

(1993) 08 P&H CK 0170

In the Punjab And Haryana At Chandigarh

Case No : Latters Patent Appeal No. 822 of 1992

Haryana Land Reclamation and Development Corporation Ltd.

APPELLANT

Vs

Pawan Kumar

RESPONDENT

Date of Decision : 24-08-1993

Acts Referred:

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

Citation : (1994) 106 PLR 107

Hon'ble Judges : S.D. Agarwala, C.J.;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Govind Goel, for the Appellant; M.M. Kumar and Pawan Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Agarwala, C.J.—This judgment will also dispose of LPA No. 820 of 1992, C.W.P. No. 13106, 14160 & 14161 of 1991 and CWP No. 6385 of 1992 as common question of law is involved therein and all these cases were heard together. For facility of reference, facts have been taken from LPA No. 822 of 1992.

2. The appellant is Haryana Land Reclamation and Development Corporation Limited (hereinafter to be referred to as the Corporation) having its registered office at Chandigarh. Its main object is to undertake, assist, aid, finance, execute and pro mote measures for land development, conservation and improvement of soil and water resources.

3. Pawan Kumar respondent was appointed as a clerk-cum- typist in the above Corporation on 31st March, 1989 on adhoc basis. His case is that he was retrenched by an order dated 18th July, 1991. He filed a writ petition challenging the order of retrenchment on the ground that he had completed more than two years and in any case more than 240 days in the preceding twelve calendar months when the impugned order of retrenchment was passed. The

retrenchment order has been annexed as Annexure P-1 to the writ petition. In the retrenchment order, it was categorically stated that while the turn over of the Corporation increased to Rs. 12.00 crores during the year 1990-91 as compared to Rs. 10.80 crores during the year 1989-90, the increased expenditure on manpower and for other financial reasons, the Corporation suffered a net loss of Rs. 35 lacs during the year 1990-91 as compared to a net profit of Rs. 49.45 lacs during the year 1989-90. In the light of heavy financial losses to the Corporation during the year 1990-91 and also in view of the fact that sale of fertilisers besides insecticides has been considerably less than anticipated in the last few months, and also due to other economic factors, it had become uneconomical to carry on the business activities of the Corporation at its present strength of staff. As such it was necessary to reduce clerical staff as well, as peons who were recruited to assist in monitoring and maintaining the record of transactions as their services were no longer required.

4. By the said order eleven clerks-cum-typists were declared surplus to the requirement of the Corporation as their retention in service any more would adversely affect the economic viability of the Corporation and was likely to result in increased losses. Eleven employees, mentioned in the order, were consequently retrenched who were adhoc employees of the Corporation. All the employees were served with a notice along with cash equivalent to one month wages, in lieu of notice period, and the retrenchment compensation due u/s 25F of the Industrial Disputes Act, 1947 (hereinafter to be referred to as the Act).

5. Pawan Kumar respondent was appointed, as already stated, as an adhoc employee and it is admitted that he was working in the head office of the Corporation. He filed the writ petition on the ground that the order of retrenchment dated 18th July, 1991 is violative of Section 25N of the Act and consequently it is liable to be set aside. His case was that under clause (b) of sub-section (1) of Section 25N of the Act, it was mandatory for the Corporation to obtain prior permission of the Government before retrenching a workman who has been in continuous service for not less than one year and since no permission had been taken for retrenchment, the retrenchment order was wholly invalid. His further case was that he was not given three months notice in writing nor paid in lieu thereof as required by clause (a) of sub-section (1) of Section 25N of the Act.

6. The petition was allowed by the learned Single Judge vide judgment dated 15th July, 1992 holding that the Corporation is an industrial establishment and as such it was necessary before retrenchment of its employees that the Corporation should have complied with the requirements of Section 25N of the Act and since this has not been done, the impugned retrenchment order was wholly invalid.

7. The Corporation has now filed the present appeal against the order of the Learned Single Judge dated 15th July, 1992.

8. Section 25N of the Act is contained in Chapter V-B of the Act which provides

for special provisions relating to lay off, retrenchment and closure in certain establishments. Section 25K of the Act specifically lays down that the provisions of this Chapter will apply to an industrial establishment in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.

9. Section 25L(a) defines "Industrial Establishment" for the purposes of this chapter as follows:-

" "industrial establishment" means -

(i) a factory as defined in clause (m) of Section 2 of the Factories Act; 1948(63 of 1948);

(ii) a mine as defined in clause (j) of sub-section (1) of Section 2 of the Mines Act, 1952(35 of 1952); or

(iii) a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951(69 of 1951)."

10. Section 25N of the Act lays down the conditions precedent to the retrenchment of a workman. Sub-sections (1) and (2) of the said section are relevant for the purposes of the decision of this appeal and hence are quoted below: -

"25N Conditions precedent to retrenchment of workman:-

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(a) the workman has been given three months" notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner."

11. Sub Section (1) provides that no workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by the employer until he fulfills the conditions laid down in sub Sections 1(a) and (b) of Section 25N of the Act. Since Section 25N of the Act is contained in Chapter V-B of the Act. it is apparent that in order to make Section 25N of the Act applicable,

the workman must be employed in any "industrial establishment". "Industrial Establishment" for the purposes of this Chapter means a factory as defined in clause (m) of Section 2 of the Factories Act, 1948.

12. From the above, it is clear that Section 25N of the Act would be applicable to a "factory" as defined u/s 2(m) of the Factories Act, 1948 in which not less than hundred workmen were employed.

13. Section 2(m) of the Factories Act, 1948 which defines a factory is quoted below:-

"2(m) "factory" means any premises including the" precincts thereof-

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, --" but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952) or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place."

14. According to the definition of the word "factory" which has been quoted above, "factory" means any premises, including the precincts thereof and in any part of which a manufacturing process is carried on. In the circumstances before a Corporation can be held to be an "industrial establishment", it must have firstly hundred workmen employed with it; must have premises including the precincts thereof and further it must be carrying on a manufacturing process. These are all questions of fact and unless these facts are proved on the basis of evidence, it could not be held that a particular Corporation is an "industrial establishment."

15. The word "manufacturing process" has also been defined in Section 2(k) of the Factories Act which reads as follows:-

"2(k) "manufacturing process" means any process for -

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance, or,

(iii) generating, transforming or transmitting power, or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage."

16. The definition of the word "manufacturing process" is very wide and whether a particular factory is carrying on the process is also a question of fact which can only be determined on the basis of facts which come on record after the parties get an opportunity of leading evidence, if it is not admitted.

17. In our opinion, therefore, in a case where it is disputed that a particular Corporation is an "industrial establishment", the proper remedy available to a person, who has been retrenched, is to take steps under the Industrial Disputes Act for reference of such a dispute to the appropriate authority under the Act which authority would after considering the evidence on record determine as to whether the Corporation is an "industrial establishment" or not. The determination of the question whether a Corporation is an "industrial establishment" or not is a vital question for the existence of a Corporation itself and it has very wide ramifications. In the circumstances to decide it purely on the basis of some stray averments made on affidavits in which the allegations are denied would result in great injustice to the parties. In the circumstances and in our opinion it would not be a proper exercise of discretion in interfering under Article 226 of the Constitution in such a case.

18. It is pertinent to state here that "industrial establishment" is defined in Section 2(ka) of the Act meaning an establishment in which any industry is carried on. A proviso has been added to this definition to the effect that where several activities are carried on in an establishment and only one or some of such activities is or are an industry or industries, then, if such establishment being an industry, is severable from the other units of such establishment, such unit shall be deemed to be a separate industrial establishment. The effect of the definition is that if an industrial establishment has more than one industrial units and if such units are severable then each unit shall be deemed to be separate industrial establishment.

19. The word "industry" has been defined in Section 2(j) of the Act which is a very wide definition and means any systematic activity carried on by co-operation, between an employer and his workmen for the production, supply or , distribution of goods or services with a view to satisfy human wants or wishes. We have only stated relevant portion of the definition. It is, therefore, apparent that the word "industrial establishment" as defined in the Act has a very wide amplitude, and since the intention of the word "industrial establishment" for the purposes of Chapter V-B of the Act, it laid down that so far as Chapter V-B of the Act is concerned which contains Section 25N of the Act relating to retrenchment, it would mean a factory as defined u/s 2 of the Factories Act. The word "factory" as defined under the Factories Act only means any premises including the precincts thereof. In the circumstances when the question of considering the applicability of Section 25N of the Act is concerned, it would apply only to an "industrial establishment" which has premises including the precincts thereof. In the instant case admittedly it has not been found by the learned Single Judge

that the Corporation has got any particular premises or precincts. It is also admitted on record that the writ petitioner was working in the head office. Prima facie, therefore, it cannot be said that the writ petitioner was working in an industrial establishment unless it is proved to the contrary.

20. We will now refer to a few averments which have been made in the petition relating to the question as to whether the appellant Corporation is an industrial establishment or not. In Paragraph 3 of the writ petition it has been stated that appellant Corporation is and industrial establishment regularly engaged in the business of land levelling, land reclamation, production of quality seeds and sale of gypsum and various fertilizers, pesticides, insecticides etc. The contents of this para have been denied in the written statement. It was clearly averred in paragraph 3 of the written statement that the Corporation is not engaged in any industrial activity so as to be covered within the purview of the "factory" as defined under the Factories Act. It has been further averred that one of the major functions of the Corporation is land reclamation which is undertaken by it by purchase of gypsum and selling the same to the farmers for its utilisation by them for the purpose of reclamation of the land and removal of alkalinity. The Corporation neither manufactures anything nor uses gypsum directly and entire activity of it is trading. Two other activities of the Corporation are mentioned in this paragraph which are land levelling and sale of fertilizers at its various sale points throughout the State of Haryana. It was also stated that none of these activities had any manufacturing process.

21. In the circumstances, from the above pleadings of the parties, it is clear that there was a serious dispute of fact as to whether the activities of the Corporation could amount to a manufacturing process so as to make the Corporation an "industrial establishment".

22. During the hearing of the petition by the learned Single Judge affidavits were filed. One affidavit was of Sh. A.D. Malik, Managing Director of the Corporation dated 22nd August, 1991. In para 1 of this affidavit, it was categorically averred that the Corporation has agricultural farm at Hissar and grows various seed products, such as, cotton, barley, wheat, gram and oil seeds etc. as per the seed production programme assigned to it by the Haryana Seeds Development Corporation and the seed grains so grown are sold to Haryana Seeds Corporation and as such no activity takes place which involves any manufacturing process.

23. Another affidavit of Shri B.R. Dhiman, Secretary of the Corporation dated 4th February, 1992 was filed. In para No. 2 of the affidavit, it was categorically stated that one of the major activities of the Corporation is land reclamation which is carried out by the sale of gypsum to the farmers. The Corporation is the sole selling agent of gypsum in the State. The Corporation purchases gypsum from Rajasthan State Mineral Development Corporation and Rajasthan State Mines and Minerals Ltd. in the packs of 50 kgs. These packs are sold at the sale points of the Corporation and through the dealers authorised by it.

24. In Paragraph 3 of the affidavit it has been further stated that as regards the sale of fertilizers, pesticides and weedicides, the Corporation receives supplies from various manufacturers in packs and these packs are sold as it is by the Corporation at its sale points.

25. Thus we find that gypsum, pesticides and weedicides received by the Corporation in packs from various manufacturers are sold in as it is condition at its various sale points. It is, there fore, clear that there is no activity of packing which can be called a manufacturing process. The packs which are received are sold as it is to the various customers.

26. The writ petitioner, however, has also filed a supplementary affidavit dated 22nd August, 1991 in which the statement is made in regard to the seeds grown by the Corporation. In Paragraph 5, it has been stated that the seeds grown by the Corporation are subject to various processes before obtaining certificate from the Seeds Certifying Agency. These processes include cleaning, finishing and treating of the seeds, before they are got certified. This fact stands controverted by the affidavit of Shri A.D. Malik dated 22nd August, 1991, already referred to above, wherein it has been stated that the seeds as grown are sold directly to the Haryana Seeds Development Corporation and it is the Haryana Seeds Development Corporation which subject the same to various processes before obtaining the certificate from the Seeds Certifying Agency.

27. Another affidavit of the writ petitioner which has been placed on record is dated 24th August, 1991 in which averments have been made with regard to how the altering or reclamation of the land is done in order to make it fit for cultivation. Nothing has been stated with regard to any process which can be called a manufacturing process. In any case, even if the entire evidence relating to manufacturing process mentioned above is considered, it cannot conclusively be held that the Corporation was carrying on any manufacturing process which could come under the definition of the word "industrial establishment".

28. The learned Single Judge in the impugned judgment by merely quoting what are the objects of the Corporation has come to the conclusion that the Corporation is carrying on manufacturing process. The learned Single Judge further held that gypsum etc. is received in bulks by the Corporation and after the same is packed in packages of different sizes, the same are sold by the Corporation. This finding on the facts of it is erroneous as it has been categorically stated by the Corporation that the gypsum is received in packs and the packs are sold as it is by the Corporation. The memorandum of association of any corporation contains many objects. So far as the present Corporation is concerned, its main object is to undertake, assist, aid, finance, execute and promote measures for land development, conservation and improvement of soil and water resources such as reclamation of land including reclamation of alkaline soils and revine and gullied areas etc. All these objects relate to the development of the land for agricultural purposes. The Corporation may be having many other objects but unless any industry is established by the Corporation in view of the

objects of the Corporation, it cannot be said that the Corporation is an industrial establishment. This essentially is a question of fact. So far as question of sale of gypsum is concerned, after the packs are received, they are sold by the Corporation as it is so it cannot prima facie be said that there is any manufacturing process in the sale of gypsum packages.

29. In view of the above, we are of the opinion that prima facie the finding recorded by the learned Single Judge that the Corporation is an industrial establishment cannot be sustained and we consequently set aside the said finding. It is made clear that we are not finally recording a finding that the Corporation cannot be called an industrial establishment. This is a question of fact which has to be determined in appropriate proceedings after opportunity is given to the parties to lead evidence in support of their respective cases. We have already observed that the writ petitioner has efficacious alternative remedy by taking proceedings under the Industrial Disputes Act for determination of the question as to whether the Corporation is an industrial establishment or not and as such the retrenchment order passed against him is a valid order or not. We consequently allow the appeal, set aside the judgment of the learned Single Judge and make it clear that it will be open to the writ petitioner, if so advised, to take proceedings for reference under the Industrial Disputes Act as is open to him in law. The writ petition is dismissed. No costs.