

(2012) 06 KAR CK 0150

In the Karnataka High Court

Case No : Writ Petition No. 37070 of 2011 (L-TER)

K. Hanumantharayappa

APPELLANT

Vs

Management of Indian Express (P) Ltd., Chennai and Another

RESPONDENT

Date of Decision : 19-06-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 2 (3), 2 (s), 25 F

Citation : (2012) 135 FLR 674 : (2012) LLR 1083

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Manjula N. Kulkarni, for the Appellant; B.C. Prabhakar, Advocate for Respondent Nos. 1 and 2, for the Respondent

Judgement

Aravind Kumar, J.—Petitioner has sought for quashing of the award passed by the Additional Labour Court, Bangalore dated 30.11.2010, passed in reference No. 74/2007, whereunder the dispute raised by the workman was rejected by answering the reference in favour of the respondent-Management. Heard Smt. Manjula N. Kulkarni, learned counsel appearing for the petitioner and Sri B.C. Prabhakar, learned counsel appearing for respondent Nos. 1 and 2 erused the impugned award as also the depositions filed along with the writ petition.

2. In the year 1989, petitioner was appointed as an Apprentice Inspector of Agencies in the second respondent and his appointment came to be confirmed in the year 1991 and he was deputed to work in the Circulation Department. His initial appointment was as Apprentice Inspector and then he was promoted as Circulation Inspector in the year 1996 Subsequently, the petitioner was designated as Sales Inspector in the year 1999 and was redesignated as Circulation Executive in the year 2004, Petitioner was on medical leave from 18.8.2004 to 31.8.2004 and since he did not report to work on the expiry of the leave period and remained unauthorisedly absent and continued to remain absent Thereafter, petitioner claims to have sent a tax message seeking for one day casual leave on 9.9.2004 and as such the absence of the petitioner was

noted and when he signed the attendance register on 10.9.2004 he was confronted by the Senior Personnel Officer about his late coming and there was no satisfactory explanation given and thereafter it is stated that the petitioner left the Department abruptly and remained absent thereafter.

3. It was the stand of the management that petitioner remained continuously absent from 1.9.2004. As per the certified standing orders, if an employee remains absent beyond the period of leave originally granted, he is deemed to have left the service of the second party on his own account and without notice and as such the contract of employment has come to an end. On account of refusal of employment, petitioner raised a dispute and appropriate government referred the dispute for adjudication by the Additional Labour Court, Bangalore by order dated 6.11.2007. Before the Labour Court the petitioner got himself examined and got marked 17 documents as Exs. W-1 to W-17(B) and on behalf of the Management two witnesses were examined and in all 24 documents were got marked as Exs. M-1 to M-24. After analyzing the entire evidence both oral and documentary, Labour Court by its award dated 30.11.2010 rejected the reference both on merits and by holding that the petitioner is not a workman as defined u/s 2(s) of the Industrial Disputes Act, 1947 and it is this award which is impugned in the present writ petition.

4. Smt. Manjula N. Kulkarni, learned counsel appearing for the petitioner would contend that Labour Court committed a serious error in arriving at a conclusion that petitioner is not a "workman" as defined under the Industrial Disputes Act, only on the ground that designation of the petitioner was "Circulation Executive" is erroneous and contends that it is not the nomenclature which would be the deciding factor as to whether an employee is a workman or an Executive, but it is the nature of duties which the employee discharges which would be the deciding factor to arrive at a conclusion as to whether he is the workman or not. She would contend that Labour Court has heavily relied upon the Performance Appraisal Reports Exs. M-17 and M-18, wherein admittedly the designation of the petitioner is shown as Circulation Inspector and contends merely it is shown as Circulation Inspector, it does not mean that the petitioner was discharging any managerial or supervisory duties and the work that was being discharged by the petitioner was not that of managerial or supervisory inasmuch as petitioner did not have authority either to sanction leave of absence to any of his subordinates or to initiate disciplinary proceedings against the subordinate staff and this itself would clearly go to show that he was not discharging the duties of an Executive. She would further contend that petitioner was required to do door-to-door survey, improve the sales activities, collect cheques from the agents, forward it to the management which duties are to be considered as an act of a workman and these types of work by no stretch of imagination could be construed as work discharged in managerial or supervisory capacity and as such she contends impugned award does not stand to reason. She would also elaborate her submission by relying heavily on the oral evidence of the witnesses examined on behalf of the management to buttress her argument that petitioner was

discharging the duties of a "workman" and not that of a "supervisor" or "manager" so as to exclude the petitioner from the purview of the definition of "workman". She would draw the attention of the Court to the evidence of MW-2 Sri Raviraj, who has admitted in his, cross-examination at para 19 of the; deposition that he was not empowered to sanction leave and he was not empowered to appoint agents, distributors and sales promoters and solely rested with the Senior Circular (sic Circulation) Manager and as such she contends that Labour Court was in error to arrive at a conclusion that petitioner is not workman that too by relying upon Exs. M-17 and M-18 - self-appraisal reports and as such she seeks for setting aside the award passed by the Labour Court.

5. She would further contend that management has not complied with the mandatory provision of Section 25F of the Industrial Disputes Act and its action in refusing the employment to the petitioner is unjust and illegal and as such she contends that even on merits of the claim which has been gone into by the Labour Court is contrary to the evidence on record and she seeks for setting aside the said award by allowing the writ petition.

6. Per contra Sri B.C. Prabhakar, learned counsel appearing for respondents would support the award passed by the Labour Court and he relies very heavily on two documents produced by the management before the Labour Court, copied of which are made available to this Court by him during the course of his arguments namely Exs. M-17 and M-18 to contend that it is a Self-Appraisal Form submitted by the petitioner himself, wherein he admits his designation was Circulation Inspector and at Column "C" he admits that he intends to appoint some new distributors to get the sale increased. He would submit that certain Incidental work carried on by the workman while on his tour in discharge of his supervisory work like accepting cheques from the distributors cannot be considered so as to bring the petitioner within the purview of the workman or take him out of his "supervisory" work being discharged. He would also contend that petitioner himself has admitted with regard to the signature found in Exs. M-17 and M-18 as that of his signature and as such he cannot wriggle out of the situation to contend that he is a workman. He would also submit that Labour Court on appreciation of entire evidence on record has arrived at a conclusion that petitioner was not discharging his duties as "workman" but was discharging his duties in "supervisory" and "managerial" capacity and as such he seeks for dismissal of the writ petition.

7. Having heard the learned Advocates appearing for the parties and on perusal of the impugned award, depositions and Exs. M-17 and M-18 made available to this Court during the course of the arguments, I am of the considered view that the following points would arise for my consideration:

(1) Whether the award passed by the Labour Court rejecting the reference is required to be set aside or affirmed?

(2) What order?

8. Re: Point No. 1: The fact that petitioner was appointed as Apprentice Inspector of respondent in the year 1989 and subsequently promoted as Inspector of Agencies, designated as Circulation Inspector and re-designated as Sales Inspector and thereafter promoted as Circulation Executive in the year 2004 are not in dispute. Before the Labour Court a specific plea was raised by the management that petitioner is not a workman as defined u/s 2(s) of the Industrial Disputes Act on the ground that he was drawing salary of Rs. 7,800 and the work discharged by the petitioner was managerial and supervisory in nature.

9. This defense was denied by the petitioner by contending that though he was designated as Circulation Executive, he continued to do the work which was not in the nature of managerial or supervisory capacity and as such the Labour Court examined these contentions and has given a finding on appreciation of both oral and documentary evidence to hold that petitioner is not a workman but he was discharging the duties in the nature of supervisory and managerial work. In order to arrive at such a conclusion, two documents have been relied upon by the Labour Court namely Performance Appraisal Forms, which admittedly is the Self Appraisal Forms of an employee working with the respondent. The said two forms relates to the period of June and July 2004 The said Form comprises of 3 parts A, B and C. At the place marked designation, it has been mentioned by the petitioner himself as "Circulation Manager" in both these forms. In part "C the petitioner himself has stated as under:

In the coming I want do door-to-door sales promotional activities to get copies and I want to appoint some new distributors to get some increases.

(Emphasis supplied by me)

Again in the same column, he has reiterated the proposed step to improve himself as under:

I want to appoint new distributors to increase the circulation and qeff/ng some adds for sponsorship copies.

(Emphasis supplied by me)

10. In the claim statement workman has contended that he has not been discharging the duties in the nature of supervisor or manager. In his cross-examination he admits the execution of Exs. M-17 and M-18 at para 20 of the cross-examination dated 28.7.2010. At para 21, he also states that he was advising the management as to how the sales promotion can be increased. He further admits that he used to tour the State and visit different places and was meeting the agents and distributors but denies the suggestion about appointing them. With regard to the designation, he admits in his cross-examination about his (sic) being re-designated in the year 1999. However, he denies about being promoted as a Circulation Manager. Such denial cannot be accepted for the simple reason in his leave letter dated 18.8.2004 which came to be marked as

Ex. M-8, petitioner himself has called himself as Circulation Executive, Even in Ex. M-9 also he describes himself as Circulation Executive. The duties performed by the petitioner was not that of managerial and supervisory and merely because he had collecting cheques from the agents to be handed over to the management or handing over the letters by the agents addressed to the management, that by itself will not extinguish the primary duties that was being performed by the petitioner Admittedly petitioner was touring for more than 20 days a month and was being paid travel expenses and batta. In this background, the Labour Court on appreciation of both oral and documentary evidence has rightly held that nature of duties discharged by the petitioner was of managerial/supervisory in nature. As rightly pointed out by the Labour Court if it was the only duty of collecting cheques by the petitioner so as to bring him within the definition of workman as defined u/s 2(3) of the Industrial Disputes Act, there was no need or necessity for the management to permit him to visit various places, district wise and to meet the agents and distributors and appoint distributors to improve the circulation of the newspaper. The contention of the petitioner that these two documents namely Exs. M-17 and M-18 were got written at the behest of the management, was rightly not accepted since at no point of time petitioner has raised such a claim in this regard. Admittedly it is a Self-Appraisal Form of which the petitioner himself is the author. One another factor which requires to be considered is the petitioner was recommending to the Management the claim of the subordinate persons working in the respondent when they submitted their applications for grant of leave along with his remarks. Admittedly employees working under petitioner were submitting the applications to the petitioner who on scrutiny and examination in appropriate case would recommend the same for being sanction by the higher authority This itself would clearly go to show that petitioner was discharging supervisory duty and having control over these employees In that view of the matter, I do not find infirmity in the finding given by the Labour Court holding that the petitioner is not a workman as defined u/s 2(s) of the industrial Disputes Act Such a finding given by the Labour Court deserves to be affirmed.

Re: Point No. 2: In view of the discussion made hereinabove, I proceed in pass the following:

ORDER

- (i) Writ petition stands rejected
- (ii) The award of the Labour Court stands affirmed.
- (iii) No costs.