
(1999) 07 GAU CK 0013
In the Gauhati High Court
Case No : C.R. No. 6211 of 1996

Dynesty Walford Ltd.

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 22-07-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1999) 3 GLT 115 : (2000) 3 LLJ 1313

Hon'ble Judges : P.C. Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.C. Agarwal, J.—Heard Shri P.C. Deka, learned counsel for the petitioner Dynesty Walford Ltd., and Shri Banerjee learned counsel for the State of Assam. None has appeared for the respondent No. 3.

2. This application under Article 226 of the Constitution of India is directed against an award dated May 16, 1996 passed by the Presiding Officer, Labour Court, Gauhati in Reference Case No. 16 of 1993.

3. The respondent No. 3 was appointed as Sales Executive by the petitioner company on May 20, 1985 and he continued to work in the company as Sales Executive looking after the Sales Promotion. On July 20, 1991 a show cause notice was issued to the respondent No. 3 and after holding an enquiry the respondent No. 3 was dismissed by order dated August 31, 1991 and thereafter on application filed by the dismissed employee the Govt. of Assam referred the dispute to the Labour Court and the Presiding Officer, Labour Court, Gauhati by the impugned order held that the Management was not justified in dismissing the employee from his service. The Presiding Officer did not pass any order for reinstatement and considering the fact that the employee was reemployed elsewhere, the Presiding Officer passed the order that the difference between the pay which the employee was getting earlier and the pay which he was getting at

present shall be paid. Hence the present application.

4. Shri PC Deka, Senior Advocate for the petitioner has submitted that the respondent No. 3 Sri Jitendra Sarma was not a workman as defined u/s 2(s) of the Industrial Disputes Act and as such the Labour Court had no jurisdiction to decide the question of dismissal, as it was not an industrial dispute as per Section 2(s) of the Industrial Disputes Act. As regard the nature of the job of respondent No. 3, the Labour Court held that he was a sales representative. Moreover, from the written statement filed by the employee it is crystal clear that the only job of respondent No. 3 was to procure orders for the different types of vehicles sold by the petitioner's company and his job was limited to promotion of sales only.

5. The Labour Court held that the respondent No. 3 is a workman mainly on the ground that he was working under supervision of the management and he had no control over his staff.

6. The learned counsel for the petitioner has referred to the decision of the Apex Court in the case of Management of May and Baker (India) Ltd. Vs. Their Workmen, Facts to observe:

"The nature of the duties of Mukherjee is not in dispute in this case and the only question, therefore, is whether looking to the nature of the duties it can be said that Mukherjee was a workman within the meaning of Section 2(s) as it stood at the relevant time. We find from the nature of the duties assigned to Mukherjee that his main work was that of canvassing and any clerical or manual work that he had to do was incidental to his main work of canvassing and could not take a small fraction of the time for which he had to work. In the circumstance the Tribunal's conclusion that Mukherjee was a workman is incorrect. The Tribunal seems to have been led away by the fact that Mukherjee had no supervisory duties and had to work under the directions of his superior officers. That, however, would not necessarily mean that Mukherjee's duties were mainly manual and clerical. From what the Tribunal itself had found it is clear that Mukherjee's duties were mainly neither clerical nor manual."

As the sales representative was not within the purview of the Industrial Disputes Act, the Central Govt. enacted the Sales Promotion Employees Services Act, 1966 to regulate the service condition of the Sales promotion employees. In the objects and reasons for enacting it is stated that in view of the decision in May and Baker (India) Ltd. case (supra) the provision have been provided.

7. The nature of work u/s 2(s) as existed at the time when the decision in May & Baker (supra) was passed, did not include the work technical, operational and supervising. There seems to be certain controversy whether a person may be termed as workman if he is not covered by either of the four exceptions to the definition or whether he is required to be covered or must fall in any of the categories mentioned as above. The controversy was settled in the Constitution Bench decision of the Apex Court in the case of H.R. Adyanthaya Vs. Sandoz

(India) Ltd., etc. etc., The Apex Court held hence the position in law as it obtains today is that "a person to be a workman under the Industrial Disputes Act must be employed to do the work of any of the categories comprising manual, unskilled, skilled, technical, operational, clerical and supervisory. It is not enough that he is not covered by either of the four exceptions of the definition.

8. The Apex Court further reiterated the decision in *May & Baker (Supra)* in *Western India Match Co. Ltd. Vs. Their Workmen*, and in *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others*,

9. In view of the findings of the Labour Court the respondent No. 3 job was sales promotion only. It is held that the above work does not cover the type of works like manual, unskilled, skilled, technical, operational, clerical, supervising work and as such the respondent No. 3 was not a workman as defined under the Industrial Disputes Act. As the respondent No. 3 was not a workman the Labour Court had no jurisdiction to pass the impugned order and accordingly the writ is allowed. The impugned order is set aside. No order as to cost