
(1992) 03 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 2128 of 1980 & Civil Writ Petition No. 2128 of 1980

Indian Sulphacid Industries Ltd.

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 06-03-1992

Acts Referred:

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

Citation : (1992) 65 FLR 705 : (1993) 1 LLJ 496

Hon'ble Judges : H.S. Bedi, J

Bench : Single Bench

Advocate : R.S. Mittal and S.P. Soi, for the Appellant; K.S. Keer, for the Respondent

Final Decision : Allowed

Judgement

H.S. Bedi, J.—As per averments in the writ petition, respondent No. 2 (hereinafter called "the respondent") was engaged by the petitioner-company as Labour Law Adviser on retainership basis at Rs. 125 per month in the year 1967 to look after its interests before the Labour Court and conciliation authorities set up under the Industrial Disputes Act, 1947 (hereinafter called "the Act"). On January 4, 1979, the respondent wrote a letter to the petitioner-company requesting for an increase in his emoluments to Rs. 500 per month and by way of justification, it was stated as under:

"You know that I appear before High Court judges as well as Tribunals and, therefore, the charges paid to me are very less and a disgrace to both sides and then you know my intelligence, that even I have assisted Shri Palkhivala in some matters of legal importance and even he reads me with interest and then the present pay is highly incommensurate with my laurels and legal wisdom. Please, therefore, be obliged to consider my case cheerfully."

2. The petitioner-company,, however, did not accede to the demand of the respondent and, vide communication dated May 3, 1979 (Annexure P-2 to the

petition), he was informed that with effect from May 1, 1979, remuneration to him would be given on per case and not on monthly basis. The respondent thereupon moved an application (copy Annexure P-3 to the writ petition) before the Labour Court u/s 33C(2) of the Act claiming certain amounts allegedly due to him. Vide ex-parte order (Annexure P-4 to the writ petition), the Labour Court allowed the application and ordered the payment of a sum of Rs. 6,220. The petitioner thereafter moved an application before the Labour Court for setting aside the ex-parte award but while the matter was yet pending, approached this court by way of the present writ petition impugning the order, Annexure P-4. At the time of motion hearing, stay of operation of the impugned order was granted which is in operation till today.

3. The stand of the petitioner in the writ petition was that there was no relationship of master and servant between the petitioner and the respondent as he was a self-employed person rendering professional services to a number of organisations and, as such, did not fall in the category of a workman as defined in Section 2(s) of the Act. It was also averred that the payments being made to the respondent were in the nature of a retainerhip and not in the nature of salary. In the written statement filed by the respondent, the averments made by the petitioner were denied and it was pleaded that the respondent was employed on a part-time basis for a remuneration of Rs. 125 per month which necessitated his visit to the factory at Shahbad every Saturday afternoon for supervising the maintenance of provident fund account registers and other works relating to the labour employed by the petitioner. Reliance has been placed by the respondent on the findings of fact recorded by the Labour Court, vide order Anneuxre P-4.

4. After hearing learned counsel for the parties, I find that the petition deserves to succeed. It has been argued by Mr. R.S. Mittal, learned senior advocate, appearing for the petitioner that the respondent was employed on retainerhip basis as will be clear from the communication, Annexure P-1. It has been urged that a reading of said letter, particularly the words quoted above, is indicative of the fact that the respondent was a practising lawyer who appeared before High Court Judges as well as Tribunals and had been assisting Mr. Palkhivala, in matters of legal importance. Reliance has also been placed on a letter, Annexure P-2, written by the petitioner to the respondent in which it is clearly stated that the payments with effect from May 1, 1979, would be made on per case and not on monthly basis. On the strength of these arguments, it is urged that the element of control of the petitioner over the working of the respondent was lacking and the relationship between the parties depicted it to be a contract for service rather than a contract of service. For the above proposition, reliance was placed on *Shri Birdhichand Sharma Vs. First Civil Judge Nagpur and Others*, *Lakshmipathi (Dr. T.N.) Vs. Standard Vacuum Oil Company, Ltd. and Another*, *Achutha Achar Vs. Sharada Jewellery Mart and Another*, and *Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another*, In *Birdhichand Sharma's case*, (supra), it was held by the Supreme Court of India that the prima facie test whether the relationship of master and

servant or employer and employee existed between the parties was the existence of the right in the employer not merely to direct what work was to be done but also to control the manner in which it is to be done although the control visualised was incapable of being precisely defined on account of different situations prevailing in different organisations or industries. In Standard Vaccum Oil Company's case (supra) the Court found that a doctor employed on part-time basis on retainerhip was not an employee so as to create relationship of master and servant. The matter reiterated in Achutha Achar's case (supra). The case law was re-examined by the Supreme Court in Silver Jubilee Tailoring House, (supra) and the court found that the control over the working of the employee was not only an important factor but in many cases a decisive factor, in order to determine whether the relationship of master and servant existed. Applying the ratio of the aforesaid judgments to the facts of the present case, I am of the view that on the facts as admitted by the respondent as per Annexure P-1 itself, it is clear that there was no element of relationship of employer and employee or master and servant between the contesting parties. It bears repetition that the respondent himself conceded that he was appearing before the High Court Judges and the Tribunals and as such it was an implied admission that he was a practising advocate. An affidavit dated August, 7, 1980, filed by the respondent to the effect that he was neither a registered advocate nor a pleader is obviously inaccurate keeping in view the facts stated above as also the fact that in the caption to Annexure P-1, the respondent has identified himself as a Government Pleader to the Chandigarh Administration. It also appears to me that the respondent had been working on a fixed retainerhip of Rs. 125 per mensem since 1967, until he made the application, Annexure P-1, in January, 1979, and it is difficult for me to believe that had the employment of the respondent been on part-time basis, he could have continued on the same emoluments for almost 12 years. In this back-ground, it is significant that, vide Annexure P-2, the petitioner undertook to pay the respondent on per case basis and not on monthly basis henceforth.

5. Mr. Keer, learned counsel for the respondent, has placed reliance on Rajesh Garg v. Punjab State Tubewell Corporation Ltd. (1985) 1 PLR 153, and V. P. Gopala Rao Vs. Public Prosecutor, Andhra Pradesh, I have gone through these authorities and find that they are not applicable to the facts of the present case. In Rajesh Garg's case, (supra) it was the admitted case that the petitioner was employed as a legal assistant and it was on that basis that he was held to be a workman and entitled to the benefits under the Act. In V.P. Gopala Rao's case (supra), it is held although on very different facts that it is a question of fact as to whether relationship of master and servant exists in a given case.

6. Mr. Keer has also urged on the basis of V.P. Gopala Rao's case, (supra), that the dispute raised in the writ petition as to the relationship inter se the parties is one of disputed fact and this Court should not upset the order of the Labour Court on this aspect of the matter. It has to be noted, however, that the order of the Labour Court was an ex-parte one and the facts of the case are so glaringly

eloquent that the only inference that can be drawn is that there was no relationship of master and servant between the parties.

7. For the reasons recorded above, this writ petition is allowed and order Annexure P-4 is quashed with no order as to costs.