

(2008) 08 AP CK 0066
In the Andhra Pradesh High Court
Case No : Writ Petition No. 17150 of 2006

H. Rama Murthy

APPELLANT

Vs

K.R.D. Technologies Limited and Another

RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 2A(2), 33C(2)

Citation : (2009) 1 ALD 39 : (2009) 1 ALT 658

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V. Narasimha Goud, for the Appellant; V. Hariharan and G.P. for Labour, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The petitioner was initially employed with the 1st respondent (for short "the respondent") in the year 1980. Thereafter, he was designated as Supervisor (Civil), vide order of appointment, dated 07.07.1984, and was placed in the pay scale of Rs. 600-925. He was dismissed from service on 27.07.2001. The order of dismissal is the subject matter of I.D. No. 178 of 2005 before the Labour Court-I, Hyderabad.

2. The petitioner filed Miscellaneous Petition No. 10 of 2002 before the Labour Court, u/s 33-C(2) of the Industrial Disputes Act, 1947 (for short "the Act"), claiming certain monetary and financial benefits. They included the arrears of salary, bonus, encashment of leave etc. Particulars thereof were furnished in the petition. The respondent raised an objection as to the very maintainability of the Miscellaneous Petition u/s 33-C(2) of the Act. They pleaded that the petitioner does not answer the description of "workman" and the M.P. is not maintainable. The claim was opposed on merits also. The Labour Court dismissed M.P. No. 10 of 2002, through order, dated 15.04.2006, mainly on the ground that the petitioner is not a workman. The said order is challenged in this writ petition.

3. It is stated that though the post that was held by the petitioner was designated as Supervisor, he was not conferred with any financial, administrative or managerial powers, and as such, Clauses (iii) & (iv) of Section 2(s) of the Act are not attracted.

4. The respondent filed a counter affidavit, stating that the petitioner admitted in his claim petition, as well as evidence, that he was discharging supervisory functions. They contend that the petition u/s 33-C(2) of the Act was not maintainable, even on the admissions on the part of the petitioner.

5. Sri V. Narasimha Goud, learned Counsel for the petitioner submits that the respondent failed to establish that the petitioner was ever entrusted with the managerial or administrative functions, and the Labour Court was not justified, in dismissing the petition. Placing reliance upon several decided cases, he submits that the actual test to be applied in the facts of this case is to examine whether the employee was conferred with the power to grant leave, take disciplinary action against his subordinates, and was conferred with any financial powers. He contends that the civil works used to be got executed by the respondent by engaging contractors and virtually no employee was under the administrative or managerial control of the petitioner.

6. Sri V. Hariharan, learned Counsel for the respondent, on the other hand, submits that the salary of the petitioner was more than Rs. 1,600/- per month, and having regard to the nature of functions, that were discharged by him, he did not come within the purview of the definition of "workman" by operation of Section 2(s)(iv) of the Act. He too placed reliance upon certain decided cases.

7. In view of the arguments advanced on behalf of the parties before the Labour Court as well as this Court, it becomes necessary to deal with the scope and ambit of Section 2(s) of the Act on the one hand, and Section 33-C(2) of the Act on the other.

8. The second aspect is taken first. The actual purport of Section 33-C(2) of the Act has always been perplexing. If one goes by the tenets of ordinary adjudication, the remedy provided for u/s 33-C(2) of the Act is comparable to execution proceedings. This normally pre-supposes a prior adjudication of the rights of the parties by a competent Forum. However, if one looks at the provision as well as the decided cases, it becomes permissible, to grant relief under it, even where, no prior adjudication has taken place. Such a course, however, would be possible, if only there is no dispute about the entitlement of the workman, or the record does not permit of any other opinion, on the issue involved. In the instant case, there is no prior adjudication of the rights of the petitioner. In fact an I.D. filed by the petitioner u/s 2A(2) of the Act is said to be pending. Further there is serious dispute on each and every claim made by the petitioner. Hence the application filed by the petitioner u/s 33-C(2) of the Act was not maintainable.

9. The Labour Court had rejected the claim of the petitioner, on the ground that

he does not answer the description of "workman". For the limited purpose, let it be proceeded on the assumption that the claim was otherwise tenable, u/s 33-C(2) of the Act.

10. The remedy, under various provisions of the Act such as 2-A(2), 10 and 33-C(2), is available, if only the individual, in whose favour the remedy is claimed, is a workman. The word "workman" is defined u/s 2(s) of the Act, as under:

2(s). "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or, as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an Officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him functions, mainly of a managerial nature.

11. If one goes by the main definition, it covers the employees of various categories, irrespective of the nature of work undertaken by them, as long as they were employed in an industry. The exceptions carved out in Clauses (i) to (iv) exclude certain categories of persons from the definition. Clauses (i) and (ii) admittedly do not apply to the facts of the case. Clauses (iii) and (iv) are very important and were the subject matter of discussion in many decided cases.

12. A combined reading of Clauses (iii) and (iv) discloses that if a person is employed mainly in "managerial" or "administrative" capacity, he cannot be treated as workman, irrespective of his emoluments. This is clear from Clause (iii). Where however, a person is employed in a "supervisory" capacity, he stands excluded from the definition of "workman", in case his monthly salary is more than Rs. 1,600/-. This is the purport of the first part of Clause (iv). The second part of this clause indicates that where a person is employed in a supervisory capacity and exercises the functions mainly of managerial nature, he too would be outside the definition of "workman", irrespective of the emoluments drawn by him. To certain extent, the second part of Clause (iv) overlaps Clause (iii). The three categories, that stand excluded from the definition of "workman" under Clauses (iii) and (iv), can be summed up as under:

- (a) person employed in managerial and administrative capacity;
- (b) person employed in supervisory capacity, but drawing wages exceeding Rs. 1600/- per month; and
- (c) person employed in supervisory capacity and exercising functions, mainly of managerial nature, irrespective of the salary.

13. By their very nature, the words "administrative" and "supervisory" are not susceptible to any precise description, much less, definition. Further, the functions to be discharged by an employee in one organization would radically differ from, those to be discharged by an employee in another organization. What is an administrative or managerial function, in one organization may not be so, in other organization. In certain industries, even a person entrusted with the supervisory functions would be under obligation to do manual work, whereas in others, he may just have to oversee the functioning of others. Further, within the same organization, duties differ, depending on the divisions.

14. In *Coromandal Fertilizers Ltd. Vs. P. Venugopal and Others*, , a Division Bench of this Court made extensive reference to the Judgment of the Supreme Court in *All India Reserve Bank Employees Association Vs. Reserve Bank of India*, , which, in turn, referred to its own Judgment in *Ford Motor Company of India Ltd. v. Ford Motors Staff Union* 1953 II L.L.J. 344 (SC). It was held that much would depend upon the nature of work in the industry and such questions are either purely of fact, or mixed questions of fact and law. It was also pointed out that the High Court would be slow to interfere with the findings recorded by the Labour Court, in this regard. This Court observed inter alia as under:

It is unnecessary to multiply authorities on this aspect. Suffice it to observe that, the question whether an employee is a "workman" or not, is a mixed question of fact and law, and this Court would interfere with the finding of the Labour Court only if it is shown to be "manifestly or obviously erroneous", or where any other ground warranting issuance of certiorari is made out.

15. In *Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd. Bombay*, , the Supreme Court held that it is the primary and basic duty of an employee, that would constitute the criterion and basis, to decide whether he answers the description of "workman". The other authorities relied upon by the learned Counsel for the petitioner include the Judgments of the Supreme Court in *National Engineering Industries Ltd. Vs. Shri Kishan Bhageria and Others*, , *Ved Prakash Gupta Vs. Delton Cable India (P) Ltd.*, and *Ananda Bazar Patrika (P) Ltd. Vs. The Workmen*, . In its Judgment in *S.K. Maini Vs. M/s. Carona Sahu Company Limited and others*, , the Supreme Court observed as under:

The determinative factor is the main duties of the concerned employee and not some works incidentally done. In other words, what is in substance, the work which employee does or what in substance he is employed to do. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or

for a fraction of time does also some manual or clerical work, the employee should be held to be doing supervisory works. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of "workmen" as defined in Section 2(s) of the Industrial Disputes Act.

From this, it becomes clear that much would depend upon the nature of duties discharged by an employee. The Act itself maintained clear distinction among managerial, administrative and supervisory functions. While the employees discharging administrative and managerial functions, per se, are kept outside the definition, a supervisor is made, not a workman, if only, his salary exceeds the stipulated limits. More often than not, the confusion arises, when the powers, referred to above, are treated as similar to or interchangeable with each other. In view of the clear distinction made by the Act itself, it becomes necessary to differentiate the one from the other, though such task is fraught with its own uncertainties.

16. Reverting to the facts of the case, it is not in dispute that the appointment of the petitioner was as a Supervisor. The petitioner introduced himself in the claim petition as under:

The complainant is employee of Opposite Party since 1st Dec. 1980 (21 yrs.,). The Complainant presently was Supervisor building construction with Additional incharge of personal department of Supervisor of Security Staff at basic salary of Rs. 4,135/-(Rupees Four Thousand one thirty five only), HRA Rs. 1150 and Conveyance Rs. 950/- with other benefits and emoluments like yearly Bonus etc. The Complainant lastly drawn salary is Rs. 6,305/-.

Rest of the petition is devoted to the description of the items of claims, such as arrears of salary, increments, bonus, encashment of leave, medical reimbursement, conveyance bills. The respondent took a specific plea that the petitioner was admittedly a supervisor, with emoluments exceeding Rs. 1,600/- per month and as such, he does not answer the description of "workman". In view of the fact that the petitioner described himself as supervisor and admitted that the salary exceeded Rs. 1,600/- per month, heavy burden rested upon him to prove that he does not come within the exception of Clause (iv) of Section 2(s) of the Act. His chief examination was mostly devoted to substantiation of the claims and the alleged harassment meted out to him by the respondent. All the same, it was elicited in his cross-examination as under:

I was also supervising the civil construction work within the premises. It is not true to say that I was also supervising the security staff regarding their attendance, payment of salary etc. I was also attending manual work. It is not true to say that I was supervising work of Security etc. and that I never performed manual job.

17. From the pleadings and evidence of the petitioner, it becomes evident that he was discharging supervisory functions. Emphasis of the petitioner was mostly about his control over the security wing. At any rate, that was an additional function assigned to him. His basic function was to supervise the civil works. The petitioner himself understood his functions as supervisory in nature. He pleaded and deposed to the same effect. The Labour Court has discussed these aspects and arrived at the conclusion that the petitioner is not a "workman" within the meaning of Section 2(s) of the Act. The said finding is supported by cogent reasons and undisputed evidence. Therefore, this Court is not inclined to interfere with the order passed by the Labour Court.

18. The writ petition is, accordingly, dismissed. There shall be no order as to costs.