
(1966) 05 P&H CK 0030
In the Punjab And Haryana At Chandigarh

John Lee

APPELLANT

Vs

Chief Commissioner and Others

RESPONDENT

Date of Decision : 18-05-1966

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1967) 2 LLJ 673

Hon'ble Judges : S.K. Kapur, J

Bench : Single Bench

Judgement

S.K. Kapur, J.—This Judgment will dispose of Civil Writs Nos. 244D or 1966 and 369D to 372D of 1965. There is no difference In the facts involved except that in Civil Writ No. 244D of 1966 the claim of the petitioner is that the agreement dated 27 July 1965, on which a considerable part of the judgment of the industrial tribunal has been based cannot, In any event, bind the petitioner as his shop came into existence long after the said agreement. An Industrial dispute between the various petitioners and their workmen as represented by the Leather and Shoe Workers" Union was referred on 15 October 1962, to the industrial tribunal, Delhi. The terms of reference were as follows;

(1)(a) Whether persons paid on piece-rated basis are " workmen" within the purview of the Industrial Disputes Act, 1947 ?

(b) Whether they are entitled to be paid weekly-offs from the date the same was discontinued and for provision of service cards as per agreement dated 27 July 1965, and If so, what directions are necessary in these respects?

(2) Whether the workmen are entitled to any profit share in bonus twice a year on "Holi" and "Diwali" and what directions are necessary in this respect ?

(3) Whether the workmen are entitled to any medical relief and If so, to what extent?

(4) Whether the workmen are entitled to wages for the strike period from

29 March 1960 to 16 May 1960 and 23 December 1960 to 26 February 1961, and if so, what directions are necessary in this respect?

2. The industrial tribunal by its award dated 27 February 1965, held that the persons paid on piece-rated basis were workmen within the purview of the Industrial Disputes Act and that the said workers were entitled to be paid weekly-offs from 1 February 1965, as also the issue of service cards. All other points were decided in favour of the petitioners. The award in so far as it goes against the petitioners has been challenged principally on the ground that it is based on no evidence and has, in any case, been arrived at without affording proper opportunity to the petitioners of being heard. It is necessary to refer for a moment to the order sheet showing the various orders passed by the Industrial tribunal on different dates. On 6 January 1964, the matter was "adjourned to 10 March 1964 for "evidence and hearing," at the request of parties." The case was again sojourned from 10 March 1964 to 18 May 1964, for "evidence and hearing." The following order was passed by the Industrial tribunal on 18 May 1964:

Presence as before.

The case was fixed for evidence. But it was considered necessary to hear the parties before proceeding with the evidence. It transpires that the statement of claim itself is not clear on certain points nor is the written statement. The original agreement dated 26 February 1931, has been filed today and it purports to be signed by M.M. Aggarwal who is alleged to be Secretary of the New Delhi Traders' Association. This agreement contains an agreed term of reference as the last item which is embodied in terms of reference No. 4, Para. 13, of the statement of claim does not refer to this agreement nor does it make clear in what circumstances the strike took place. The corresponding paragraph of written statement is also evasive. The settlement itself has not been admitted although it is allegedly signed by the Secretary of the New Delhi Traders' Association. Let Sri Aggarwal be produced for examination. The union should file better particulars regarding this matter on the next date with copy to the management at least ten days in advance. The latter also to file its reply-rejoinder on the same date.

Regarding the first term of reference the union undertakes to file affidavits of the workmen regarding the conditions under which they were employed and supply advance copy to the management at least fifteen days ahead. The management to file counter-affidavit on the next date.

In regard to term (2) the workmen should file agreements or awards if any in regard to the alleged practice of Holt and Diwali bonus in other establishments in Delhi and also include this in their affidavits which should include affidavits of the establishments concerned.

For further bearing and cross-examination of deponents, 10, 11 and 12 August 1964.

3. Again on 10 August 1964, the following order was passed by the tribunal :

Sri K. P. Kapur for the workmen, Sri K. K. Luthra for the management. The union has not complied with the directions contained In the last order sheet although three months have elapsed.

Sri Luthra objects to further adjournment) for compliance of the previous orders. Sri Kapur says that he has only a few of the documents ready and some affidavits but not the better particulars.

In the circumstances the case is fixed for hearing on the present state of affairs.

To come up on 2 September 1964, for hearing.

4. On 2 September 1964, the case was adjourned to 9 November 1964, "for hearing:" On 9 November 1964, the tribunal passed the following order:

Parties heard. Award will be submitted to Government.

5. It is also necessary to refer to the pleadings of the parties. In the statement of claim filed on behalf of the workmen It was alleged In Para. 6 that the workers were being paid weekly off lays In conformity with the agreement arrived at between the managements and the workers dated 27 July 1965, Again In Para. 9 it is said :

That the agreement dated 27 July 1965, Is legal and binding Inasmuch as the managements had already put In operation Clauses 1 and 2 of the agreement. (The agreement dated 27 July 1965, Is enclosed as annexure A.)

6. It may be pointed out that the agreement In original was not enclosed but only a copy thereof on which the learned Counsel for the managements wrote:

Not admitted. Original not In Court.

In the reply filed on behalf of the management to Paras. 6 and 9 It was stated as under:

6. Paragraph 6 of the claim Is denied. The agreement go called is without force. The said agreement was Induced by coercion and threat and was based on wrong conception of law, and Is not enforceable. The workers were given some concessions but were not entitled to them as they had committed breach and violated the derma by going on unlawful strike In the malicious manner In order to canes huge losses to the management who had all along been acting in graceful manner.

9. Paragraph 9 is wrong. There is no agreement the existence of which can be taken Into consideration by this Court. On the other hand, the Bald agreement chows that the workers are not workmen within the ambit of Industrial Disputes Act.

7. It is also necessary to quote Para. 4 of the reply filed by managements as

considerable emphasis has been laid on that by the learned Counsel for the respondents. The said paragraph reads:

4. Paragraph 4 regarding the agreement to pay to the workers then engaged in executing their part of the contract with some of the establishments is not denied. The agreement was executed after the coming into force of the Delhi Shops and Establishments Act. It was wrongly represented on behalf of the union that the said workers were employees. The position taken by the managements was clear and the managements did not agree to treat them as their employees but did offer to pay some more money to the workers by way of gratuity. The said concessions were given to the workers on the understanding that they would be cooperating with the management; shall not continue the strike or pray for higher contract price for executing the job. As admitted by the workers in the said agreement they were not deemed to be employees or workmen within the definition of employees or workmen under the laws pertaining thereto. The said agreement also stands repudiated.

8. It is in the light of the above facts that the tribunal came to the conclusion mentioned above. The decision of the tribunal was based on the following:

(1) In Para. 5 of the statement of claim filed by the workmen certain conditions of service had been specified and the said paragraph had not been firmly denied by the managements; and

(2) the management having entered into an agreement dated 27 July 1965, it was implied that the piece-rate workmen had been treated as workmen within the meaning of Section 2(s) of the Industrial Disputes Act.

The tribunal observed:

In the present case the agreement implies the admission of the existence of the relationship of master and servant and of an employer and employee.

I think the tribunal was wrong in coming to this conclusion on the basis of the material relied upon by it. It is not disputed by the learned Counsel for the respondents that the burden was on them to show that the persons paid on piece-rated basis were workmen within the purview of the Industrial Disputes Act. The reference to various orders already mentioned above shows that the tribunal was all along maintaining a clear distinction between fixing a case for "evidence and hearing" and for "hearing" alone. It appears that by "hearing" the tribunal implied only oral arguments. It further appears from the order dated 18 May 1964, that so far as the first term of reference was concerned the tribunal decided to take evidence by affidavits and directed the workmen to file their affidavits with advance copies to the managements. The managements were then directed to file counter-affidavits on the next date of hearing. The workmen failed to comply with the directions contained in the order dated 18 May 1964. and, therefore, the tribunal adjourned the case for hearing only. The matter can be viewed from two points of view:

(i) the workmen having failed to file any affidavit In support of their plea as directed by the tribunal by Its order dated 18 May 1964. they should have failed In vie of the fact that the burden of proof lay on them; and

(ii) the tribunal had directed the managements to file counter-affidavits only to the affidavits filed by the workmen, with the result that on the failure of the workmen to file the said affidavits the managements were not given any opportunity to file affidavits In support of their claim.

Be that as It may, the fact remains that them was no evidence before the tribunal on the basis of which it could form the opinion which finds expression In the award and the onus being on the workmen they should have failed. The fact that the award IB based on no evidence flaws farther support from the fact that the tribunal was not quite poorest In reading the pleadings of the parties. Paragraph 5 of the statement of claim filed by the workmen, on which a considerable reliance had been placed by the tribunal, had not only been denied bat It had also been stated that the said workmen were Independent corona tore. The managements had set-oat In Para. 5 of the written statement the various pleas denying the claim of the workmen. In my opinion, the tribunal was not right In holding that there was no firm denial of the allegations contained In Para. 6.

9. There is yet another factor which vitiates the decision of the tribunal. Toe decision la baaed to a substantial extant on the agreement dated 27 July 1965. The only document on the retook-d was a copy purporting to be a copy of the Bald agreement, which was not admitted by the managements. Consequently, the document Itself was not before the tribunal and yet the tribunal baaed Its award on the same. Moreover, in the written statement the petitioners had specifically alleged that there was no agreement the existence of which could be taken into consideration. It was also pleaded that the said agreement showed that the workers were not workmen within the purview of the Industrial Disputes Act and yet without looking at the agreement the tribunal gave its award. I also find that apart from denying Para. 6 of the statement of claim filed by the workmen the petitioners had also raised the plea that the alleged agreement had been induced by coercion and threat. In these circumstances, it was not proper for the tribunal to have based its decision on the said agreement.

10. In the result, the award la quashed. It would, however, be open to the tribunal to decide the reference afresh.

11. It has also been urged by the petitioner In Civil Writ No. 244D of 1966 that the reference In his case is Invalid Inasmuch as his business came Into existence long after the agreement dated 27 July 1965. That is a matter which can be decided by the tribunal and not In the writ proceedings.

12. In the result, the petitions succeed and are allowed with no order as to costs.