

(1990) 03 AHC CK 0048
In the Allahabad High Court
Case No : Writ Petition No. 3664 of 1986

Jagdish Prasad Sinha

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

Date of Decision : 26-03-1990

Acts Referred:

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

Citation : (1991) 62 FLR 562 : (1992) 2 LLJ 33

Hon'ble Judges : S.N. Sahay, J

Bench : Single Bench

Advocate : S. Agarwal and I.H. Farooqui, for the Appellant; C.S.C. and J. Bhalla, for the Respondent

Final Decision : Allowed

Judgement

S.N. Sahay, J.—This is a petition under Article 226 of the Constitution for quashing an order of the Labour Court, Lucknow, dated March 18, 1985, contained in Annexure 6 and for directing the respondents to pay bonus to the petitioner for the period from 1973-74 to 1982-83 and onwards.

2. The petitioner moved an application u/s 33-C(2) of the Industrial Disputes Act, 1947 before the Labour Court for computation of an amount of Rs. 5,317.53 paise on account of bonus due to him for the period of 1973-74 to 1982- 83. The case of the petitioner Jagdish Prasad Sinha is that he was appointed as Head Master of Ganga Devi Primary School which is an Institution run by Laxmi Sugar and Oil Mills Ltd. Hardoi. The Sugar Undertaking, belonging to the said Mills, has been taken over by the State Government under the U.P. State Sugar Undertaking (Acquisition) Act, 1971, and vests in the U.P. State Sugar Corporation. It is stated that bonus has been paid to the petitioner for the year 1972-73, but not thereafter and hence the writ petition.

3. The writ petition has been contested on behalf of Sugar Corporation on the ground that the petitioner was not an employee of the Laxmi Sugar and Oil Mills

Ltd. and has not become an employee of the Sugar Corporation after the acquisition of the Sugar Undertaking. Ganga Devi Primary School is an Institution run by a Managing Committee and was only given financial aid/grant from time to time by the said Mills. The Sugar Corporation, it is asserted, is therefore not liable to pay anything to the petitioner towards bonus. It is also stated that if there is any liability for payment of bonus, it should be enforced against the said Mills.

4. The Labour Court has found that there is no dispute that the petitioner is a teacher employed in Primary School mentioned above. However, it took the view that the petitioner is not a workman within the meaning of Section 2(s) of Industrial Disputes Act, 1947 and hence the application u/s 33-C(2) thereof made by petitioner is not maintainable. In taking this view the Labour Court relied on Mr. Karthiyayani and Others Vs. Union of India (UOI) and Others, The application filed by the petitioner u/s 33-C(2) was accordingly rejected.

5. After rejection of the said application, the petitioner filed a Writ Petition No. 3940 of 1985 for bonus being paid to him. The said writ petition was dismissed by a Division Bench of this Court on April 30, 1989 on the ground that the order of the Labour Court dismissing the application u/s 33-C(2) had not been challenged. Copy of the judgment delivered in the said writ petition has been filed as Annexure 7. After that the present writ petition was filed by the petitioner.

6. It is urged on behalf of the petitioner that the Labour Court has taken an erroneous view that the petitioner is not a workman. There is force in this submission. The decision in Karthiyayani's case cited above was given on the basis of the fact that the work of teaching is not skilled or unskilled manual work. This view cannot be accepted as sound after the decision of the Supreme Court in S.K. Verma Vs. Mahesh Chandra and Another, It was held therein that Development Officer in the Life Insurance Corporation of India is a workman as defined in Section 2(s) of the Industrial Disputes Act, 1947. The following observations made by their Lordships, after referring to the provisions of Section 2(s), may be apposite (p. 432):

"The words "any skilled or unskilled manual, supervisory, technical or clerical work" are not intended to limit or narrow the amplitude of the definition of "workman": on the other hand they indicate and emphasise the broad sweep of the definition which is designed to cover all manner of persons employed in an industry, irrespective of whether they are engaged in skilled work or unskilled work, manual work, supervisory work, technical work or clerical work. Quite obviously the broad intention is to take in the entire "labour force" and exclude the "managerial force". That, of course, is as it should be."

7. In National Engineering Industries Ltd. Vs. Shri Kishan Bhageria and Others, it has been held that internal auditor of a company whose main duties are of reporting and checking up on behalf of the Management and who has no independent right or authority to take decision which would bind the company is

a workman u/s 2(s).

8. It may be mentioned that in *Dr. P.N. Gulati v. Presiding Officer, Labour Court, Gorakhpur* 1978 II LLJ 46 it was held by a Division Bench of this Court that a Doctor employed by an Industry for rendering medical aid to its employees is a workman u/s 2(s) because even though a Doctor is not employed for doing manual or clerical work, he is certainly employed for doing a work of a technical nature.

9. It has not been suggested that as a Head Master, the petitioner was employed in a managerial or administrative capacity. The essential duty of the petitioner was to impart education to the students studying in the institution. The work performed by the petitioner can be said to be work of technical nature in the broad sense of the term because every person cannot be expected to do systemised teaching work in a well organised Education Institution. Even in *Karthiayani's case* (supra), it was recognised that the act of teaching is not mechanical or repetitive physical exercise, rather a process involving the exercise of the intellectual and creative faculty of the individual teacher. Education being an industry, this fact may not be in doubt after the decision in *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, there is no justification for taking the view that a teacher is not a workman because the work of teachers is not manual work. It must be held that the petitioner is a workman within the meaning of Section 2(s) of Industrial Disputes Act, 1947 and the application filed by him before the Labour Court u/s 33-C(2) of the said Act was maintainable.

10. The learned counsel for the petitioner has also contended that the petitioner is entitled to bonus for the relevant period. But this question cannot be decided in the present writ petition. The application filed by the petitioner was not decided by the Labour Court on merits. In view of the contentions raised on behalf of the respondents, question of fact arising in this case cannot be appropriately decided in the writ petition. It is to be determined whether the primary school in which the petitioner is serving as Head Master was established and run by Laxmi Sugar and Oil Mills Ltd. and has vested in the Sugar Corporation after the acquisition of Sugar Undertaking or is an independent body. It is also to be determined whether Laxmi Sugar and Oil Mills Ltd. is still in existence or not and if it is in existence what is its liability in respect of the payment of bonus for the period prior to the acquisition of the Sugar Undertaking. It may be mentioned that the said company was originally impleaded as a respondent in the writ petition but it was deleted on the application of the petitioner on the basis of the service report that it has ceased to exist. This fact is contested in the counter-affidavit filed on behalf of the respondents. Under the circumstances, it would be proper to direct the Labour Court to decide the application of the petitioner on merits expeditiously.

11. The writ petition is allowed and the impugned order of the Labour Court dated March 18, 1985, contained in Annexure 6 to the writ petition, is hereby quashed. The Labour Court is directed to decide the application filed by the

petitioner u/s 33-C(2) Industrial Disputes Act, 1947 on merits according to law expeditiously. Parties will bear their own costs in this Court.