
(1992) 11 AP CK 0026

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10954 of 1987

J. Philips

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 13-11-1992

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1994) 2 LLJ 750

Hon'ble Judges : P. Venkatarama Reddy, J

Bench : Single Bench

Advocate : G. Bikshapathy, for the Appellant; Govt. Pleader and K. Srinivasa Murthy, for the Respondent

Final Decision : Dismissed

Judgement

P. Venkatarama Reddy, J.—The Award of the Labour Court, Hyderabad dated February 17, 1987 in I.D. No. 46 of 1981 is being challenged in this writ petition. The petitioner was an employee of the second respondent company before he was dismissed from service on January 7, 1977. At that time he was working as departmental Supervisor in-charge of material warehouse, having been promoted to that post on July 16, 1976 on probation for a period of one year. Earlier he was working as Head Clerk. The allegation against him was that when he was the Factory Head Clerk, there was an excess issue of huge quantity of cigarettes and that this loss had occurred on account of the dereliction of duties on the part of the petitioner in not checking up the records properly. The dismissal was preceded by an enquiry. The petitioner after having recourse to the conciliation machinery under the Industrial Disputes Act (hereinafter referred to as the Act), raised the industrial dispute questioning the order of dismissal. This dispute was referred to Labour Court for adjudication u/s 10(1)(c) of the Act. The reference was in the following terms:

"Whether the dismissal of Sri J. Philips by the management of Vazir Sultan Tobacco Company Limited is legal and justified? If not, to what relief he is

entitled?"

The following points were framed by the Labour Court for its consideration:

1. Whether the petitioner is a workman or a Supervisor?
2. Whether the respondent-management satisfactorily established the misconduct alleged against the petitioner?
3. If so, whether the order of dismissal of the petitioner is just in this case?

2. Before the Labour Court, the petitioner examined himself as W.W.I. On behalf of the Management, one witness, who was employed in a similar capacity as the petitioner, was examined. Certain documents were also marked. The Labour Court on appreciation of the oral and documentary evidence, came to the conclusion that the petitioner is not a workman within the definition of Section 2(s) of the Act and therefore the reference itself is not maintainable. In that view, the other two points were not considered and decided by the Labour Court. Challenging the said award, the present writ petition is filed.

3. The case of the Management was that the petitioner was drawing a salary of more than Rs. 500/- p.m. i.e., above the prescribed ceiling limit placed by Clause(iv) of Section 2(s) of the Act as it then stood and he was appointed as Supervisor and performing the duties of Supervisor and therefore, stands excluded from the main part of the definition of Section 2(s) of the Act. This contention found favour with the Labour Court.

4. The finding of the Labour Court has been attacked by the learned Counsel for the petitioner Sri G. Bhikshapathy, contending that it betrays the lack of appreciation of the well-settled legal principles governing the question whether an employee is a workman and the finding is perverse. It is also contended that certain material aspects of the evidence has not been considered by the Labour Court. In short the submission is that the Award is vitiated by legal j errors apparent on the face of the record. The learned Counsel for the respondent No. 2 Sri K. Srinivasa Murthy has contended otherwise and submitted that the finding of the Lower Court is amply justified by the evidence on record. He pointed out the well-known limitations on the exercise of the jurisdiction of this Court to issue a writ of certiorari and said that even if there is wrong appreciation of evidence, the Award is beyond the scope of interference by this Court; under Article 226 of the Constitution of India.

5. It is now well-settled that the test to be applied to decide whether an employee is a workman is to take into account his basic or; primary duties and the dominant purpose of his employment. An incidental performance of supervisory duties will not impress his employment with the character of supervisory capacity. The mere designation as Supervisor is not decisive. The focus shall be on the nature of the duties (vide *Arkal Govind Raj Rao v. Ciba Geigy of India Ltd.*) (1985 LLJ 401). In some of the cases, the power of assignment of the duties and distribution of work among the workers has been

considered to be an indicia of a person being a Supervisor or Manager (vide All India Reserve Bank Employees Association Vs. Reserve Bank of India, . It was also held in those decisions that the mere check of work of others such as check of accounts cannot be said to be a supervisory function. In some cases the power to appoint or to take disciplinary action against workman were considered to be relevant factors (vide Ved Prakash v. Delton Cable India) (1984 1 LLJ 546). In the case of Arkal Govind Raj Rao (supra), the Supreme Court held that the distribution of work among persons working in the same group by a leader of a group did not change the clerical character of the workman.

6. The question is: Whether on the basis of the evidence adduced by both the parties, the conclusion reached by the Lower Court can be said to be perverse in the sense that no reasonable body of persons could have arrived at that conclusion on that evidence and whether the Lower Court ignored the tests laid down in the decided cases bearing on the question whether an employee is a workman?

7. The first thing to be noticed is that in the order promoting the petitioner (Ex. W-8), it is specifically stated as under:

"It is a condition of your employment that you, having supervisory and managerial functions, shall not be a member of or take part in or be associated with the activities of any workers" and clerical staffs Trade Union(s) in connection with the Company or otherwise".

Admittedly, the petitioner is not governed by the memorandum of settlement entered into between the Management and Workers' Union. The supervisory staff have an association of their own of which the petitioner is a member. Coming to the nature of job performed and the responsibilities shouldered by the petitioner, we have the evidence of petitioner as W.W.I. The petitioner stated that he was in charge of the general administration of material warehouse section comprising of 8 (eight) godowns and he was also in charge of supervision of 7 clerks, 2 checkers and 18 general workers. At the same time, the petitioner says that he was not allocating labour for various jobs. However, M.W.I. stated that he was allocating the jobs for the workers reporting to him. The Labour Court disbelieved the version of the petitioner on this aspect and preferred to believe the other version that a departmental Supervisor was also allocating work to the workers and clerical staff. W.W.I. stated that he sanctioned leave to the persons working under him, subject to the final sanction of the purchasing department. He denied the suggestion that he was making annual assessment of the work of daily-rated workmen. He stated "It is true that I was supervising the work of 7 clerks, 2 checkers and 18 general workers, who were reporting to me". He also admitted that he was responsible for the maintenance of accounts and proper maintenance of records and timely preparation of all statements, particularly the godown stock statement. He also said that he used to periodically check and certify the entries in warehouse stock registers. Of course these two duties "by themselves do not constitute supervisory duties.

8. As against this evidence of W.W.I, M.W.I, who was working as departmental Supervisor in the year 1983, categorically stated that he was supervising the work of workmen and clerical staff and allocating jobs to them as well. He also stated that he was sanctioning and refusing leave for the workers. He stated that he was performing the duties mentioned in Ex.M-3 which are extracted in page 3 of the counter-affidavit filed in this writ petition. He further stated that he was evaluating the workers' performance. He further stated that he could initiate the disciplinary action and the final decision was left to the personnel Department.

9. The Labour Court apart from commenting that the petitioner's version that he was not allocating the jobs to the workmen working under his supervision was wrong, has disbelieved the petitioner's statement that he was not issuing gate passes for the material. The Labour Court also held. that one of the functions of the departmental Supervisor was to assess the performance of workmen engaged in that section.

10. On the basis of the above evidence, it is not possible for me to say that the finding reached by the Labour Court was not backed by any evidence or that the conclusion reached by the Labour Court is wholly unreasonable or perverse. Undoubtedly I cannot sit as an Appellate Court and consider the sufficiency of the evidence. The mere fact that the Labour Court could have analysed the evidence in a more detailed manner and referred to the tests laid down in the decided cases does not ipso facto render the impugned award invalid. May be, that the Labour Court could have written a more satisfactory order. But it cannot be said that on the evidence before the Labour Court, the conclusion which it reached cannot be sustained at all. It cannot also be said that any wrong tests or criteria were applied by the Labour Court while arriving at the conclusion it did. The judgment of the Supreme Court in Ved Prakash's case (supra) and the judgment in Arkal Govind Raj Rao's case (supra) on which strong reliance was placed by the learned counsel for the petitioner do not help the petitioner. It is trite to say that the facts of each case have to be considered and evaluated. The facts emerging from the record in the instant case cannot be compared with the facts obtaining in those cases.

11. The learned counsel for the petitioner contended that a Canteen Supervisor who controls the workmen being admittedly a workman, there is no reason why the petitioner shall not be regarded as workman. But, it is clear from the evidence of the petitioner as well as M.W.I that the departmental Supervisor is of superior rank than that of the Canteen Supervisor. There is no evidence about the duties and working pattern of the Canteen Supervisor. It is therefore difficult to accept this contention.

12. The learned counsel for the petitioner then contended that the Management failed to furnish the relevant documents such as leave applications, assessment reports etc., to substantiate its case. It is true that the Management could have produced those records to dispel any controversy in this case. But, merely on that account, I am not inclined to disturb the finding of the Labour Court. If I dp

so, I will be entering into the arena of appreciation of evidence or going into adequacy or sufficiency of evidence which is not permissible for me to do in exercise of jurisdiction under Article 226 of the Constitution of India. I do not therefore see any merits in this writ petition. It is accordingly dismissed.