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(2023) 09 SC CK 0054

In the Supreme Court Of India

Case No : Civil Appeal No. 3592 Of 2019

Commanding Officer, Railway Protection Special Force, Mumbai — APPELLANT

Vs

Bhavnaben Dinshbhai Bhabhor & Others — RESPONDENT

Date of Decision : 26-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 366, 372(2)
Employees Compensation Act, 1923 — Section 2(1), 2(1)(dd), 2(1)(e), 2(1)(n), 2(1)(n)(i), 2(1)(n)(ia), 2(1)(n)(ii), 2(n), 4, 30
Railways Act, 1989 — Section 2(34), 124, 124A, 125, 127, 128, 131
Railway Protection Force Act, 1957 — Section 2(1), 2(1)(a), 3, 10, 19
Indian Railways Act, 1890 — Section 3(7), 71A, 71B, 71C, 71D, 71E, 71F, 71G, 71H
Railways Claims Tribunal Act, 1987 — Section 3

Citation : (2023) 09 SC CK 0054

Hon'ble Judges : B.V. Nagarathna, J;Manoj Misra, J

Bench : Division Bench

Advocate : Jitender Kumar Tripathi, Amrish Kumar, Prerana Chaturvedi, Jaitunkumar N. Patel

Final Decision : Dismissed

Judgement

Manoj Misra, J

1. This appeal is directed against the judgment and order of the High Court of Gujarat at Ahmedabad (in short, "the High Court"), dated 24.02.2016, passed in First Appeal No. 112 of 2016, by which the appeal of the appellant under Section 30 of the Employees Compensation Act, 1923 (formerly known as the Workmen's Compensation Act, 1923 - hereinafter referred to as the 1923 Act) against the order of the Workmen Compensation Commissioner (in short, "the Commissioner") in W.C. Case No. 05 of 2010, has been dismissed.

FACTS

2. The husband of the first respondent was appointed as a Constable in the

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Railway Protection Special Force, a unit of the Railway Protection Force (in short, "the RPF"), on 27.12.2006. He died on 23.04.2008 in an accident in the course of his employment. On his death, the first respondent along with other heirs of the deceased filed a claim petition under the 1923 Act for compensation by claiming, inter alia, that on the date of his death, the deceased was aged 25 years and getting monthly wages of Rs. 8,000/-. The claim was resisted by the appellants, inter-alia, on the ground that the deceased was part of the Armed Forces of the Union and, therefore, not a workman; hence, the claim petition under the 1923 Act is not maintainable.

3. The Commissioner found that the relationship of workman-employer between the deceased and the non-claimant was admitted to the non-claimant; the deceased died in an accident in the course of his employment; and the deceased being a "Railway Servant", as per the provisions of Section 2(34) of the Railways Act, 1989 (in short, the 1989 Act), would be deemed to be a "workman" under Section 2(1)(n)(i) of the 1923 Act and, therefore, the claim petition was maintainable. Regarding the amount payable as compensation, applying the formula provided in Section 4 of the 1923 Act, the Commissioner determined the compensation payable as Rs. 4,33,820/- and directed it to be paid to the claimants within 30 days from the date of the order with 9% interest.

4. Aggrieved by the order of the Commissioner, the appellant filed a first appeal bearing number 112 of 2016 before the High Court under Section 30 of the 1923 Act. The thrust of the submissions before the High Court was that the definition of "workman" as per Section 2 (n) of the 1923 Act excludes any person working in the capacity of a member of the Armed Forces of the Union, therefore, since Section 3 of the Railway Protection Force Act, 1957 (in short, "the 1957 Act") declared the RPF as an Armed Force of the Union, the deceased being a constable in the RPF would not be a workman within the meaning of section 2 (n) of the 1923 Act; hence, claim petition under the 1923 Act was not maintainable.

5. The aforesaid plea raised by the appellant was not accepted by the High Court and the appeal was dismissed.

6. Aggrieved by the judgment and order of the High Court, this appeal has been preferred.

7. We have heard Mr. Vikramjit Banerjee, learned ASG assisted by Mr. Rajan Kr. Chourasia for the appellant and Ms. Prerana Chaturvedi and Mr. Shubhendu Anand for the respondents.

SUBMISSIONS ON BEHALF OF THE APPELLANT

8. On behalf of the appellant, it was submitted that the deceased was indisputably a member of the RPF which, as per Section 3 of the 1957 Act, is an Armed Force of the Union. Section 2 (n) of the 1923 Act defines a workman. By clause clause (n) of sub-section (1) of Section 2 of the 1923 Act, though workman, inter alia, means a railway servant as defined in Section 2 (34) of the

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1989 Act, any person working in the capacity of a member of the Armed Forces of the Union is excluded. Therefore, as, by virtue of Section 3 of the 1957 Act, the deceased was part of the Armed Forces of the Union, he was not a workman within the meaning of Section 2 (1)(n) of the 1923 Act and, in view thereof, the claim petition was not maintainable under the 1923 Act.

9. In addition to the above, it was argued that the deceased was not an employee specifically covered by any of the Entries in Schedule II of the 1923 Act, therefore, he cannot be treated as a workman under 2(1)(n) of the 1923 Act. It was pointed out that Entries (i), (xii) and (xiii) of Schedule II refers to employees of the Railways but a constable in the RPF is conspicuous by its absence there. According to the counsel for the appellant, unless an employee falls in any of the entries specified in Schedule II of the 1923 Act he cannot be considered a workman.

10. It was next contended that the process of compassionate appointment of the next of kin of the deceased was initiated, therefore, a claim for compensation was not maintainable under the 1923 Act. More so, when the claimants-respondents had an alternate remedy available under Section 124-A of the 1989 Act.

11. In support of his submissions, the learned counsel for the appellants relied on certain decisions, namely,

(i) Union of India v. Sri Harananda (2019) 14 SCC 126, wherein, relying on Sections 3 and 8 of the 1957 Act, it was held that RPF is an Armed Force of the Union. However, this decision is not in the context of the 1923 Act.

(ii) United India Insurance Co. Ltd. v. Orient Treasures Pvt. Ltd. (2016) 3 SCC 49, wherein it was observed that when the words of a statute are clear, plain or unambiguous i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences; and

(iii) Union of India v. Prabhakaran Vijaya Kumar (2008) 9 SCC 527, wherein it was observed that in a beneficial or welfare statute if the words used therein are capable of two constructions, the one which is more in consonance with the object of the Act, and for the benefit of the person for whom the Act was made, should be preferred. (Note: This decision was relied upon to canvass that compensation could be had under Section 124-A of the 1989 Act and, therefore, there was no justification to invoke the provisions of the 1923 Act)

SUBMISSIONS ON BEHALF OF RESPONDENTS

12. On behalf of the respondents, it was submitted that Section 2 (1) (n) (i) of the 1923 Act unequivocally states that workman means a "railway servant" as defined in Section 2(34) of the 1989 Act. Section 2 (34) of the 1989 Act, as amended with effect from 01.07.2004, provides that "railway servant" would include a member of the RPF appointed under clause (c) of sub-section (1) of Section 2 of the 1957 Act. Therefore, by virtue of Section 2(1)(n)(i) of the 1923

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Act read with Section 2(34) of the 1989 Act, a constable of RPF would be deemed a workman for the purposes of the 1923 Act.

13. It was argued that the phrase "armed forces of the Union" is not defined and, therefore, it would have to be interpreted in the context in which it was inserted in the statute. It was urged that the 1923 Act is a pre-independence statute. Prior to independence, instead of the phrase "armed forces of the Union", "His Majesty's naval, military or air forces" was used. Therefore, to assert the Republic status of the country, post the enforcement of the Constitution of India in the year 1950, replacement of that phrase was considered necessary and was done so by A.O. 1950 with effect from 26 January 1950. Thus, the phrase "armed forces of the Union" would have to be given a restrictive meaning in the context in which it has been inserted.

14. With regard to the relevance of Entries (i), (xii) and (xiii) of Schedule II of the 1923 Act, it was urged that they do not concern an RPF constable who, by virtue of Section 2(34) of the 1989 Act read with Section 10 of the 1957 Act, is a railway servant and, therefore, a workman as per the provisions of sub-clause (i) of clause (n) of sub-section (1) of Section 2 of the 1923 Act.

15. It was urged that by declaring a member of the RPF as a member of the armed forces of the Union, the legislative intent was not to exclude the applicability of the 1923 Act, inasmuch as Section 19 of the 1957 Act, which was simultaneously amended, though excludes the applicability of certain other Acts such as Payment of Wages Act, 1936, Industrial Disputes Act, 1947 and Factories Act, 1948, does not exclude the applicability of the 1923 Act. This clearly indicates that the legislative intent is not to exclude the applicability of the provisions of the 1923 Act on a member of the RPF by virtue of their inclusion in the definition of a "railway servant".

16. It was also submitted that by Workmen's Compensation (Amendment) Act, 2009, with effect from 18.01.2010, the term "Workman" was substituted by the term "Employee" and, therefore, clause (n) of sub-section (1) of Section 2 of the 1923 Act, defining a "workman", was omitted and new clause (dd), defining an "employee", was inserted in sub-section (1) of Section 2 of the 1923 Act. Yet, despite having declared RPF as an armed force of the Union and a member of the RPF being included in the definition of a "railway servant", with effect from 1.7.2004, the newly inserted clause (dd), defining an "employee", takes no exception to it. Therefore, the legislative intent has never been to exclude a member of the RPF from the purview of the 1923 Act.

17. As regards existence of an alternative remedy under Section 124-A of the 1989 Act, it was argued that Section 128 of the 1989 Act specifically states that the right of any person to claim compensation under Section 124 or Section 124-A of the 1989 Act shall not affect the right of any such person to recover compensation payable under the 1923 Act, or any other law for the time being in force, though such person would not be entitled to claim compensation more

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than once in respect of the same accident.

18. In a nutshell, the submission on behalf of the respondents is that the application before the Commissioner under the provisions of the 1923 Act was maintainable and it was rightly entertained and allowed, therefore, the appeal was justifiably dismissed.

19. In support of her submissions learned counsel for the respondents cited a number of decisions, broadly on two general principles, namely,

(a) that harmonious construction of the provisions of a statute must be adopted so that no provision of a statute is rendered otiose; and (b) that the 1923 Act being a piece of social welfare legislation, its provisions must be liberally interpreted in a manner that they serve the interest of those for whose benefit it was enacted.

ISSUES THAT ARISE FOR CONSIDERATION

20. Having considered the rival submissions, the issues that arise for our consideration are:

(i) Whether a Constable of a Railway Protection Force (RPF) can be treated as a "Workman" under Section 2(1)(n) of the 1923 Act even though, by virtue of amended Section 3 of the 1957 Act, he is a member of the Armed Forces of the Union?

(ii) Whether, on account of availability of alternative remedy to apply for compensation under Sections 124 and 124-A of the 1989 Act, a claim under the 1923 Act is maintainable?

DISCUSSION AND ANALYSIS

21. Before we dwell on the aforesaid issues, a look at the relevant statutory provisions would be apposite. The relevant provisions, interplay of which would have to be examined, are found in the following statutes:

(i) The Workmen's Compensation Act, 1923 (Now known as Employee's Compensation Act, 1923) (in short, "the 1923 Act).

(ii) The Indian Railways Act, 1890 (in short "the 1890 Act").

(iii) The Railways Act, 1989 (in short "the 1989 Act").

(iv) Railway Protection Force Act, 1957 (in short, "the 1957 Act").

Relevant Provisions of the 1923 Act

22. The preamble of the 1923 Act reads thus:

"An Act to provide for the payment by certain classes of employers to their workmen (now substituted by the word 'employees') of compensation for injury by accident."

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23. Clause (n) of sub-section (1) of Section 2 of the 1923 Act, as it stood before its omission by Act No.45 of 2009, w.e.f. 18.01.2010, which is relevant to the controversy at hand, reads as under:

"(n) "workman" means any person who is—

(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative, district or sub-divisional officer of a railway and not employed in any such capacity as is specified in Schedule II, or

(ia) (a) a master, seaman or other member of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) a person recruited for work abroad by a company,

and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India, or

(ii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to a workman who has been injured shall, where the workman is dead, include a reference to his dependents or any of them."

Note: The highlighted portion above, when originally enacted read as "but does not include any person working in the capacity of a member of His Majesty's naval, military or air forces or of the Royal Indian Marine Service".

The words "or of the Royal Indian Marine Service" were omitted by A.O. 1937. Likewise, the words "His Majesty's naval, military or air forces" were replaced by the words "the Armed Forces of the Union" by A.O. 1950.

(Emphasis supplied)

24. The aforesaid clause (n) of sub-section (1) of Section 2 of the 1923 Act was omitted by Act No.45 of 2009, with effect from 18.01.2010, as by Act No.45 of 2009 the name of "The Workmen's Compensation Act, 1923" was changed to "The Employee's Compensation Act, 1923". Consequent to the change in nomenclature of the Act, clause (n) of sub-section (1) of Section 2 was omitted and clause (dd), defining an employee, was inserted in sub-section (1) of Section 2 of the 1923 Act. Clause (dd) of sub-section (1) of Section 2 of the 1923 Act reads as under: -

"(dd) "employee" means a person, who is—

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(i) a railway servant as defined in clause (34) of section 2 of the Railways Act, 1989 (24 of 1989), not permanently employed in any administrative district or sub-divisional office of a railway and not employed in any such capacity as is specified in Schedule II; or

(ii) (a) a master, seaman or other member of the crew of a ship,

(b) a captain or other member of the crew of an aircraft,

(c) a person recruited as driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle,

(d) a person recruited for work abroad by a company,

and who is employed outside India in any such capacity as is specified in Schedule II and the ship, aircraft or motor vehicle, or company, as the case may be, is registered in India; or

(iii) employed in any such capacity as is specified in Schedule II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the Armed Forces of the Union; and any reference to any employee who has been injured shall, where the employee is dead, include a reference to his dependants or any of them;"

25. As we notice that various sub clauses of clause (n) of sub-section (1) of Section 2 of the 1923 Act refer to Schedule II, a look at the relevant Entries in Schedule II, which deals with Railways, would be apposite to have a clear understanding of the true import of the provisions of clause (n) of sub-section (1) of Section 2 of the 1923 Act.

26. At this stage, we may observe that the learned counsel for the appellant has pointed out three entries in Schedule II which are referable to railways. These are Entry Nos. (i), (xii) and (xiii). These entries in Schedule II, as it stood prior to the amendment brought about by Act No.45 of 2009, along with the opening part of Schedule II are extracted below:

Schedule II

List of Persons who, subject to the provisions of Section 2 (1) (n), are included in the definition of Workmen.

"The following persons are workmen within the meaning of Section 2 (1) (n) and subject to the provisions of that section, that is to say, any person who is--

"(i) employed otherwise than in a clerical capacity or on a railway, in connection with the operation, repair or maintenance of a lift or a vehicle propelled by steam or other mechanical power or by electricity or in connection with the loading or unloading of any such vehicle; or

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(xii) employed upon a railway as defined in clause (31) of Section 2 and sub-section (1) of Section 197 of the Railways Act, 1890 (9 of 1890), either directly or through a sub-contractor, by a person fulfilling a contract with the railway administration; or

(xiii) employed as an inspector, mail guard, sorter or van peon in the Railway Mail Service or as a telegraphist or as a postal or railway signaller, or employed in any occupation ordinarily involving outdoor work in the Indian Posts and Telegraphs Department"

The relevant provisions of the 1890 Act

27. The provisions of the 1890 Act are relevant because when the 1923 Act was enacted, the 1890 Act was in operation and the definition of a "workman" under the 1923 Act makes a reference to a railway servant. Therefore, definition of a "railway servant" as it existed in the 1890 Act becomes relevant. Likewise, Section 10 of the 1957 Act makes a reference to the 1890 Act, by stating that officers and members of the Force shall for all purposes be regarded as railway servants within the meaning of the 1890 Act other than Chapter VI-A thereof. It would therefore be useful to notice the definition of a railway servant as also the provisions of Chapter VI-A of the 1890 Act.

28. Section 3 (7) of the 1890 Act defined railway servant as: "railway servant means any person employed by a railway administration in connection with the service of a railway."

29. Chapter VI-A of the 1890 Act provided for limitation of employment of railway servants. The said chapter comprised of Sections 71A, 71B, 71C, 71D, 71E, 71F, 71G and 71H.

30. Section 71A, inter alia, provided that unless there is anything repugnant in the subject or context:

(a) the employment of a railway servant is to be "essentially intermittent" when it has been declared to be so by the authority empowered in this behalf, on the ground that it involves a long period of inaction.

31. Section 71B clarified that Chapter VI-A would apply only to such railway servants or classes of railway servants as the Central Government may, by rules made under Section 71E, prescribe.

32. Section 71C, inter alia, provided that a railway servant, other than a railway servant whose employment is essentially intermittent, shall not be deployed for more than sixty hours a week on the average in a month; whereas a railway servant whose employment is essentially intermittent shall not be deployed for more than eighty-four hours in any week.

33. Section 71D provided for grant of periodical rest and Section 71E empowered the Central Government to make rules.

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34. Section 71F clarified that nothing in Chapter VI-A or the rules made thereunder shall authorize a railway servant to leave his duty where due provision has been made for his relief, until he has been relieved.

35. Section 71G provided for appointment of persons to be Supervisors of Railway Labour and Section 71H provided for penalty to any person under whose authority any railway servant is employed in contravention of any of the provisions of Chapter VI-A or of the rules made thereunder.

The relevant provisions of the 1989 Act

36. The 1890 Act was repealed by the 1989 Act. Section 2 (34) as it existed originally defined railway servant as:

"railway servant means any person employed by the Central Government or by a railway administration in connection with the service of a railway."

By Act No.51 of 2003, with effect from 1.7.2004, the definition of railway servant as provided in Section 2 (34) was amended as to read:

"railway servant means any person employed by the Central Government or by a railway administration in connection with the service of a railway; including member of the Railway Protection Force appointed under clause (c) of sub-section (1) of section 2 of the Railway Protection Force Act, 1957 (23 of 1957)".

(Emphasis supplied)

37. Chapter XIII of the 1989 Act talks about liability of railway administration for death and injury to passengers due to accidents. Section 124 provides for the extent of liability and Section 124A, which was inserted by Act No. 28 of 1994, with effect from 01.08.1994, provides for compensation on account of an untoward incident. Section 125 enables filing of an application for compensation under Section 124 or Section 124A before the Claims Tribunal. Section 127 provides for determination of compensation by the Claims Tribunal in respect of any injury or loss of goods. Section 2 (3) states that "Claims Tribunal" means the Railway Claims Tribunal established under Section 3 of the Railways Claims Tribunal Act, 1987 (54 of 1987).

38. What is interesting in Sections 124 and 124A of the 1989 Act is the explanation attached thereto. The explanation to Sections 124 and 124-A provides that, for the purposes of the section, "passenger" includes a railway servant on duty. However, Section 128 of the 1989 Act saves the right of any person to claim compensation under the Workmen's Compensation Act, 1923, or any other law for the time being in force. For reference, Section 128 of the 1989 Act is reproduced below:

"128. Saving as to certain rights.-

(1) The right of any person to claim compensation under section 124 or section 124A shall not affect the right of any such person to recover compensation

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payable under the Workmen's Compensation Act, 1923 (8 of 1923), or any other law for the time being in force; but no person shall be entitled to claim compensation more than once in respect of the same accident.

(2) Nothing in sub-section (1) shall affect the right of any person to claim compensation payable under any contract or scheme providing for payment of compensation for death or personal injury or for damage to property or any sum payable under any policy of insurance."

39. In the 1989 Act, Chapter XIV provides for regulation of hours of work and period of rest of a railway servant, which is similar to the provisions of Chapter VI-A of the 1890 Act. Section 131 of the 1989 Act, which finds place in Chapter XIV of the 1989 Act, reads as under:

"131. Chapter not to apply to certain railway servants.-- Nothing in this Chapter shall apply to any railway servant to whom the Factories Act, 1948 (63 of 1948) or the Mines Act 1952 (35 of 1952) or the Railway Protection Force Act, 1957 (23 of 1957) or the Merchant Shipping Act, 1958 (44 of 1958), applies."

The relevant provisions of the 1957 Act

40. The 1957 Act has undergone legislative changes. The preamble of the Act, as originally enacted, used to read as under:

"An Act to provide for the constitution and regulation of a Force called the Railway Protection Force for the better protection and security of railway property."

41. By Act No. 60 of 1985, with effect from 20.09.1985, the preamble was substituted to read as follows:

"An Act to provide for the constitution and regulation of an armed force of the Union for the better protection and security of railway property, passenger areas and passengers and for matters connected therewith."

42. Some of the provisions of the 1957 Act relevant to the controversy at hand are Section 2(1)(a); Section 3; Section 10; and Section19.

43. Section 2(1)(a) defines "Force" as: "Force means the Railway Protection Force constituted under Section 3".

44. Section 3 of the 1957 Act has undergone a legislative change with effect from 20.09.1985 by Act No. 60 of 1985. Prior to its amendment, Section 3 used to read as under:

"Section 3. Constitution of the Force.-

(i) There shall be constituted and maintained by the Central Government a Force to be called the Railway Protection Force for the better protection and security of Railway property.

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(ii) The Force shall be constituted in such manner, shall consist of such number of superior officers and members of the Force and shall receive such pay and other remuneration as may be prescribed."

45. Post amendment, made by Act No. 60 of 1985, Section 3 of the 1957 Act, w.e.f. 20.09.1985, reads as follows:

"Section 3. Constitution of the Force.-

(i) There shall be constituted and maintained by the Central Government an armed force of the Union to be called the Railway Protection Force for the better protection and security of Railway property.

(ii) The Force shall be constituted in such manner, shall consist of such number of superior officers, subordinate officers, under officers and other enrolled members of the Force and shall receive such pay and other remuneration as may be prescribed."

46. Section 10 of the 1957 Act also underwent legislative change. Prior to its amendment, it was as follows:

"Section 10. Officers and members of the Force to be deemed to be Railway Servants.- The Inspector General and any other superior officer and every member of the Force shall for all purposes be regarded as Railway Servant within the meaning of the Indian Railway Act, 1890 other than Chapter VI-A thereof, and shall be entitled to exercise the powers conferred on Railway Servants by or under that Act."

(Emphasis supplied)

47. By Act No. 60 of 1985, Section 10 was amended, with effect from 20.09.1985, to read as follows:

"Section 10. Officers and members of the Force to be deemed to be Railway Servants.- Director General and every member of the Force shall for all purposes be regarded as Railway Servants within the meaning of the Indian Railways Act, 1890 (9 of 1890) other than Chapter VI-A thereof, and shall be entitled to exercise the powers conferred on Railway Servants by or under that Act."

(Emphasis supplied)

48. Section 19 of the 1957 Act, prior to its amendment made by Act No. 60 of 1985, was as follows:

"Section 19. Certain Acts not to apply to members of Force.- Nothing contained in the Payment of Wages Act, 1936 or the Industrial Disputes Act, 1947 or the Factories Act, 1948, shall apply to members of the Force."

49. Post amendment, brought by Act No. 60 of 1985, with effect from 20.09.1985, Section 19 of the 1957 Act reads as follows:

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"Section 19. Certain Acts not to apply to members of Force.- Nothing contained in the Payment of Wages Act, 1936 (4 of 1936) or the Industrial Disputes Act, 1947 (14 of 1947) or the Factories Act, 1948 (63 of 1948) or any corresponding law relating to investigation and settlement of industrial dispute in force in a State shall apply to members of the Force."

Issue No.(i): Whether provisions of the 1923 Act applies to a member of the RPF

50. Having examined the relevant statutory provisions, we shall now address the issue no.(i) noted above.

51. The 1923 Act as it stood at the relevant time (i.e., the date of the accident out of which the claim has arisen) was an Act to provide for the payment by certain class of employers to their workman, compensation for injury by accident. Section 3 of the 1923 Act, as it stood at the time of the accident in question, provided that if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provision of Chapter II of the 1923 Act. Thus, to sustain a claim against an employer under the 1923 Act, there must be a workman-employer relationship; there must be a personal injury to the workman by an accident; and that accident must arise out of and in the course of his employment.

52. "Employer" is defined by clause (e) of sub-section (1) of Section 2 of the 1923 Act as:

"employer includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him."

53. By use of the phrase "any body of persons whether incorporated or not" the legislative intent is clear as to include a juristic person whether incorporated or not. However, to maintain a claim against an "employer" under the 1923 Act, there must be, (a) a workman and an employer relationship; (b) the workman must suffer personal injury in an accident; and (c) that accident must arise out of and in the course of his employment.

54. At the time of the accident in question, "workman" was defined by clause (n) of sub-section (1) of Section 2 of the 1923 Act. As per the then definition clause workman meant any one of the persons specified in sub clauses (i), (ia) and (ii) of clause (n) of sub-section (1) of Section 2 of the 1923 Act; but would not include any person working in the capacity of a member of the Armed Forces of the Union.

55. Importantly, neither the 1923 Act nor The General Clauses Act, 1897 defines "The Armed Forces of the Union". What is also interesting is that the phrase

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"armed forces of the Union" came, with effect from 26 January 1950, as a replacement for the words "His Majesty's naval, military or air forces", vide the "Adaptation of Laws Order, 1950" issued by the President of India in exercise of powers under Article 372(2) of the Constitution of India.

56. Clause (2) of Article 372 of the Constitution of India confers power on the President of India to make such adaptations and modifications in any law in force in the territory of India, whether by way of repeal or amendment, as may be necessary or expedient, to bring the provisions of that law into accord with the provisions of the Constitution.

57. In Ramesh Birch and others v. Union of India and others 1989 Supp (1) SCC 430, this Court while dealing with the executive power to extend an existing law of one territory to another, had the occasion to deal with the scope of such power of the Executive. Relying upon the observations made by a Constitution Bench of this Court In re. Delhi Laws Act, 1912, AIR 1952 SC 332, it was observed:

"23. But, these niceties apart, we think that Section 87 is quite valid even on the "policy and guideline" theory if one has proper regard to the context of the Act and the object and purpose sought to be achieved by Section 87 of the Act. The judicial decisions referred to above make it clear that it is not necessary that the legislature should "dot all the i's and cross all the t's" of its policy. It is sufficient if it gives the broadest indication of a general policy of the legislature. If we bear this in mind and have regard to the history of this type of legislation, there will be no difficulty at all. Section 87, like the provisions of Acts I, II and III, is a provision necessitated by changes resulting in territories coming under the legislative jurisdiction of the Centre. These are territories situated in the midst of contiguous territories which have a proper legislature. They are small territories falling under the legislative jurisdiction of Parliament which has hardly sufficient time to look after the details of all their legislative needs and requirements. To require or expect Parliament to legislate for them will entail a disproportionate pressure on its legislative schedule. It will also mean the unnecessary utilisation of the time of a large number of members of Parliament for, except the few (less than ten) members returned to Parliament from the Union territory, none else is likely to be interested in such legislation. In such a situation, the most convenient course of legislating for them is the adaptation, by extension, of laws in force in other areas of the country. As Fazl Ali, J. pointed out in the Delhi Laws Act case [1951 SCC 568 : AIR 1951 SC 332 : 1951 SCR 747] it is not a power to make laws that is delegated but only a power to "transplant" laws already in force after having undergone scrutiny by Parliament or one of the State legislatures, and that too, without any material change. There is no dispute before us — and it has been unanimously held in all the decisions — that the power to make modifications and restrictions in a clause of this type is a very limited power, which permits only changes that the different context requires and not changes in substance. There is certainly no power of modification by way of repeal or amendment as is available under Section 89."

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(Emphasis supplied)

58. In the light of the above decision, it would be useful to explore the purpose of the amendment brought by the Adaptation Order of 1950 (supra) with reference to Article 372(2) of the Constitution of India. Indisputably, the 1923 Act is a pre-independence statute therefore, on India being declared a Republic by our Constitution, the use of the phrase "His Majesty's naval, military or air forces" appearing therein became antithetical to our Constitution. Hence, to make it in accord with our Constitution, it was considered necessary to substitute the said phrase with the phrase "armed forces of the Union." However, neither the Constitution of India (see Article 366) nor The General Clauses Act, 1897 or the 1923 Act defines "armed forces of the Union". Therefore, in our view, mere declaration in Section 3 of the 1957 Act that the RPF shall be an "armed force of the Union" is not sufficient to take it out of the purview of the 1923 Act. In our view, what assumes importance is the legislative intent. That is, whether by declaring a member of the RPF as a member of the armed force of the Union, the legislature intended to take away the benefits which he would have otherwise got by virtue of being a railway servant within the meaning of Section 2 (34) of the 1989 Act.

59. The definition of a "Railway Servant" as contained in Section 2 (34) of the 1989 Act was amended vide Act No.51 of 2003, with effect from 1.7.2004. By such amendment, notwithstanding that from 20.09.1985 the RPF was declared an armed force of the Union, the definition of a Railway Servant included a member of the RPF. Therefore, since a railway servant continued to be a workman as per Section 2(1)(n)(i) of the 1923 Act, the provisions of the 1923 Act would continue to apply to a member of the RPF as he does not belong to any of those categories specified in Schedule II of the 1923 Act. More so, when there is nothing in the Railways Act, either new or old, which may exclude the applicability of the 1923 Act on a railway servant. Rather, Section 128 of the 1989 Act makes it clear that right of any person to claim compensation under Section 124 or Section 124-A of the 1989 Act shall not affect the right of any such person to recover compensation payable under the 1923 Act. Likewise, Section 19 of the 1957 Act, which was simultaneously amended vide Act No.60 of 1985, with effect from 20.09.1985, along with Section 3 of the 1957 Act, declaring RPF as an armed force of the Union, did not make any provision to exclude the applicability of the 1923 Act. Not only that, Section 10 of the 1957 Act was also amended vide Act No.60 of 1985. It too, declared every member of the Force (RPF) to be regarded as railway servant for all purposes other than Chapter VIA of the 1890 Act, which relates to limitation on duty hours, etc. Thus, in our considered view, despite declaring RPF as an armed force of the Union, the legislative intent was not there to exclude its members or their heirs from the benefits of compensation payable under the 1923 Act or the 1989 Act.

60. At this stage, we may notice that, though Section 19 of the 1957 Act declared that nothing contained in the Payment of Wages Act, 1936 or the

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Industrial Disputes Act, 1947 or the Factories Act, 1948 or any corresponding law relating to investigation and settlement of industrial dispute in force in a State shall apply to members of the Force (RPF), there is no exclusion of the applicability of the provisions of the 1923 Act.

61. In light of the discussion above, we are of the considered view that despite declaring RPF as armed force of the Union, the legislative intent was not to take it out of the purview of the 1923 Act. Issue no. (i) is decided in terms above.

Issue No.(ii): Whether, on account of availability of alternative remedy to apply for compensation under Sections 124 and 124-A of the 1989 Act, a claim under the 1923 Act is maintainable?

62. The answer to issue no.(ii) lies in Section 128 of the 1989 Act. According to which, notwithstanding the right to claim compensation under Section 124 or Section 124-A of the 1989 Act, the right of a person to claim compensation under the 1923 Act, or any other law for the time being in force, is specifically saved subject to the condition that he shall not be entitled to claim compensation more than once in respect of the same accident.

63. In the instant case, there is nothing to indicate that the respondents' claim under the 1923 Act was made after receiving compensation for the same accident under any other Act or law. Hence, the application under the 1923 Act was not barred on account of there being an alternative remedy under the 1989 Act. Issue no.(ii) is decided accordingly.

64. For the reasons detailed above and in view of our answer to the issues framed above, we hold that the claim set up by the respondents under the 1923 Act was maintainable. The appeal lacks merit and is accordingly dismissed. The interim order, if any, stands discharged. Parties to bear their own costs.

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