
(2014) 01 CAL CK 0006
In the Calcutta High Court
Case No : Writ Petition No. 29752 (W) of 2013

Esab India Limited

APPELLANT

Vs

Swapan Kumar Chakraborty and Others

RESPONDENT

Date of Decision : 16-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2(s) 33(C)(2)

Citation : (2014) 141 FLR 541 : (2014) 2 LLJ 16

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : N.K. Mehta and Mr. Soumya Majumder, for the Appellant; R.N. Paul for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Harish Tandon, J.—The petitioner has assailed the order of the 1st Labour Court, Kolkata dated 8th May, 2013 passed in case No. Comp. 54/1999 whereby and whereunder the application for taking up preliminary issue relating to the status of an employee is disposed of. Admittedly the private respondent was holding a post of Welfare Officer. It is not in dispute that the said post is statutory in nature and is guided by the West Bengal Factories (Welfare Officers) Rules, 1971. The arena of dispute raised before the Labour Court was whether the employee, who is holding a managerial post, can be brought within the definition of "workman" enshrined u/s 2(s) of the Industrial Disputes Act, 1947.

2. Admittedly the private respondent tendered his voluntary retirement under the Voluntary Retirement Scheme 1997-98, which was duly accepted. The dispute raised by the private respondent relates to the monetary benefits to be paid under the said scheme and other statutory benefits.

3. The private respondent approached the Labour Court u/s 33(C)(2) of the said Act praying for computation of the monetary benefits in terms of the Bonus Act, 1965, Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and

other monetary benefits as provided under the said voluntary retirement scheme.

4. The petitioner though filed the written statement taking all objections against the claim of the private respondent, but subsequently took out an application raising a preliminary point relating to the status of the private respondent as a workman within the definition of "Workman" provided under the said Act.

5. According to the petitioner, the West Bengal Factories (Welfare Officers) Rules, 1971 (hereinafter referred to as "the said Rules") provides for an appointment of the Welfare Officer in every factory wherein 500 and/or more workers are ordinarily employed. Rule 8 of the said Rules contains the condition of services, whereas Rule 9 relates to the duties of the Welfare Officer. The petitioner says that from the aforesaid Rules it can be deciphered that the nature of work entrusted upon the said Welfare Officer is supervisory and in effect is a managerial post. The definition given for "Workman" u/s 2(s) of the said Act does not include any person, who is employed in a supervisory capacity and the nature of the duties attached to the office and the power vested is of managerial in nature.

6. By interpreting the said definition clause, the petitioner says that the Welfare Officer is holding a managerial post and, therefore, the said application u/s 33(C) (2) of the said Act is not maintainable. The petitioner relies upon the appraisal form submitted by the private respondent, which is also annexed to this writ petition, in support of his aforesaid contention, wherefrom it could be ascertained without any reasonable doubt that the private respondent was in fact a managerial staff and, therefore, does not come within the definition clause. The petitioner further relies upon the evidence of the private respondent adduced before the Labour Court where the deponent says that he has to look after the work of canteen, security staff and other workers.

7. The private respondent submits that from a meaningful reading of the evidence of his client as well as perennial nature of duties would suggest that he was not holding any supervisory post as his client had no independent authority to take decisions. He also relies upon the said Rules to contend that the post of the Welfare Officer is to assist the management and to liaison between workmen and the management. He further submits that there is no impediment on the part of the Tribunal to consider the point relating to the status of the private respondent and, therefore, the challenge to the course of action adopted by the Tribunal cannot be made to this writ petition and places reliance upon a Coordinate Bench judgment of this Court in Ramen Chandra Ghosh Vs. State of West Bengal and Others, . Relating to the exercise of judicial review under Article 226 of the Constitution of India, the reliance is placed upon a judgment of the Supreme Court in case of Sadhu Ram Vs. Delhi Transport Corporation,

8. From the respective submissions made at the Bar it is clear that there is no quarrel that the private respondent at the time of opting an early retirement under the Voluntary Retirement Scheme was holding the post of Welfare Officer.

9. Before dealing with the issues evolved from the respective stand of the parties, it would be relevant to quote the relevant provisions of the West Bengal Factories (Welfare Officers) Rules, 1971.

10. Rule 4 of the said Rules provides for an appointment of a Welfare Officer in a factory where 500 and/or more workers are ordinarily employed, which reads thus:

4. Number of Welfare Officer.

a) In every factory wherein five hundred or more workers are ordinarily employed the minimum number of full-time Welfares Officers to be employed by the occupier shall be as follows:-

Provided that where the number of workers exceeds 20,000 there shall be employed one more Welfare Officer in any grade for every 2,000 workers in excess of 20,000.

b) Where there are two or more Welfare Officers, the one enjoying the higher or the highest grade, as the case may be, shall be designated as Chief Welfare Officer, and each of the other Welfare Officers shall be designated as Welfare Officer Grade I, II, III, as the case may be:

Provided that the Welfare Officer or the Chief Welfare Officer may be given any other designation as may be approved by the State Government by an order in writing.

Provided further that where in any premises there are more factories than one under the same occupier and there are more than one Welfare Officer for all those factories, the Welfare Officer enjoying the higher or the highest grade, as the case may be, shall be designated as the Chief Welfare Officer for all such factories.

11. Rule 8 contains the conditions of service in the following words:

8. Conditions of service.

1) The Chief Welfare Officer, or the Welfare Officer, where there is only one, shall be given the same status as is enjoyed by the other departmental heads in the factory, and he shall work directly under the control of same executive of the factory under whom the other departmental heads work.

2) Every other Welfare Officer shall be given appropriate status corresponding to the status of an officer holding a position next below the other departmental heads in the factory.

3) The Welfare Officer may be employed either on tenure basis, or on a permanent basis. Where he is appointed on tenure basis, the term shall not be less than three years and the period of probation shall be six months; and where the appointment is on permanent basis, the period of probation shall not be less than one year or more than two years. Any such officer appointed on tenure

basis shall ordinarily be entitled to a renewal of such periodical contract.

4)(a) The occupier of a factory who possesses either to terminate the services of a Welfare Officer otherwise than by way of penalty in terms of sub-rule (5) or to withhold the renewal of contract shall give three months' notice to such officer stating reasons thereof and giving reasonable opportunity of making representation against such proposed action.

(b) The occupier shall not take a final decision without giving due consideration to such representation and intimating such final decision in writing to the Welfare Officer concerned.

5)(a) The occupier may impose upon any Welfare Officer any or more of the following punishments:-

- i) suspension,
- ii) removal or dismissal from service,
- iii) reduction in rank,
- iv) withholding of increment,
- v) censure,
- vi) warning;

Provided that no Welfare Officer shall be punished as aforesaid except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of the charges and where it is proposed, after such an inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such enquiry.

b) Any Welfare Officer who is awarded any one or more of the punishments referred to in clause (a) of sub-rule (5) shall, within thirty days of the communication of the order of punishment to him, be entitled to appeal against such order to the Chief Inspector of Factories, West Bengal:

Provided that the Chief Inspector of Factories, West Bengal, may, on sufficient cause being shown for the delay, extend the aforesaid time limit to a period not exceeding six weeks.

c) On being satisfied that a Welfare Officer intends to prefer an appeal under clause (b) of sub-rule (5) the Chief Inspector of Factories, West Bengal, may stay the enforcement of the order of punishment to be appealed against, for such period and on such terms, if any, as he may think just and proper;

d) The Chief Inspector of Factories may call for any information and may require by a written order the production, at such place as may be specified in the order, of any register or record or document which is considered necessary for disposal

of the appeal.

e) The Chief Inspector of Factories, West Bengal, shall after giving both the parties a reasonable opportunity of being heard, by an order for reasons to be recorded in writing, dispose of the appeal as expeditiously as possible. While disposing of the appeal the Chief Inspector of Factories, West Bengal, may confirm, modify or set aside the order appealed against.

6) a) The occupier or any Welfare Officer, being aggrieved by the decision of the Chief Inspector of Factories, West Bengal, may within thirty days of the communication of such order to him, prefer a second appeal to the State Government, and the decision of the State Government on such appeal shall be final and binding on both the parties:

Provided that no such second appeal shall lie where all or any of the punishments specified in sub-clause (iv); (v) or (vi) of clause (a) of sub-rule (5), have been imposed, and in cases of such punishment the decision of the Chief Inspector of Factories shall be final and binding on both the parties.

b) On being satisfied that the occupier or a Welfare Officer intends to prefer an appeal under clause (a) of sub-rule (6) the State Government may stay enforcement of the decision of the Chief Inspector of Factories, West Bengal, for such period and on such terms, if any, as the State Government may think just and proper.

7. Notwithstanding any condition of service, which is repugnant to these rules imposed by the employer on a Welfare Officer, the provisions of these rules shall prevail.

12. Rule 9 contains duties of the Welfare Officer and the Chief Welfare Officer as follows:

9. Duties of the Chief Welfare and Welfare Officers.

1) In addition to the duties of a Welfare Officer hereinafter prescribed, the Chief Welfare Officers shall supervise the work of the Welfare Officers.

2) The duties of the Welfare Officers shall be-

a) to advise the concerned departments of the factory on questions of fulfillment of obligations statutory or otherwise, in the application of the provisions of the Factories Act, 1948 and the rules made thereunder;

b) to establish liaison with the Inspector of Factories, the Medical Inspector and the Certifying Surgeon of Factories concerning medical examination of employees, health and records;

c) to advise and assist management (I) regarding provision or amenities such as first-aid, ambulance rooms, canteens, shelters, for rest, creches, drinking water and latrine facilities, and (ii) for fulfillment of obligations concerning sickness and benevolent scheme payments, provident fund pension and super-annuation

fund, gratuity payments, maternity benefits, workmen's compensation, and other welfare and social benefit measures;

d) to advise and assist the factory management regarding

i) display of abstracts of the labour laws and the notices under the Factories Act, 1948, the West Bengal Factories rules, 1958, the Payment of Wages Act, 1936 and the West Bengal Payment of Wages Rules, 1958 and

ii) submission of all notices and periodical and yearly returns to Factory Inspector;

e) to help the factory management in regulating grant of leave with wages, to explain to the workers the provisions relating to leave with wages and other leave privileges, and to guide the workers in the matter of submission of application for grant of leave for regularising authorized absence;

f) to promote relations between the concerned departments of the factory and workers for bringing about productive efficiency as well as amelioration in the working conditions, and to help workers to adjust and adapt themselves to their working environments;

g) to advise the factory management on questions relating to-

i) training of new entrants and apprentices, where there is no arrangement for imparting training.

ii) transfer and promotion, and

iii) supervise and control the notice board and information bulletins to facilitate further education of workers and to encourage their attendance at technical institutes.

h) to encourage the formation of safety committees, Joint committees, Co-operative Societies, workers and Welfare committees and to supervise their work:

i) to advise and assist the factory management--

i) in dealing with individual personnel problems, and ii) in providing welfare facilities, such as housing facilities, foodstuff, social and recreational facilities, sanitation and education of children.

j) to bring to the notice of workers--

i) their rights and liabilities under the standing orders of the factory, and

ii) other rules defining the right and prescribing duties of workers and dealing with discipline, safety and protection of workers and the factory;

k) to establish contacts and hold consultations with a view to maintaining harmonious relations between the factory management and the workers;

l) to bring to the notice of the factory management the grievances of workers, individual as well as collective with a view to securing their expeditious redress;

m) to study and understand the point of view of labour in order to help the factory management to shape and formulate labour policies, and to interpret these policies to the workers in a language they can understand;

n) to watch industrial relations with a view to using high influence to prevent a dispute arising between the factory management and the workers, and in the event of a dispute having arisen, to help to bring about a settlement by persuasive efforts;

o) to suggest measures which will serve to raise the standard of living of the workers, and in general promote their well-being;

p) to advise the management to display the provisions of the Code of Discipline, Code of Conduct, Grievance Procedure, and other decisions of the Indian Labour Conference or Standing Labour Committee as are available or may be available subsequently;

q) to advise management to lay down "grievances procedure" and also assist the management in implementation thereof;

r) to supervise hazardous jobs, systematic plant inspection, safety education, accident prevention and investigation of accidents, in case of those factories where a Safety Officer is not required to be appointed under the provisions of section 40B of the Act.

3) The Chief Welfare Officer or a Welfare Officer shall not-

a) deal with any disciplinary case against a worker, or

b) appear before a conciliation officer or in a court or tribunal on behalf of the factory management against a worker or workers except when he is required by the conciliation officer or a court or a tribunal to appear as a witness.

13. From the conjoint reading of the aforesaid provisions it appears that the factory having 500 or more workers compulsorily requires an appointment of a Welfare Officer wherein the number varies on the strength of the workers. The Welfare Officer is given the same status as of the departmental heads of the factory and works directly under the control of the same Executive of the factory, under whom the departmental heads work. The Welfare Officer is next to the rank of a departmental head in the factory. The duties as embodied under Rule 9 of the said Rules is mainly an advisory and assistance in nature to the management, in effect the perennial nature of duties of the Welfare Officer to act as a bridge between the workmen and management relating to the affairs as indicated in Rule 9 of the aforesaid Rules.

14. The most important feature can be traced from sub-rule 3 of Rule 9 of the said Rules, which denudes the Welfare Officer to deal with any disciplinary case against the worker or to appear before the Conciliation Officer or any Court or Tribunal on behalf of the factory management against the worker except when the Conciliation Officer or the Court or Tribunal requires his presence as a

witness. It is a settled proposition of law that the nomenclature of the post is not a determinant factor, but the nature of the duties assigned to the person, both administratively or otherwise, is a primary consideration.

15. This Court does not intend to go into catena of decisions on such issue, as this Court does not find that it admits any debate thereupon; even the learned counsel for the respective parties are also ad idem to the said issue and, therefore, this Court can proceed to decide an issue whether the private respondent can be brought within the purview of "Workman" under the said Act on the strength of the nature of the duties assigned either by the management or under the aforesaid Rules.

16. The petitioner has relied upon the statements made in the evidence relating to the nature of duties performed by the private respondent. The entire tenet of the evidence does not really support the case of the petitioner, wherefrom it can be culled out that the very nature of duties entrusted upon the petitioner as a Welfare Officer was supervisory in nature; rather it is an impeachable evidence, which suggests that the private respondent was not bestowed with any independent power to take decision, but in fact works as per direction of the management.

17. As already indicated sub-rule 3 of Rule 9 does not confer any power on the Welfare Officer to deal with any disciplinary case against the worker and, therefore, the Welfare Officer cannot take any action against the worker relating to his dismissal, discharge, termination and/or penal action.

18. The foundation of the entire arguments of the petitioner is based upon the appraisal form submitted by the private respondent. There is no dispute that the petitioner has submitted the performance appraisal form relating to the management staff. In the evidence the petitioner admits to have submitted such form bearing a signature, but denies to have incorporated the particulars in his own handwriting.

19. From the aforesaid deposition it is evident that there is no denial to the execution of the said performance appraisal form as well as contents thereof, but what has been denied that those contents written are not his own handwriting. If the execution of the document and the contents thereof has not been denied, the said document is in effect accepted and can be applied and its impact on the issues in holding the proceedings can be considered by the Court.

20. According to the petitioner the execution of the said performance appraisal form and contents of the document being admitted, which apparently suggests that it is required to be submitted by a management staff, leads to an inevitable conclusion that the private respondent was employed in a supervisory capacity and discharges his functions mainly of a managerial in nature.

21. As I have already indicated that mere nomenclature is not the sole factor to decide the status of a person, but the very nature of the duties and functions

discharged is the other guiding factors. The Tribunal found that the private respondent was performing a duty to advise the factory management and to assist the said management relating to the various facilities and problems of the labourers. The Tribunal further held that since the private respondent has no power to take any penal or disciplinary action against the workers, that itself shows the perennial nature of his duties as a workman as opposed to supervisory.

22. The findings recorded by the fact finding authority or Court should not be disturbed in exercising the power of judicial review, unless there is any unreasonability, irrationality, improbability or against the settled principles of law apart from the violation of the principles of natural justice. The Writ Court should not usurp the power of the Appellate Authority/Court where the entire issues are at large, but acts within the limited periphery and restricted arena.

23. This Court does not find that any interference is called for against the order of the Labour Court and, therefore, dismisses the writ petition. There shall, however, be no order as to costs.