

(2006) 09 DEL CK 0021
In the Delhi High Court
Case No : Writ Petition (C) 2920 of 2002

Ganga Parshad Tiwari

APPELLANT

Vs

Khyber Pass Mess Hostel Committee and Others

RESPONDENT

Date of Decision : 15-09-2006

Acts Referred:

Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 2, 33C(2)

Citation : (2007) 112 FLR 933

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : A.K. Jain, for the Appellant; P.R. Thakur and Jyoti Singh, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Narayan Dhingra, J.—By this writ petition, the petitioner has assailed the validity of award dated 31.1.2002 of Labour Court-III, Karkardooma, Delhi.

2. Briefly, the facts are that the petitioner made an application u/s 33C(2) of Industrial Disputes Act claiming an amount of Rs.1,02,451/- from the respondent based on an award dated 14.12.1989 passed by Labour Court-VII, Tis Hazari, management whereby he was directed to be reinstated with full back wages and continuity. The management had not reinstated him despite the award, Therefore, he claimed entire back wages, damages in lieu of quarters @ Rs. 150/- p.m. for the entire period.

3. The claim was contested by the respondent respondent's plea was that the application was not maintainable because petitioner was not a workman since the respondent was not an industry. It was contended that petitioner was working as a part-time chowkidar with the Hostel Mess Committee.

4. The Tribunal observed that in view of judgment of Supreme Court in case of MGT. of Som Vihar Apt. Owners Housing Maintenance Society Ltd. Vs. Workmen,

Indian Engg. and General Mazdoor, ," the petitioner could not be termed as a workman. Tribunal also observed that in terms of the recovery certificate issued by the Labour Commissioner determining the dues at Rs.16,008/-, petitioner has already received the amount against back wages. Workman had not proved on record any notice served upon by the management for his reinstatement before coming to court and he served notice after about four years of filing the application before the Tribunal. The petitioner was not entitled to get any salary from the management for the period after the passing of the award.

5. The award has been challenged by the petitioner on the ground that approach of the Labour Court was one sided and Labour Court acted in a malafide manner while passing the order. The petitioner pleaded that Labour Court was only to calculate the amount of money due to him from his employer in view of the previous award passed in his favor and Labour Court could not go into the question whether the petitioner was a workman or not. Order of Labour Court was perverse and illegal. Labour court by passing the present award against the workman has in way set aside the earlier award and Labour Court had no power to set aside the earlier award.

6. A perusal of the record would show that the award dated 14.12.1989 passed by Labour Court No. VII was an ex-parte award and the court had not considered the question whether the petitioner was a workman or not. The present award, which is subject matter of challenge was not before the same Presiding Officer who presided the Labour Court VII. The present proceedings were u/s 33C(2) while the earlier award was on a reference made by the appropriate government. It is settled law that the judgment and opinion of one Labour Court is not binding on the other Labour Court. It is only the judgments of High Court and Supreme Court which have binding effect on the lower courts. Labour Court No. III which passed the impugned award was not bound by the findings given by Labour Court VII. Every subordinate court has to give judgments and orders in conformity with the law laid down by High Courts and Supreme Court. The law laid down by Supreme Court has a binding effect on the lower courts under Article 14 of the Constitution of India and could not have been ignored by the Labour Court.

7. In order to maintain an application u/s 33C(2), the applicant must fulfill the character of a workman within the meaning of Section 2(s) of the Industrial Disputes Act and Labour Court is bound to adjudicate this question as without adjudicating this question it cannot grant relief under this Section. A Labour Court is free to decide this question independent of decision of any other Labour Court or any other authority under any other statute. I, Therefore, consider that the Labour Court No. III was within its right to address the question whether the petitioner was a workman or not.

8. It is undisputed that the petitioner was working as chowkidar with the respondent which is a Hostel Mess Committee. It is also undisputed that the Mess Committee was running mess for the hostellers and it was not providing

any service to outsiders. The mess committee was a cooperative effort of the hostelries to run the mess so that, they could take meals collectively. A hostelier was always free to take meal outside. The mess was being run by pooling funds by the hostelries .

9. A somewhat similar question had come for consideration before the Supreme Court in *Som Vihar Apartment owners" MGT. of Som Vihar Apt. Owners Housing Maintenance Society Ltd. Vs. Workmen, Indian Engg. and General Mazdoor, .* In this case, the society had formed an association to maintain the cleanliness in the apartments and to render certain other services personally to the apartment owners. The work persons working in the society claimed dearness allowance, house rent allowance, conveyance allowance and uniforms alleging that the association was an industry. The Hon''ble Supreme Court observed as under: Indeed this Court in *Karnani Properties Ltd. Vs. State of West Bengal and others*, noticed the distinction between such classes of workmen as domestic servants who render personal service to their masters from those covered by the definition in Section 2(j) of the Industrial Dispute Act. It is made clear that if literally interpreted these words are of very wide amplitude and it cannot be suggested that in their sweep it is intended to include service however rendered in whatsoever capacity and for whatsoever reason. In that context it was said that it should not be understood that all services and callings would come within the purview of the definition; services rendered by a domestic servant purely in a personal or domestic matter or even in a casual way would fall outside the definition. That is how this Court dealt with this aspect of the matter. The whole purpose of the Industrial Disputes Act is to focus on resolution of industrial disputes and the regulation will not meddle with every little carpenter or a blacksmith, a cobbler or a cycle repairer who comes outside the idea of industry and industrial dispute. This rationale, which applies all along the line to small professions like that of domestic servants would apply to those who are engaged by a group of flat-owners for rendering personal services even if that group is not amorphous but crystallised into an association or a society. The decision in *Rajappa* case if correctly understood is not an authority for the proposition that domestic servants are also to be treated to be workmen even when they carry on work in respect of one or many masters. It is clear when personal services are rendered to the members of a society and that society is constituted only for the purposes of those members to engage the services of such employees, we do not think its activity should be treated as an industry nor are they workmen. In this view of the matter so far as the appellant is concerned it must be held not to be an "industry. Therefore, the award made by the Tribunal cannot be sustained. The same shall stand set aside.

10. An organisation in order to qualify as an industry must satisfy the triple test laid down by the Supreme Court in *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, (i) systematic activity (ii) cooperation between employer and employee and (iii) production and distribution of goods and services calculated to satisfy human wants and wishes.

It is obvious that the production and distribution of goods and services envisaged by the Supreme Court are those which the employer produces or generates for others; if an employer produces or generates goods or services with the help of an employee for his own consumption then it cannot be said that the organisation or committee is an industry.

11. In the present case the petitioner was employed as chowkidar by the mess committee, which was not an industry. I consider the Tribunal rightly held that the petitioner was not a workman, I find no force in the writ petition and the same is hereby dismissed.