
(1988) 02 AP CK 0037
In the Andhra Pradesh High Court
Case No : W.A. No. 1078 of 1983

G. Venkateswara Rao

APPELLANT

Vs

Sir Silk Ltd. and Others

RESPONDENT

Date of Decision : 18-02-1988

Acts Referred:

Andhra Pradesh Shops and Establishments Act, 1966 — Section 2(10), 2(5), 40, 41

Citation : (1988) 1 APLJ 315 : (1988) 2 LLJ 375

Hon'ble Judges : Syed Shah Mohammed Quadri, J;K. Jayachandra Reddy, J

Bench : Division Bench

Judgement

Syed Shah Mohammed Quadri, J.—This writ appeal is directed against the order of our learned brother P. C. Reddy, J (as he then was) dismissing the writ petition filed by the appellant challenging the judgment of the Labour Court dated 14th March 1980 in Second Appeal No. 45 of 1979.

2. This appellant was initially appointed by the Sir Silk Limited, the first respondent, on September 17, 1963. He continued to be an employee of the first respondent till 31st October, 1966 when he was appointed by the Birla Institute of Scientific Research, the fourth respondent. He was transferred to the first respondent on 27th September 1976, but within a short time he was directed to report to Mr. Mandelia at the Office of the fourth respondent by an order dated 26th October 1976. He was further informed by the fourth respondent that his transfer to the first respondent stood cancelled. The services of the appellant were terminated on 27th October 1976. The appellant filed an appeal against the said order of the fourth respondent, terminating his services, before the appellate Authority u/s 41 of the Andhra Pradesh Shops and Establishments Act, 1966 (hereinafter referred to as "the Act") impleading both the first respondent and the fourth respondent as respondents in the appeal. The Appellate Authority, the third respondent, held that the appellant was the employee of the first respondent and not of the fourth respondent, as such the order of termination passed by the fourth respondent was illegal and directed the first respondent to

reinstate him with full back wages. The first respondent challenged the correctness of the order of the third respondent before the Labour Court, the second respondent, S.A. No. 45 of 1979. On 14th March 1980 the second respondent set aside the order of the third respondent and allowed the second appeal holding that there was no evidence to prove that the relationship of the petitioner and the first respondent was that of the employer and the employee. This judgment of the second respondent was confirmed in the writ petition.

3. Sri G. Venkateswara Rao, the appellant party in person, contended that even assuming that he was only an employee of the fourth respondent the order of termination was passed by Mr. Mandelia who was not the competent authority. According to him one Mr. Bhandari was the competent authority who had neither delegated the power to terminate the services of the appellant nor can such a delegation be valid in law even if there was such a delegation.

4. Mr. Srinivasa Murthy, the learned counsel for respondents 1 and 4 contended that against the order of termination passed by the fourth respondent no appeal lies to the Appellate Authority u/s 41 of the Act as it is not an establishment within the meaning of the Act, as such the order has become final and the appellant cannot question the same in this writ petition. It is further contended that even if the fourth respondent is held to be an establishment, as the requirements of Section 40 of the Act have been complied with and all the benefits to which an employee is entitled to have been paid, the appellant is not entitled to any relief in the writ petition.

5. We find no force in the first contention of Sri Srinivasa Murthy. From a perusal of the order of the third respondent it is clear that the appellant did raise the question that the fourth respondent is an establishment within the meaning of the Act and that the Appellate Authority considered that question, that is whether the fourth respondent Institution falls within the meaning of Commercial Establishment and held that it should be covered within the meaning of the Commercial Establishment. But in view of the finding that the appellant is an employee of the first respondent, the Appellate Authority did not grant any relief against the fourth respondent.

6. Further in the order of discharge passed by the appellant itself it is clearly stated that leave etc. will be governed by the Shops & Establishments Act. It may also be noticed that the fourth respondent in its counter as well as in the evidence admitted that for the purpose of leave etc., the employee would be governed by the Shops and Establishments Act.

The term "Establishment" is defined in Section 2(10) of the Act in the following terms,

""Establishment" means a shop, restaurant, eating house, residential hotel, lodging house, theatre or any place of public amusement or entertainment and includes a commercial establishment and such other establishment for the purpose of this Act."

A reading of this definition shows that a commercial establishment defined in Section 2(5) of the Act, is included within the meaning of an Establishment. Section 2(5) of the Act reads as follows :-

""Commercial establishment" means an establishment which carries on any trade, business, profession or any work in connection with or incidental or ancillary to any such trade, business or profession, or which is a clerical department of a factory or an industrial undertaking or which is a commercial or trading or banking or insurance establishment and includes an establishment under the management and control of a co-operative Society, an establishment of a factory or an industrial undertaking which falls outside the scope of the Factories Act, 1948 and such other establishment as the Government may, by notification, declare to be other commercial establishment for the purposes of this Act, but does not include a shop."

7. A close reading of this definition shows that the term has been very widely defined so as to include any establishment which (a) carries on any trade, business, profession in connection with or incidental or ancillary to any such trade or business profession, (b) is clerical department of a factory or an industrial undertaking, (c) is a commercial or trading or Banking or Insurance establishment (d) is under the management and control of a co-operative society (e) is of a factory or an industrial undertaking, but falls outside the scope of the Factories Act; and (f) such other establishment as the Government may, by notification declare to be a commercial establishment for the purposes of this Act. It is thus seen that an establishment of an industrial undertaking falls within the ambit of the term. This leads us to the next question as to what is an industrial undertaking ?

8. The classical judgment of the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, has explained the components of the Industrial undertaking to mean :

"Where there is (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical). (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale, (prasad or food) prima facie, there is an "industry" in that enterprise."

""Undertaking" must suffer a contextual and associational shrinkage as explained in D.N. Banerji Vs. P.R. Mukherjee and Others, , so also, service, calling and the like. This yields the inference that all organised activity possessing the triple elements above mentioned, although not trade or business, may still be "industry" provided the nature of the activity viz., the employer-employee basis, bears resemblance to what is found in trade or business. This takes into the fold of "industry" undertakings, calling and service adventures analogous to the carrying on of trade or business. All features other than the methodology of

carrying on the activity viz., in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

xx xx xx xx The consequences are (i) professions, (ii) clubs (iii) educational institutions (iv) co-operatives (v) research institutes, (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed above, cannot be exempted from the scope of Section 2(j)."

9. We shall now proceed to examine whether the fourth respondent satisfies the triple tests laid down by the Supreme Court. The fourth respondent invests the fund in movable and immovable properties, purchases and sells share. It looks after excise work and manufacturing of citronells oil. It has also within its activity growing up commercial crops like groundnut and caster and selling it to Thungbhandra Industries. One of its objects is research with the objects of improving, to secure greater efficiency, rationalisation, reduction of costs. It is thus seen that there is a systematic activity which is organised by cooperation between employer and employee and the activity is for the production and for distribution of goods. It follows that a research institute which satisfies the triple tests, (i) systematic activity (ii) organized by co-operation between employer and employee, (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, is a commercial establishment and therefore an establishment governed by the provisions of the Act. Thus, in our view the fourth respondent is an establishment within the meaning of the Act and therefore an appeal against the order of termination of services of its employees lies to the authority u/s 41 of the Act.

10. In our view the contention of Sri G. Venkateswara Rao that the order of termination passed by Mr. Mandelia, being not competent authority, is without jurisdiction, is, therefore, illegal should not detain us any longer. We have gone through the record and found that the order of termination was in fact passed by Mr. Bhandari who is admittedly the competent authority, but it was communicated by Mr. Mandelia. If the order had been passed by the competent authority, communication by the lower authority does not, in our view, vitiate the order.

11. We will now consider the next contention of the learned counsel for the respondents that the requirements of Section 40 of the Act have been complied with, so the termination of the services of the appellant is legal and valid. The services of the petitioner were terminated for want of work and during the course of the arguments it is not disputed by the appellant that pay in lieu of one month's notice or wages in lieu of one month's notice and gratuity at the rate of 15 days average wages for each year of continuous employment have been paid. As such it is not a case of non-compliance of requirements of Section 40 of the Act.

12. What is, however, contended is that the termination was arbitrary and that

the whole of the Provident Fund due to the appellant has not been paid and that only Rs. 6,000/- were paid towards Provident Fund.

13. From the facts of this case we notice that the first respondent and the fourth respondent are controlled by the same management and that though technically the appellant was found not to be an employee of the first respondent but that of the fourth respondent, the fact remains that the services of the appellant were utilised by both the establishments and that employees of the fourth respondent were frequently transferred from one establishment to another establishment. The appellant who had rendered valuable services for such a length of time has been retrenched for want of work and in the litigation about twelve years have elapsed. Though the termination of services of the appellant is in accordance with the terms of Section 40 of the Act, we cannot term it arbitrary, yet feel that the appellant has not been given the treatment which he, for his hard and unblemished services, rightly expected. In the circumstances of the case, in our view, interest of justice would be met if a direction is given to the fourth respondent to pay compensation of Rs. 10,000/- to the appellant in addition to the Provident fund if any due to him. While dismissing the writ appeal, we direct the fourth respondent to pay compensation of Rs. 10,000/- and the unpaid amount of Provident Fund within a period of four weeks from today.

14. Subject to above direction the writ appeal is dismissed. No costs.