaghur was to get rid of the Appellant. It was further held that" this purported transfer was nothing but unfair labour practice. Dealing with this question, however, the trial Court came to the conclusion that the Syndicate was a pool arrangement by which a particular type of work was undertaken. Such an arrangement, it was held, need not have a separate identity. It was further held that the agreement to constitute the Syndicate could be terminated by mutual consent and three months" notice for such termination was unnecessary. The conclusion of the trial Court on the question of closure was that there was a closure of the business of aircraft maintenance and, therefore, no industrial dispute could be referred to a Tribunal and no relief could be granted to the Appellant in such dispute.

11. In order to determine this question the first matter to be taken into is, firstly, who was the employer of the Appellant and, secondly, whether by reason of the formation of the Syndicate any change took place in the employment of the Appellant, that is to say, whether previous employer of the Appellant ceased to be the Appellant's employer and the Syndicate became the Appellant's employer at any stage from the formation of the Syndicate until reference of the dispute to the Tribunal for adjudication. It is quite plain to us that at all material times the Appellant was the employee of the first Respondent and was on its pay roll and was also a member of the Provident Fund of I.C.I, and associated companies of whom the Appellant was one. The first letter of appointment dated June 18, 1962, is at p. 64 of the Paper Book. The second appointment followed from an agree merit dated August 17, 1965 (p. 287 of the Paper Book). From both these documents it is clear that the first Respondent was the employer of the Appellant. The material clause in the agreement of August 17, 1965, is Clause 11(c) in which it is provided that the agreement may be terminated at any time by either party giving to the other six months" notice in writing to that effect and such notice need not expire at the end of a calendar month. The employment of the Appellant by the first Respondent continued all through and was not affected

or altered by the formation of the Syndicate or by its dissolution.- This is an admitted position and it is not the first Respondent's case that at any stage the Appellant ceased to be the employee of the first Respondent. In determining the question whether there has been a closure of the business of the employer and whether such a closure disentitles the employee to raise an industrial dispute arising out of the termination of service, one of the important questions is whether the employee ceased to be in the employment of the particular employer. In this case, it is nobody's case that there was a closure with regard to the business or undertaking of the first Respondent who, as I have noticed earlier, was at all material times the employer of the Appellant. The contentions of the counsel for the first Respondent was that the Syndicate ceased to carry on its undertaking of maintenance of aircraft and, because the Appellant was engaged as a maintenance engineer in the maintenance of aircraft of the members of the Syndicate, it should be held that there was a closure of business or undertaking where the Appellant was engaged, and that such closure disentitled the Appellant from raising an industrial dispute arising out of the closure, and further disentitled him to any relief under the Industrial Disputes Act. It seems to me that there is a clear fallacy in this contention. The Appellant was an employee of the first Respondent and was on its pay roll, and even though he was directed to look after and maintain the aircrafts belonging to the members of the Syndicate, he did not cease to be an employee of the first Respondent. The Appellant's employment under the first Respondent was not terminated upon the formation of the Syndicate, nor did the Syndicate at any stage appoint the Appellant to maintain the aircraft belonging to its members. The dissolution of the Syndicate, therefore, has no bearing at all on the question of closure as the Syndicate was at no time the employer of the Appellant. In that view of the matter, questions such as whether the Syndicate was lawfully dissolved, and whether a valid notice of termination of the agreement constituting the Syndicate was given, are altogether immaterial. There is nothing on record to show that the Appellant's service was at any time transferred to the Syndicate. The Appellant continued on the pay roll of the first Respondent as he was before the formation of the Syndicate and the closure of the business or undertaking of the Syndicate, assuming there was a cessation of the activity of the Syndicate connected with maintenance of the aircraft, would have no effect on the Appellant's employment under the Respondent No. 1. This is clearly the position on the question of the Appellant's right to raise an industrial dispute, which right is sought to be barred on the ground of closure. It is to be remembered that it is nobody's case that there has been a closure of the business or undertaking of the Respondent No. 1/

12. The counsel for the Respondents strenuously argued that the Syndicate was an undertaking or, at any rate, the part of the undertaking of the first Respondent. He argued that the first Respondent's aircraft was maintained by the Syndicate, as also the aircrafts of the other members of the Syndicate. The management of the Syndicate, it was further argued, was vested in the first

Respondent. Since the management of the Syndicate passed out of the" hands of the first Respondent, it was next argued, there was a closure of the business or undertaking of the first Respondent relating to aircraft maintenance.

13. The agreement constituting the Syndicate was between three entirely separate units and legal entities, namely, Indian Explosives Ltd., Titaghur Paper Mills Company Ltd. and Ganges Manufacturing Company Ltd. This agreement provided for the repairs and maintenance of aircraft of the parties to the agreement and also of some other parties owning aircraft. The identity of the units in the Syndicate was not merged into one unit, nor did these units agree to treat themselves as part of the undertaking of the first Respondent. The separate and distinct identity of the parties to the agreement had been retained and emphasised by the terms of the agreement. For instance, Clause (3) of the agreement provides that each* party shall insure its aircraft and spares against fire, theft and accident. There is a provision for contribution by the parties to the agreement for the purpose of maintenance of the aircraft by the Syndicate. Clause (2) of the recitals states that the first Respondent had a fully qualified personnel under the control of a maintenance engineer who has been maintaining aircraft of Titaghur Paper Mills Company Ltd. Clause (5) provides for contribution of Rs. 2,500 per month by Ganges Manufacturing Company Ltd. to the first Respondent. Clause (7) provides for repairs of the aircraft, of the parties strictly according to priority. Clause (9) provides that all spares owned by the parties, with the exception of complete engine, shall be available to the other parties, either on the basis of sale or loan, the basis to be decided by the maintenance engineer. There is also a provision that any party may use spares upto the value of Rs. 3,000 belonging to another party without the permission of the owner of such spares. It is further provided, in case of any spares belonging to any party being sold to another party on an outright sale basis, the bill for the same shall be sent to the purchaser with the monthly bill of charges and credited to the seller at the end of the next month. Clause (12) provides that the maintenance engineer and the staff under him will be responsible to and under the control of the first Respondent. These clauses in the agreement clearly emphasize the distinct and, separate entity of the units constituting the Syndicate. The import of these clauses wholly militates against the contention of the counsel for the Respondents that the Syndicate was an undertaking of the first Respondent. If the Syndicate, as such, was part of the undertaking and business of the first Respondent, there could be no question of payment by the members of the Syndicate to the first Respondent for the maintenance and repairs of the aircraft every month. There could again be no question of sale of spares by one party to the agreement to the other, on payment of price thereof, and similarly there could be no question of priority in the repairs to the aircraft belonging to the members of the Syndicate. The terms of the agreement, such as they are, clearly show that the Syndicate was constituted as a separate unit for the maintenance of aircraft belonging to the members thereof and that the maintenance engineer and the staff under him would be responsible to the first

Respondent. If anything, the agreement clearly shows that the Syndicate was no part of the undertaking of the first Respondent and was constituted for the specific purpose of maintenance of the aircraft belonging to the members thereof strictly on the basis of payment for services and spare parts.

14. At a meeting of the Syndicate held on February 8, 1962, various questions were discussed and decided. The minutes of this meeting are to be found at p. 108 of the Paper Book. Clause (9) of the minutes provides that the Appellant and the staff should understand that they form one pool for all the planes and the staff should not identify themselves as being Bird's employees or I.E.L.'s employees. In Clause (13), it is stated that although the Appellant would be on I.E.L.'s pay roll he will also be responsible to Bird, who will give him direct instructions regarding their plane. It is difficult to imagine why an employee of an undertaking belonging to the first Respondent should be directed firstly not to identify himself as the employee of the first Respondent and should be responsible to a third party for maintenance of aircraft and would receive instructions from such party regarding its plane.

15. In support of his contention Mr. Ginwalla relied on the decision of the Supreme Court in *Hariprasad Shibshankar Shukla v. A.D. Divalkar and Ors.* AIR 1957 S.C. 121. In that, case it is held that retrenchment, as defined in the Act, has no wider meaning than the ordinary connotation of the word, and that it means the discharge of surplus labour or staff by the employer for any reason other than punishment as a disciplinary action, and such retrenchment has no application where the services of workmen were terminated on a real and bona fide closure of business or where the services of workmen had been terminated on the business or undertaking being taken over by another employer. This decision, to our mind, is of no assistance to the first Respondent, because, in our view, the business of the Syndicate was not part of the undertaking of the first Respondent, nor was there any transfer, of the undertaking by the first Respondent to another party. Reliance was next placed on another decision of the Supreme Court in *Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club*, . Reliance was placed on the observations that industrial dispute occurred when the operation of an undertaking rested upon the co-operation between employers and employees with a view to production and distribution of goods and services. We do not see how this case is of any assistance to the Appellant.

16. Mr. Ginwalla next relied on a Bench decision of the Bombay High Court in *Tulsidas Khimji Vs. F. Jeejeebhoy of Bombay and Others*, for the proposition that an industrial undertaking might have several different industrial establishments and a single such establishment might have different departments. This decision was relied upon in support of the contention that the Syndicate was a part of the undertaking of the first Respondent. On the facts in this case, the Syndicate cannot be held to be a part of the undertaking of the first Respondent! On the same question, reliance was placed on another decision of the Supreme Court,

Management of R.S. Madharam and Sons Agencies (P) Ltd. Vs. Its Workmen, . In that case it was held that a business conducted by an undertaking would ordinarily be an integrated business, and though it might consist of different branches, they would be inter-related with each other so as to constitute one whole business, and that in Such a case Section 25FF would not apply if. a transfer was made in regard to a department o? the business and such a partial transfer would be outside the scope of Section 25FF of the Act. In this appeal we are i not concerned with the question of a transfer of an undertaking from one employer to a new employer. We are concerned in this appeal with the question of closure of an undertaking. The decision mentioned above is, therefore, of no assistance to the Appellant. Reliance was next placed by Mr. Ginwalla on another decision of the Supreme Court in Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate, . This case was relied on in support of the proposition that the union had no community of interest to raise the industrial dispute with regard to the termination of service of the Appellant. In our view, this decision is of no assistance to the Appellant in this case because there arc no materials on record to hold that there was no such community of interest.

17. All in all, we have no doubt that the materials on record are altogether incompatible and inconsistent with the contention of the counsel for the first Respondent, namely, that the Syndicate was an undertaking or business of the first Respondent. The first Respondent was for some time a member of the Syndicate along with two other companies, and during this period it was responsible for the management of the affairs of the Syndicate. But, because the management of the affairs of the Syndicate was vested in the first Respondent, that did not make the Syndicate a part of the undertaking or business of the first Respondent. If that was so, there could not have been a provision for dissolution of the Syndicate by agreement between the parties. A third party, having nothing to do with the first Respondent, could not be invested with the right to decide on the dissolution of an undertaking or business of the first Respondent. On these materials, we do not think that the closure of the business of the Syndicate, assuming there-was a genuine and bona fide closure, disentitles the Appellant from raising an industrial dispute. The trial Court, in our view, was in error in holding that the Appellant could not raise an industrial dispute on the ground of closure of the business or undertaking of the Syndicate. The Appellant, who argued the case himself and argued it very ably, rightly contended that there was no such closure of the business or undertaking in which he was employed so as 10 disentitle him to raise an industrial dispute.

18. The next question to be considered is whether the Appellant was a workman within the definition of Section 2(s) of the Industrial Disputes Act, 1947. On this question the trial Court came to a conclusion that the Appellant was a "workman within the meaning of that section. Against this finding the first Respondent has filed cross-objections.

19. Mr. Ginwalla contended that the Appellant was not a workman within the

meaning of that term u/s 2(s) of the Act. He argued that the Appellant was mainly doing supervisory or managerial work and, as he was drawing more than Rs. 500 per month, he was covered by Clause (iii) and (iv) of Section 2(s) of the Act. He placed before us the various documents which, according to him, showed that the Appellant was employed mainly in a managerial or administrative capacity and further that his duties essentially were of a supervisory nature. The Appellant, on the other hand, contended that he had no managerial or supervisory duties and that his main duty was of a technical nature though incidentally he had some ancillary managerial and supervisory duties. He emphasised that he, along with the crew of mechanics, was doing manual work, the work being the maintenance and repairs of aircraft belonging to the members of the Syndicate. He submitted that in all matters of employment, disciplinary action and other administrative matters, he was acting under the orders of the head office. On this point the question arises whether the writ Court has jurisdiction to, appraise of the evidence tendered before the Tribunal, come to its own conclusion, and then substitute the same for the conclusion of the Tribunal. I shall deal with this question later in "this judgment.

20. In order of appreciate the rival contentions of the parties it is necessary to refer to the appointment of the Appellant and the terms of such appointment. Originally, the Appellant was employed in a company known as Simon. Carves (India) Ltd. who owned an aircraft. By an agreement between Simon Carves (India) Ltd. and the first Respondent the former undertook the maintenance of the latter's aircraft. Sometime in June 1962, it was agreed between Simon Carves (India) Ltd., the first Respondent, and another company known as Bird & Company Ltd., who also owned an aircraft, that the three aircrafts of the companies would be maintained by the first Respondent and these three companies would form a Syndicate. At a meeting of the said three companies held sometime in June 1962, it was agreed that the first Respondent would take over from Simon Carves (India) Ltd. the duties and responsibilities connected with the maintenance of their planes. It was also agreed that the first Respondent would take over the Appellant and a crew of mechanics on its pay roll. It was pursuant to this agreement that the first Respondent appointed the Appellant as an aircraft maintenance engineer. The offer of appointment was made by a letter dated June 18, 1962 (p. 64 of the Paper Book). The first sentence of this letter is: "we have pleasure in offering you an appointment as an Aircraft Maintenance Engineer with India Explosives Ltd." The substance of this offer is that the consolidated salary was Rs. 2,275, the engagement was subject to termination at any time by three months' notice by either, side, 1 and the Appellant was required to join I.C.I, and Associated Companies Provident Fund as from the date of joining the company's service. By another agreement dated August 17, 1965, (p. 287 of the Paper Book) it was provided that the engagement might be terminated at any time, by either party, giving to the other six months' notice in writing. The notice terminating the Appellant's service is to be found at p. 66 of the Paper Book and appears to have been given in exercise

of the powers under the agreement mentioned above.

21. In support of the contention that the Appellant was doing mainly managerial or supervisory work, Mr. Ginwalla invited our attention to several letters to which I will now refer. - In the letter dated July 18, 1962, (p. 213 of the Paper Book) the Appellant was complaining against the conduct of one Capt. Ferrier of Titaghur Paper Mills, who insisted that a cleaner should be spared for certain purposes. In that letter the Appellant stated that all the engineering staff was in his charge, and he could not allow anybody to do something of which he was not aware. The comment of the counsel for the first Respondent on this letter was that the Appellant was in charge of the engineering staff and claimed and exercised supervisory powers on all the members of the staff. The next letter is a letter dated August 9, 1962 (p. 215 of the Paper Book). That is a letter from the administrative service manager of the first Respondent to the Appellant. This letter dealt with the question of food and tea allowances to the staff at Dum Dum. It is stated in this letter that discussion took place between the Appellant and the writer of the letter and it was agreed that when a member of the staff worked more than eight hours, but less than twelve hours, the Appellant would pay him food/tea allowance upto a maximum of Rs. 3 for a mechanic and Rs. 2 for a cleaner. If he worked more than twelve hours the Appellant was to pay such allowance upto a maximum of Rs. 5 for a mechanic and Rs. 3 for a cleaner. Mr. Ginwalla submitted that this, by no means, was work of a technical nature but exclusively referred to the managerial duties discharged by the Appellant. The next letter relied on is one dated December 12, 1962, (p-216 of the Paper Book) from Kulwant Singh to the Appellant in which the former stated that his designation as aircraft, mechanic, instead of junior engineer, was an oversight and that the Appellant should request the departmental head to amend the designation. Mr. Ginwalla commented that if the Appellant was exercising purely technical duties and was not performing managerial and supervisory duties, such a letter could not be addressed to the Appellant by one of his staff. In the letter dated December 13, 1962, (p. 217 of the Paper Book) the Appellant requested that Kulwant Singh's designation should be changed to junior engineer instead of aircraft mechanic. This letter again, it was argued, showed that the Appellant was doing managerial and supervisory work.. The letter dated December 29, 1962, (p. 218 of the Paper Book) is a recommendation for leave with pay of a darwan. The Appellant sought formal sanction for the leave and stated that there was plenty of leave to the credit of the darwan. In the next letter (undated) (p. 226 of the Paper Book) the Appellant dealt with the duties of the staff under him. The substance of what the Appellant said was that they were working for very long hours and doing extra work in addition to their normal duties. He recommended a tea allowance of Rs. 2 per head, and if they put four hours of work any day, Rs. 5 per head. It was argued " that this letter again disclosed that the Appellant^ was performing managerial duties with regard to the establishment at the hangar at Dum Dum.

22. In the letter dated October 24, 1964, (p. 265 of the Paper Book) the

Appellant asked for the sanction of a regular aircraft Storekeeper-cum-office assistant at hangar No. 10. He stated that so far he ran the office and stores with Kulwant Singh and the radio mechanic, but since a new system had been suggested by the internal audit department, the amount of paper work had increased, and therefore he should have a trained aircraft storekeeper. Mr. Ginwalla commented that the contents of this letter and the suggestions made therein clearly demonstrated that the Appellant was doing work of a managerial and supervisory nature. In the letter dated January 26, 1965, (p. 278 of the Paper Book) the Appellant stated that he would be away on leave for certain period and Kulwant Singh would be operating the impressed cash account in his absence, and that instructions might be issued for making payment to Kulwant Singh for the period of the Appellant's absence. A request was also made that the hangar staff's salary might be handed over to Kulwant Singh during the Appellant's absence. The comment of the counsel for the first Respondent was the same, namely, that the Appellant was doing managerial work and was the only person in charge of the office work at the hangar. The next letter to be commented upon by the counsel for the first Respondent was the letter on August 5, 1965 (p. 298 of the Paper Book). This letter dealt with the attendance of the hangar staff on August 5, 1965, on which date a general strike was declared. The Appellant stated that apprehending transport dislocation he had instructed the staff to report for duty between 16.00 hrs. and 17.00 hrs. He stated that, had this not been done, aircraft would not have/been available for the next day's flight and that, in fact, there was a demand for an aircraft on the following day. The counsel's comment on this letter was that this was purely a managerial work and had nothing to do with any technical matter. Reliance was next placed on a letter (undated) (p. 304 of -the Paper Book) from the administrative service manager to the Appellant by which, while granting permission to a darwan to go on leave with pay, a replacement was not sanctioned and the Appellant was asked to make suitable arrangement to carry on in the absence of the darwan on leave. This again showed, the counsel argued, that the Appellant was discharging managerial functions. In this connection Mr. Ginwalla referred to a letter dated December 29, 1962, (p. 218 of the Paper Book) in which the Appellant recommended that the darwan may be granted leave with pay. This, it was argued, again showed managerial nature of the Appellant's duties. In the letter dated January 13, 1964, (p. 222 of the Paper Book) addressed by the Appellant to M/s Instruments Avion he asked for quotation for overhauling charges of various parts of aircraft. Again in the letter dated March 23, 1964, (p. 247 of the Paper Book) the, Appellant requested another firm for quotation for repair work to the aircraft. In the letter dated March 24, 1964, (p. 248 of the Paper Book) the office superintendent of the first Respondent confirmed the advice already given that the Appellant might place orders for repair with a certain firm. It was also noted in the letter that the Appellant had taken on loan the flap of an aircraft. Reliance was-also placed on a letter addressed by the Appellant to the Director-General of Civil Aviation, dated August 25, 1964, (p. 253 of the Paper Book) in which the Appellant requested

the supply of transmitter and receiver crystals. A reference was also made to the letter dated August 28, 1964, (p. 254 of the Paper Book) in which the Appellant requested Airways India Ltd. to inform him if it would be possible for that company to overhaul certain items of aircraft equipment.

23. Relying on these letters Mr. Ginwalla contended that the Appellant was performing duties of a supervisory nature and also doing managerial work. In support of the contention that the Appellant was performing supervisory work, reliance was also placed on a letter dated January 8, 1964, (p. 242 of the Paper Book) in which the Appellant stated that having regard to the nature of a flight, it would be necessary for him to accompany the aircraft and arrangement should be made for supervision of maintenance and other technical inspection of the aircraft of the Syndicate. Reliance was next placed by Mr. Ginwalla on a letter dated December 17, 1964, (p. 271 of the Paper Book) by which the Appellant took disciplinary action against a mechanic, S. Das. It was stated in that letter that a brake link to top and bolt of an aircraft had been over tightened and that the mechanic denied the charge. It was also stated that the mechanic shifted the blame on others whenever some defects were pointed out to him, and in conclusion it was stated that that was a last warning to him and any repetition would cause instant dismissal from service. Quite plainly, it was argued by the counsel for the first Respondent, this letter showed that the Appellant was exercising supervisory and managerial powers, as the warning could not be issued and a threat of; dismissal from service could not be made had not the Appellant invested with and actually exercising the supervisory and managerial powers at the hangar.

24. It appears to us that there is a good deal of force in the contention of the counsel for the first Respondent. The above correspondence clearly shows that the Appellant was at the head of the staff at the hangar and he certainly was exercising supervisory and managerial powers over the work of the mechanics under him. He was supervising the work of the mechanics and inspecting the work done by them, pointing out defects, issuing warnings, allocating duties, fixing attendance hours, inviting quotation for supply of materials and repairs, corresponding with the Director-General, Civil Aviation, for supply of parts of aircraft and doing everything that a man entrusted with supervisory duties of maintenance and repairs to aircrafts should do. Quite apart from the supervisory functions, which the Appellant was discharging, he was doing the entire managerial work of the establishment at the hangar. He was recommending leave of the staff and was entrusted with payment of salary and was also making arrangement for the work at the hangar during the absence of staff on leave.

25. The Appellant, however, contended that his main work was of a technical nature. He was doing manual work although incidentally he performed some supervisory and managerial duties. He argued that he was primarily and essentially a person doing technical work. He sought to repel the conclusion drawn by Mr. Ginwalla from the correspondence mentioned above by contending

that his supervisory and managerial duties were of an incidental nature. He argued that as aircraft maintenance engineer at the hangar he had necessarily to perform some managerial work and also some supervisory work but that did not bring, him within the exceptions in Section 2(s)(iii) & (iv) of the Act.

26. I shall now proceed to deal with the decisions on which reliance was placed by the parties; but before doing that it is necessary to dispose of one other question. That question is whether this Court, in exercising its jurisdiction under Article 226 of the Constitution, should appraise the evidence tendered by the parties before the Tribunal and deal with the Tribunal's findings as an appellate Court. The next question is where there has been no violation of the rules of natural justice whether this Court should interfere with the conclusion drawn by the Tribunal from the evidence adduced before it. Counsel for the first Respondent argued that this Court should examine the evidence tendered before the Tribunal as it was a jurisdictional fact. He submitted that the Tribunal could not assume jurisdiction by deciding a question wrongly, and if it did,, this Court should find out from the evidence if the conclusion drawn by the Tribunal on the jurisdictional fact is wrong. In support of this contention Mr. Ginwalla relied on a decision of the Supreme Court in *The State of Madhya Pradesh and Ors. v. Sardar D.K. Jadav* AIR 1968 S.C. 1186 in which it was held that it was well-established that where the jurisdiction of an administrative authority depended upon a preliminary finding of fact the High Court was entitled in an application under Article 226 to determine upon its own independent judgment whether or not that finding was correct. Reliance was next placed on another decision of the Supreme Court in *Raman and Raman Ltd. v. State of Madras* and Anr. AIR 1956 S.C. 468. In that case again it was held that where the Tribunal's jurisdiction depended upon the existence of some facts, the High Court in writ proceedings could examine the correctness. of the decision of the Tribunal and might reverse that decision if it appeared to be erroneous. The same view was taken by the Supreme Court in an earlier decision in *T.C. Basappa Vs. T. Nagappa and Another*, .

27. It seems to us that Mr. Ginwalla's contention is well-founded and this Court is entitled to weigh and appraise the evidence adduced before the Tribunal by the parties in order to determine the question, namely, if the Appellant is a workman within the meaning of the Act. This, no doubt, is a jurisdictional fact and, if in the opinion of this Court the Tribunal had come to a wrong decision on the evidence adduced by the parties, this Court should interfere with the conclusions of the Tribunal.

28. On the question whether the Appellant was a workman, Mr. Ginwalla strongly relied on a decision of this Court in *Macleod and Company v. Sixth Industrial Tribunal* AIR 1958 Gal. 273. In that case, my Lord the Chief Justice held that a "workman" could be doing a supervisory work and still remain a workman within the definition of the Act. It was held:

Supervisory capacity may involve clerical and routine or mechanical work and

nevertheless remain supervisory. The test must be broadly conceived and broadly applied to the facts of each case. A doctrinaire attitude to mark rigid frontiers of supervision should be eschewed. The Statute does not use the word "mainly" in the case of a person who is drawing wages more than -Rs. 500 a month. It is only with the other class of exception that this question of the "main" nature of the function is put forward as a test...secondly, a supervisor by mere supervision does not come under this exception. In adjourn to being a supervisor he has to exercise function mainly of a managerial nature in order to be within the exception. Therefore, supervisory work is not necessarily managerial work. In this second class of exception the predominant test and, in fact, the only test is that he must be employed in a supervisory capacity and his functions must be mainly of a managerial nature.

Applying this dictum to the facts in this case, there is no escape from the conclusion that the Appellant was discharging supervisory duties and by the nature of the duties attached to the office of aircraft maintenance engineer and by reason of the powers vested in him he was also functioning in a managerial capacity. It is true that the office he held required him to do some work of a technical nature.- But the evidence in this case leave no room for doubt that he was acting in a supervisory capacity as a maintenance engineer and besides doing "supervisory work in the technical branches of the establishment he was doing mainly managerial work as the head of the establishment at the hangar.

29. I shall now turn to the decisions on which the Appellant relied in support of his contention that he was a workman. The first case relied on by the Appellant was a decision of the Supreme Court in All India Reserve Bank Employees Association Vs. Reserve Bank of India, In that case it was held that a workman includes an employee employed as a supervisor and only in two cases such a workman ceased to be workman, namely, if he drew wages in excess of Rs. 500 per month and if he performed managerial functions vested in him or by the nature of duties attached to his office. As I read this decision, on the facts to which I have already- referred earlier, it is against the contention of the Appellant. The next case relied on by the Appellant was *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others*, . The Supreme Court came to the conclusion that the duties of a fuelling superintendent did not include supervision of work done by a few workmen who assisted him to carry on manual. work at the depot. It was further held that the fact that a fuelling superintendent was the leader of the team which carried out the work of fuelling could not convert his work into that of a supervisory nature. This decision again is of no assistance to the Appellant because he was not only the leader to the team of mechanics but on the evidence in this case he was plainly doing supervisory work as also in the main discharging managerial functions. The next case relied on by the Appellant was *Andhra Scientific Company Ltd. v. Sheshgiri Rao and Anr.* (1961) 2 L.L.J. 117. Reliance was placed on this decision for the proposition that where a labour Court had come to a conclusion on consideration of facts and on such

consideration came to the conclusion that an employee came within the definition of workman in the Act, the High Court would not interfere under Article 226 except in cases where there was a clearer error on the face of the record. It is to be noticed, however, that in that case the High Court proceeded to consider the evidence itself and held that on that evidence the employee was a -workman. I do not see how this decision is of any assistance to the Appellant, because, as I have noticed earlier, on jurisdictional facts the High Court is entitled to go into the question of appraisal of the evidence adduced before the Tribunal. It is further to be noticed that in the case mentioned above the High Court did go into the question of evidence. Reliance was next placed by the Appellant on *Ananda Bazar Palrika v. Its Workmen* (1969) 2 L.L.J. 670. In that case it was held that whether a person who was employed in a supervisory capacity was a workman depended upon whether the main and principal duties carried out by him were those of a supervisory character and that, if the person was mainly doing supervisory work but incidentally for a fraction of time did some clerical work, it would have to be held that he was employed in a supervisory capacity. This -case again is altogether against the contention of the Appellant because we have no doubt that the Appellant was doing supervisory work though that was of a technical nature and the powers vested in him required him mainly to do managerial work... The next case relied upon was a decision of the Labour Appellate Tribunal in *Ford Motor Company of India Ltd. v. Ford Motors Staff Union* (1953) 2 L.L.J. 344. It was held in that case that essentially the question whether a person was a workman or not would depend upon the nature of the work which he did and that the question whether a workman was a supervisor or exercised directional or controlling powers was at best a mixed question of fact and law. Applying the test it was held that the foreman in the workshop was not a workman, but some of the divisional heads were workmen. This decision does not advance matters any further "as the ratio of the decision was that whether a workman was exercising supervisory or controlling powers was a mixed question of law and fact. Reliance was next, placed on a decision of the Supreme Court in *New India Motors (P) Ltd. New Delhi Vs. K.T. Morris*, . In that case it was held that, where an industrial dispute regarding some workmen was pending, the workman under whom these workmen were working was a workman concerned in such dispute and, if he was dismissed without the written permission of the Tribunal before whom the dispute was pending, he could make a complaint u/s 33A of the Act. This decision is of no assistance to the Appellant in this case. Reliance was also placed" on another decision of the Supreme Court in *Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and Others*, . Reliance was placed on this decision for the proposition that where two Courts below concurred in, coming to a decision on facts, such a finding ordinarily would not be open to further scrutiny by the Supreme Court and that a mistaken inference from documents was a finding of fact if there was no misconstruction of documentary evidence. As I have noticed earlier; it is now well-settled that where the jurisdiction of the Tribunal depended upon the existence of certain facts, the writ Court was entitled to weigh and appraise the evidence to find out

if the facts existed to enable the Tribunal to assume jurisdiction in the matter. The next case relied on was a Bench decision of this Court reported in the Labour Law Journal (1960) 2 L.I.J. 189 for the proposition that the High Court had no power under Article 226 to quash an error of fact even though the error might be apparent on the face of the record and that in exercise of its supervisory jurisdiction the High Court could not convert itself into a Court of Appeal and correct errors on fact or errors in appreciation of oral or documentary evidence and errors in drawing inferences or omission to draw inferences. This decision is of no assistance to the Appellant inasmuch as the questions of fact involved in this case are jurisdictional facts, namely,, a decision as to whether on the^ facts the Appellant could be held to be a workman so as to raise an industrial dispute and confer jurisdiction upon the Tribunal to adjudicate upon such a dispute. Reliance was next placed by the. Appellant on another decision of the Supreme Court in Bihar State Road Transport Corporation Vs. State of Bihar and Others, . In that case, by a notification under a local statute the Road Transport Corporation was set up and this Corporation was empowered to exercise functions till then exercised by the Rajya Transport authority who illegally discharged an employee. It was held that the order being invalid the employee would be deemed to be continuing in service of the Rajya Transport authority and such service must be deemed to have been taken over by the Bihar State Road Transport Corporation. It was also held that since the employee's cause was taken up by a union, the dispute was an industrial dispute referable u/s 10(1) of the Industrial Disputes Act to a Tribunal. This decision is of no assistance to the Appellant in this case.

30. On the facts in this case we have no hesitation in holding that the Appellant was employed in a supervisory capacity and was doing mainly managerial work. There is ample evidence to hold that he was controlling mechanics under him, he was inspecting the work done by them, and on such inspection, if fault was found in the maintenance work, he was pulling up the mechanics and was also taking disciplinary steps like issuing warnings and threatening to dismiss them if there was evidence of neglect. It is true that the work at the establishment was of a technical nature, because it involved maintenance and repair of aircraft, but there is o evidence that the Appellant was doing only manual work of a technical nature. The evidence, on the other hand, is entirely to. the contrary. There is no dispute in this case that the Appellant was drawing more than Rs. 500 per month. This apart, the materials show that as the head of the. unit at the hangar he was doing all the managerial work connected with maintenance and repair jobs. I have already referred to such managerial work earlier in this" judgment and it is, therefore, not necessary for me to refer to them again. All in all we arc of the opinion that the Appellant comes within except. (iv) of Section2(s) of the Act. In that view of the matter we are of the opinion that the Appellant was not a workman within the definition of that term in the Industrial Disputes Act and could not, therefore, raise an industrial dispute and the Tribunal had no jurisdiction to entertain Or adjudicate upon such dispute.

31. It now remains to deal with one other contention of the counsel for the first Respondent, namely, that the order of transfer from the Third Industrial Tribunal to the Fourth Industrial Tribunal was bad and, therefore, the latter had no jurisdiction to make the award. The order of transfer is dated July 8, 1967, and is to be found at p. 405 of the Paper Book. In the relevant part of the order it is stated that there has been heavy congestion of cases in the file of the Third Industrial Tribunal and, therefore, it is expedient that the proceeding should be withdrawn from the file of the Third Industrial Tribunal, and in exercise of the powers conferred by Section 33B of the Act the Reference was transferred to the Fourth Industrial Tribunal. The counsel for the Respondent argued that this order was bad as no reasons were stated in the order for withdrawing the Reference from the Third Tribunal and transferring the same to the Fourth Tribunal. In support of this contention reliance was placed on a decision of this Court in *Shree Shew Sakti Oil Mills Ltd. Vs. Judge, Second Industrial Tribunal and Others*, in which my Lord held that the order of withdrawal of the Reference from one Tribunal and transfer of the same to another was illegal. In that case it is to be noticed that no reasons were given for withdrawal of the case and transfer of the Reference from one Tribunal to another. Secondly, it is to be noticed that in that case the order was not made u/s 33B of the Act and was purported to be made only in exercise of the powers u/s 10 of the Act. It was further found that no reasons were stated in that order. This decision in my view is easily distinguishable from the facts in this appeal, firstly, because the transfer order in this case has been made u/s 33B of the Act, secondly, because reasons have been stated by the State Government in the order of transfer, namely, heavy congestion of cases in the file of the Third Industrial Tribunal. The next case relied by the" counsel for the first Respondent was a decision of the Supreme Court in *Associated Electrical Industries (India) Private Ltd., Calcutta Vs. Its Workmen*, . In that case it was held that the power of transfer could be exercised only after complying with Section 33B of the Act and one of the requirements of that section was that before making the order reasons for the same must be recorded. In this case, we find requirement of Section 33B of the Act has been duly complied with. In our view, the contention of the counsel for the first Respondent that the order of transfer is bad, must fail and is rejected. In our opinion, the trial Court was entirely right in holding that the transfer order was validly made by the State Government and the Reference stood validly transferred to the Fourth Industrial Tribunal.

32. In the result and for the reasons mentioned above, the judgment, except to the extent mentioned above, is set aside. The order is upheld and the appeal is dismissed. The cross-objection is allowed in part as indicated above. There would be no order as to costs.

P.B. Mukharji, C.J.

33. I agree.