
(1984) 12 OHC CK 0024
In the Orissa High Court
Case No : O. J. C. No. 636 of 1980

Dinesh Chandra Mishra

APPELLANT

Vs

Asst. Labour Commissioner (Central) and Another

RESPONDENT

Date of Decision : 07-12-1984

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1985) 59 CLT 31 : (1985) 50 FLR 136 : (1985) 1 OLR 56

Hon'ble Judges : S.C. Mohapatra, J; R.C. Patnaik, J

Bench : Division Bench

Advocate : J.K. Tripathy, for the Appellant; C.V. Murty, for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik, J.—In this application under Article 226 and 227 of the Constitution of India, the petitioner has moved this Court for the quashing of the order dated March 21, 1980 of the Assistant Labour Commissioner (Central) refusing to initiate conciliation proceeding under the provisions of the Industrial Disputes Act (for short, "the Act") and for a mandamus directing the opposite party No. 1 to act in accordance with law.

2. The petitioner has alleged that he was appointed as an Insurance Agent by the New India Assurance Company Limited, on May 6, 1977. He was appointed as Junior Inspector with effect from November 21, 1977. With effect from January 1, 1973, his service was terminated. His representations to the authorities having yielded no result, he moved opposite party No. 1 to mediate for settlement of the dispute which arose due to the termination of his service. Opposite party No. 1 relying upon decision of the Madras High Court in M/s. Oriental Fire & General Insurance Co. Ltd. Madras v. Shri A. Shrinivas and others (writ petition No. 184 of 1977), refused to take action holding that the petitioner, essentially a field officer, was not a workman coming under the definition of "workman" given in Section 2(s) of the Act.

3. Mr. J. K. Tripathy, the learned counsel for the petitioner, has drawn our attention to Annex.-1, the order of appointment, embodying the duties and functions to be discharged by him as a Junior Inspector. He has submitted that having regard to the nature of the functions and scope of the duties, the petitioner, a Junior Inspector, is a workman and opposite party No. 1 refused to exercise jurisdiction on an erroneous view of the matter. He has drawn our attention to a decision of the Supreme Court in S.K. Verma Vs. Mahesh Chandra and Another, .

4. In Verma's case the question was if a Development Officer in the Life Insurance Corporation of India was a workman within the meaning of Section 2(s) of the Act. The Supreme Court cautioned that while adjudging whether an employee came within the category of labour or management, one should not be carried away by the appellation or the glorified designation. What is germane was the nature of the duties assigned. Then Their Lordships went on to consider the terms and conditions.

5. In the petitioner's case the relevant terms and conditions are as hereunder ;

"6. Duties and Functions;

(a) you are appointed on whole-time basis and shall devote your full time and attention to the company's work. Your duties will include among other things, the following :

(i) to recruit, train, direct and control agents under you.

(ii) to introduce, develop and service General Insurance business as may be specified, in the area under your jurisdiction.

(iii) to prepare covernotes, policies and premium-receipts and maintain different statements and service any other business which may be assigned to you by the company.

(iv) to discharge such other duties, functions and responsibilities as may be assigned to you by the company.

The functions as mentioned herein above are only illustrative and not exhaustive.

(b) it will be your responsibility to ensure that you abide by all provisions of all tariffs in respect of tariff business and rules and regulations of the company. You will also abide by the policy of the company and such other directives and instructions as may be given to you from time to time regarding non-tariff business.

(c) you will not execute, issue or give any policy, receipt, covernote or letter, or any other document or bind the company in any manner, unless you are specifically authorised to issue, execute or give such a document or binding on behalf of the company. The company reserves the right to alter, withdraw or cancel any authority given to you. You will not accept or make any commitment

for accepting any business, unless you are specifically authorised to accept such a business and will not exceed in any way the authority given to you.

(d) it will also be your duty to see that proper service is rendered by you and by the agents working under you, to policy-holders and the concerned parties.

(f) at the time of ceasing to be in the employment of the company for any reason whatsoever, you shall return to the company all or any of the documents, papers, books, imprest, furniture and other articles and properties belonging to the company, which have been supplied to you at are in your possession. You shall be liable for damages to the company in case of failure to take any or all such articles or possession of the company or the concerned persons".

6. A consideration of the above would go to show that a Junior Inspector is to be a whole-time employee of the company. He is to recruit, train, direct and control agents under him; to introduce, develop and service General Insurance business as may be specified in the area under his jurisdiction; to prepare cover notes, policies and premium receipts and maintain different statements and service any other business which may be assigned to him by the company and to discharge such other duties, functions and responsibilities as may be assigned to him. He is to see that proper service is rendered by the agents to the policy holders.

7. Having regard to the nature of duties and function, we are of the view that the case of a Junior Inspector is indistinguishable from that of a Development Officer, who was held by the Supreme Court in Verma's case to be a workman not discharging any administrative or managerial function. The Junior Inspector is a workman within the meaning of Section 2(s) of the Industrial Disputes Act.

8. Mr. Murty, the learned counsel for the opposite parties, has also fairly and rightly stated that the case of the petitioner would be governed by Verma's case.

9. In view of our aforesaid holding, we hold that opposite party No. 1 erroneously failed to exercise jurisdiction vested in him. We therefore, quash Annex-8 and direct opposite party No. 1 to take up the matter for conciliation and dispose of the same in accordance with law.

10. In the result, the writ application is allowed. Let a mandamus issue as aforesaid. There would be no order as to costs.

S.C. Mohapatra, J.

11. I agree.