
(1999) 04 CAL CK 0023
In the Calcutta High Court
Case No : C.O. No. 1718 of 1994

General Manager, South Eastern Railway APPELLANT
Vs
Soyaba Khatoon RESPONDENT

Date of Decision : 28-04-1999

Acts Referred:

Railway Protection Force Act, 1957 — Section 10, 19, 3
Workmens Compensation Act, 1923 — Section 2

Citation : 2 CWN 284 : (2000) 85 FLR 922 : (2000) 2 LLJ 894

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : Sarajit Sen, for the Appellant; Krishanu Banik, for the Respondent

Final Decision : Allowed

Judgement

B. Bhattacharya, J.—This revisional application under Article 227 of the Constitution of India at the instance of General Manager, South Eastern Railway is directed against order, dated May 6, 1994 passed by the Commissioner, Workmen's Compensation, West Bengal, in Claim Case No. 435 of 1991 thereby holding that the husband of the opposite party was a workman within the meaning of Workmen's Compensation Act, 1923 (1923 Act), and as such the claim case filed by the opposite party claiming compensation for the accidental death of her husband was maintainable. The only question that arises for determination in this application under Article 227 of the Constitution is whether a head constable under Railway Protection Force is a workman within the meaning of the 1923 Act.

2. For appreciation of the respective submissions of the counsel for the parties it will be profitable to refer to the provisions contained in Sections 3, 10 and 19 of the Railway Protection Force Act, 1957 (RPF Act), as it stood on the date of accident and also the provision contained in Section 2(b) of the 1923 Act. The provisions are quoted hereunder:

"Section 3. Constitution of the Force. - (1) There shall be constituted and maintained by the Central government an armed force of the union to be called the Railway Protection Force for the better protection and security of Railway property.

(2) The Force shall be constituted in such manner, shall consist of such number of superior officers and members of the Force and shall receive such pay and other remuneration as may be prescribed.

Section 10. Officers and enrolled members of the Force to be deemed to be Railway servants. - The Director-General and every member of the Force shall for all purposes be regarded as Railway servants within the meaning of the Indian Railway Act, 1890 (9 of 1890), other than Chapter. VI-A thereof, and shall be entitled to exercise the powers conferred on Railway servants by or under that Act.

Section 19. Certain Acts not to apply to members of the Force. - Nothing contained in the Payment of Wages Act, 1936, or the Industrial Disputes Act, 1947 or the Factories Act, 1948, or any corresponding law relating to investigation and settlement of industrial disputes in force in State shall apply to members of the force.

2(n) "Workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is - (i) a Railway servant as defined in Section 3 of the Indian Railways Act, 1890 (9 of 1890), not permanently employed in any administrative, district or sub-divisional office of a Railway and not employed in any such capacity as is specified in Sch. II; or (ii) employed in any such capacity as is specified in Seh. II, whether the contract of employment was made before or after the passing of this Act and whether such contract is expressed or implied, oral or in writing; but does not include any person working in the capacity of a member of the armed forces of the union and reference to a workman who has been injured shall where the workman is dead include a reference to his dependants or any of them.

(2) The exercise and performance of the powers and duties of a local authority or of any departmental action on behalf of the Government shall, for the purposes of this Act, unless a contrary intention appears, be deemed to be the trade or business of such authority or department.

(3) The State Government after giving by notification in the Official Gazette, not less than three months" notice of its intention so to do, may by a like notification, add to Sch. II any class of persons employed in any occupation which it is satisfied is a hazardous occupation, and the provisions of this Act shall thereupon apply within the State to such class of persons;

Provided that in making such addition the State Government may direct that the provisions of this Act shall apply to such classes of persons in respect of specified

injuries only."

3. Sri Sen, the learned advocate appearing on behalf of the petitioner, contends that the deceased employee being a member of the armed forces cannot be said to be a workman within the meaning of the 1923 Act inasmuch as Section 2(n) of the 1923 Act specifically excludes a person working in the capacity of a member of the armed forces of the Union. According to Sri Sen, the finding of the learned Commissioner that the phrase "armed forces of the union" means only naval, military or air forces of union cannot be sustained in view of the clear language employed in the said section.

4. Sri Banik, the learned advocate appearing on behalf of the opposite party, has on the other hand supported the order passed by the Commissioner and has contended that in view of Section 10 of the RPF Act, even if it is assumed for the sake of argument that the deceased was a member of the armed forces of the union, he should be deemed to be a Railway servant and as such comes within the definition of workman. Sri Banik further strongly relied upon the provisions contained in Section 19 of the RPF Act wherein it is specifically mentioned that Payment of Wages Act, 1936, or the Industrial Disputes Act, 1947, or the Factories Act, 1948, shall not apply to any member of the Force. According to Sri Banik, the legislature did not include the 1923 Act in the said section thereby intending that RPF personnel are workmen and they can get benefit of the provisions contained in the 1923 Act.

5. After hearing the learned advocate for the parties and after going through the aforesaid provisions contained in the two Acts it is clear that in view of RPF Amendment Act, 1985, all RPF personnel are members of the Armed Forces of the Union. Section 10 of the RPF Act is a deeming provision and by virtue of the said provision the member of the Force shall for all purposes be regarded as Railway servant within the meaning of Indian Railways Act, 1890, other than Chapter VI-A thereof and shall be entitled to exercise the power conferred on Railway servants by and under that Act.

6. Therefore, by virtue of Section 10 of the RPF Act, although in reality they are not Railway servants, they should be treated as such for all purposes within the meaning of Indian Railways Act other than Chap VI-A thereof. By virtue of the said provision, a member of the Forces cannot be treated to be Railway servant for the purpose of interpretation of the other Acts including the 1923 Act. The aforesaid intention has been made clear by the definition of workman which excludes members of the armed forces of the union including RPF personnel.

7. When a person is deemed to be something, the only meaning possible is that whereas he is not in reality something, the Act requires him to be treated as if he was and as indicated in Section 10 of the RPF Act, the RPF personnel are deemed to be Railway servants only for the purpose of Indian Railways Act except Chapter VI-A.

8. As regards the other submission of Sri Banik that Section 9 of the RPF Act not

having excluded the operation of the 1923 Act specifically whereas other three Acts have been specifically excluded thereby intending that 1923 Act will be applicable, I do not find any substance in such contention. As in Section 2(n) of the 1923 Act itself RPF employee has not been recognised as a workman, reference to the 1923 Act was not given in Section 19 of the Act inasmuch as such reference would be a mere surplus.

9. Sri Banik lastly by placing reliance upon a decision of this Court in the case of General Manager, Eastern Railway v. Sukumar Indu, 81 C.W.N. 999 contended that where a Railway servant's duties are such that some of the work he does brings him within the category of workman, such person should be workman under the 1923 Act.

10. In the aforesaid case, the Division Bench was considering the meaning of the phrase i "not permanently employed in any administrative district, or sub-divisional office of Railways" occurring in Section 2(1)(n)(i) of the 1923 Act. It was held therein on the fact of that case that the work of the claimant consisted of drawing pay sheets in the office of Divisional Engineer, Eastern Railway, and he had come to his Calcutta office to get the bills passed and when returning from Calcutta on one occasion he met with an accident and as such he should be treated to be a workman within the meaning of the Act. The said decision has no application to the cases of RPF personnel who have been specifically excluded in the said definition of workman.

11. Therefore, on consideration of the aforesaid facts, I am of the view that RPF personnel although deemed to be Railway servant for the purpose of Indian Railways Act, cannot be deemed to be a workman within the meaning of Section 2(n) of the 1923 Act. Therefore, the application for compensation filed by the opposite party before the Commissioner, Workmen's Compensation was not maintainable and the Commissioner exercised jurisdiction not vested in him by law by entertaining such dispute.

12. Therefore, the Revisional application succeeds. The order impugned is set aside and it is held that the Commissioner, Workmen's Compensation had no jurisdiction to entertain the application for compensation filed by the opposite party.

13. In the facts and circumstances there will be however no order as to costs.