

**(1957) 01 MAD CK 0010**

**In the Madras High Court**

**Case No : Writ Petition No. 637 of 1956**

K. Kesava Reddiar, Gold Merchant Quilon, Travancore-Cochin State

APPELLANT

Vs

Labour Appellate Tribunal of India, Madras and Others

RESPONDENT

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**Date of Decision : 17-01-1957**

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Industrial Disputes Act, 1947 — Section 2

**Citation : AIR 1957 Mad 632 : (1957) 1 LLJ 645**

**Hon'ble Judges : Rajagopalan, J**

**Bench : Single Bench**

**Advocate : S. Ramachandra Aiyar, for the Appellant; A. Ramachandran, of Row and Reddy, for the Respondent**

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## **Judgement**

Rajagopalan, J.—The petitioner, who manufactured and sold gold jewels at Quilon, applied under Article 228 of the Constitution for the

issue of a writ of certiorari to set aside the order of the Labour Appellate Tribunal at Madras dated 9-5-1956.

2. On 19-II-1954 the Government of Tra-vancore-Cochin State ordered a reference u/s 10(1)(c) of the Industrial Disputes Act Act XIV of 1947).

The ""Industrial Disputes"" set out in the annexure to that order were :

1. Whether the denial of employment by the management of Sri Section Venkatachalam Achari, V. Thankappan Achari, G. Kumaraswami Achari

and P. Padhmanabhan Achari is justified? If not to what reliefs are they entitled? And

2. Whether the following workmen have been denied employment by the management for the whole or part of the period from 31-8-1954 to 3-

10-1954, and if so, whether the denial of employment is justifiable ? If not, to what reliefs are the workmen entitled?

A list of eight names was appended to the second question.

(2-a) The reference came up for adjudication before the Industrial Tribunal, Trivandrum. The labourers were represented by their Union. The

petitioner presented a preliminary objection to the jurisdiction claimed by the Industrial Tribunal. The petitioner contended that, as none of the

persons mentioned in the order of reference was a ""workman"" as defined by Section 2(s), there was no ""industrial dispute"" within the meaning of

Section 2(k) of the industrial Disputes Act. The Industrial Tribunal upheld that objection after an enquiry, and it came to the conclusion that it had

no jurisdiction to adjudicate upon the disputes referred to it. The labourers appealed to the Labour Appellate Tribunal.

By its order dated 9-5-1956 the Appellate Tribunal set aside the order of the Industrial Tribunal and directed a further inquiry into the disputes

referred to the Industrial Tribunal u/s 10(1)(c). The Appellate Tribunal differed from the Industrial Tribunal and held that the labourers, whose

names were mentioned in the order of reference, were workmen as defined by the Act, and that therefore the disputes between them and their

employer were industrial disputes, within the meaning of Section 2(k) of the Act. It was the validity of that decision of the Appellate Tribunal that

the petitioner challenged.

3. The real question for determination was whether the 12 persons, whose names were enumerated in the order of reference u/s 10(1)(c), were

workmen"" as defined by Section 2(s) of the Act. If they were not workmen within the meaning of Section 2(s) there could obviously be no

industrial dispute within the meaning of Section 2(k). The relevant portion of Section 2(s) runs:

Workman means any person employed Including an apprentice in any industry to do any skilled or unskilled, manual or clerical work for hire or

reward.....

In my Judgment in Annamalai Mudaliar and Bros. Vs. Regional Provident Fund Commissioner, Madras and Others, , I had occasion to discuss the

scope and significance of the word ""employed"" as it occurred In Section 1(3) of the Employees Provident Fund Act (Act XIX of 1952), and I

recorded :

In my opinion the expression "employed" in Section 1(3) taken in the context of the Act as a whole would imply (subject to the statutory definition

in Section 2(f) the existence of the relationship of master and servant between the employer and the worker.

In my decision in *Modern Match Industries Ltd. v. Labour Appellate Tribunal of India*, W. P. Nos. 96 and 332 of 1956 (Mad) (B), where the

scope of the expression "employed" as it occurs in Section 2(s) of the Industrial Disputes Act arose (or consideration, I took the view that it

postulated the relationship of master and servant. I had also to consider in that case whether the tests has been satisfied -- whether the

management exercised control over the workers, and whether the time of the workers was really at the disposal of the management.

4. A similar view was taken by Rajagopala Aiyangar J., in *Abdul Ksder Sahib v. State of Madras*. W. P. No. 476 of 1954 (Mad; (C), where he

observed :

It does not need much argument to snow that under the Industrial Disputes Act the existence of a relationship of employer and employee is

necessary before there can be any industrial dispute, and the existence of an industrial dispute is necessary before there can be any valid reference

by the Government of such dispute to an industrial tribunal,

The learned Judge, on the facts of that case, came to the conclusion that no such relationship had been established, and that the real position of the

persons who worked for the management in that case was that of contractors.

5. In the present case the Appellate Tribunal, no doubt, correctly posed the question for determination :

The only question is whether they are employed by the management, or in other words whether there is a relationship of employees and employer

as between them and the gold merchant or whether they are independent contractors.

In paragraph 13 the Appellate Tribunal pointed out:

On the above evidence. It is clear that the first respondent (Kesava Reddiar) has a large measure of control over these workmen so as to

constitute them his employees.

That was followed us by the finding in paragraph 14 where the Appellate Tribunal stated :

They work in the first respondent's shop itself, prepare gold jewels according to the instructions of the first respondent and within the time fixed

by him and receive the stipulated making charges. The employer, therefore, exercises a good deal of control over them and directs the work to be turned out by them.

The findings on the questions whether the labourers were workmen as defined by Section 2(s) of the Act and if so whether the disputes between

them and the petitioner were industrial disputes were findings on what really amounted to a jurisdictional issue. It was, rightly treated as such both

before the Industrial Tribunal and before the Appellate Tribunal; and it is the correctness of the decision of the Appellate Tribunal that is now in

issue in these proceedings.

6. The test the Appellate Tribunal postulated was whether the petitioner had a large mea-sure of control over the labourers. That may not be quite

correct What the Appellate Tribunal had to consider was whether the time of those who claimed to be employees of the petitioner, as workmen

within the meaning of Section 2(s) of the Act, was at the disposal of the master. Another of tne grounds on which the Appellate Tribunal rested its

decision was that in Modern Match Industries Ltd.. Gudiyattain v. Their Workmen, 1956 1 Lab LJ 335 (D), a Bench of the Tribunal took the

same view, and the position of those who worked for the petitioner in his shop was analogous to that of the workers involved in the Industrial

dispute that related to the Modern Match Industries Ltd., Gudiyattam.

It was the validity ""of the order of the Labour Appellate Tribunal in the Gudiyattam case that. was successfully challenged before me in W. P. No.

96 of 1956, which was heard along with W. P. No. 322 of 1956 (B).

7. The question at Issue, however, has to be decided on the material on record, even as the Appellate Tribunal purported to decide it. Pour

witnesses were examined during the enquiry held by the Industrial Tribunal. Of these Bhima Bhattar, E. W. 1, was the Vice-President of the

Travancore Cochin Gold Merchants" Association, and he spoke to the general practice prevalent in the shops of gold merchants of Quilon, The

petitioner himself was examined as E. W. 21. Kumaraswami Achari, one of the

persons whose names were enumerated in the order of reference and who had been working in the shop of the petitioner was examined as W. W. 2. Another, Padhmanabha Achari, who also worked in the shop of the petitioner, was examined as W. W. 1, but he furnished no real evidence on any of the questions at issue. The Industrial Tribunal accepted the evidence of Bhima Bhattar and the petitioner. But the Appellate Tribunal was not inclined to place any great reliance on the evidence of the petitioner, E. W. 2, where it conflicted with that of Bhima Bhattar, E. W. 1. It was, of course, within the Jurisdiction of the Appellate Tribunal to assess the evidence on record, and to decide whom it should believe and to what extent. But it was also bound to take into account the entire evidence on record including that of Kumaraswami Achari, W. W. 1.

8. Both Bhima Bhattar and the petitioner gave evidence, that each item of work entrusted to a person who worked in the shop of the gold smith was a separate contract, in support of the plea, that at no time was there the relationship of master and servant between the goldsmith and the person who made the jewel. Bhima Bhattar deposed :

There is no control over the labourer in regard to the time limit. Sub-contract is allowed.

When he was cross-examined he stated :

A person with whom gold is entrusted is allowed to engage others to work for him.

But the Appellate Tribunal discounted the value of this statement on the ground, that E. W. 1. was unable to give any details in his cross-

examination in regard to them and even conceded that the workers from the neighbouring shop did not come to work in his (Bhima Bhattar's)

shop. Bhima Bhattar further stated when he was cross-examined : ""Generally Workmen come and go when they like."" He admitted that those who

worked for a goldsmith even on contract basis were given an annual bonus of 6 1/4 per cent calculated on the total amounts earned by them under

their contracts during the year.

9. It should however be remembered that Bhima Bhattar's evidence related to the circumstances under which work was done in his shop, and he

did not speak with personal knowledge of what happened in the petitioner's shop. Bhima Bhattar admitted that the workers in his shop were

supplied by him with the husk and charcoal necessary for the work, whereas in the petitioner's shop the petitioner claimed that it was the worker

that had to find the husk and charcoal, and that was admitted to be correct by Kumaraswami Achari who stated ""We have to buy rice, husk and

charcoal."" I am only giving these as instances of the variations that might possibly exist between shop and shop. The primary question, for

consideration was whether those who admittedly worked in the shop of the petitioner were his ""workmen"" as denned by Section 2(s) of the Act.

10. Keeping aside for the moment the oral evidence of the petitioner, E. W. 2. I shall examine the scope of some of the statement made to

Kumaraswami Achari, as W. W. 1. He stated :

The system of workers ""taking gold from the shop, work at the home and to get wages is also prevalent.

When he was cross-examined, in answer to the question, ""Do workers take golds for work in their homes?"" he stated ""No. The employer will not

give."" Kumaraswami Achari deposed further:

The fools for work belong to the workers. The employer will weigh and give the gold to the workers. We have to buy rice, husk and charcoal.

When work is given the type of ornament to be made will be instructed. The details will also be said. The size of the ornament and how it should

be made will also be instructed. The period in which it can be finished will also be asked. The total wages will be fixed.

One of the claims of the petitioner before the Industrial Tribunal was that those who worked in his shop on a contract basis were masters of their

own time and they could take in work not belonging to the petitioner to be done in the premises of the petitioner. When Kumaraswami Achari was

questioned ""Have you a right to make ornaments for other shops than that of Kesava Reddiar (petitioner)? he did not specifically deny it but stated

The principle is that it should not be done,"" Again in answer to the question ""if an ornament of 10 or 20 sovereigns is made will you engage

workers from outside?"" his answer was ""That is not the practice. The employer will not allow.

11. The petitioner examined 83 E. W. 2 categorically stated : ""I entrust each work on contract basis."" That was also the claim of Bhima Bhattar

examined as E. W. 1. The petitioner stated further :

There is no fixed time for work. They can come and go as they like.....I allow some people in whom I have confidence to take gold to their homes.....

He also stated that if work was entrusted to one person he has the liberty to take other persons and do the work.

12. As I pointed out in my judgment in *Annamalai Mudaliar and Bros. Vs. Regional Provident Fund Commissioner, Madras and Others*, , that

work was done at the premises of either of the contracting parties may not be determinative of the question, was the relationship between the

parties that of master and servant, or was the position of the person who did the work that only of a contractor.

13. One of the main tests to be applied in deciding whether the relationship of master and servant was present is whether the time of the person

who worked was at the disposal of the master. Taking the evidence of the petitioner and even that of Kumarasami Achari, it should be fairly clear

that that test was not satisfied in this case. As the learned counsel for the petitioner pointed out, if a labourer was given ten days within which to

complete the ornament, no doubt he was expected to complete it within ten days. Suppose he completed the work in a shorter period, there was

no real obligation on the petitioner to give him another jewel to manufacture. There was no obligation on the labourer to present himself for work

on the remaining days.

14. In my view on the evidence on record, the view taken by the Industrial Tribunal, that there was no relationship of master and servant between

the petitioner and those who worked in his shop, was correct, and the view of the Appellate Tribunal that such a relationship did exist was

erroneous and was not supported by any real evidence on record.

15. The learned counsel for the respondents urged that the admission of E. W. 1 that bonus was paid to the workers, should suffice to show the

relationship of master and servant, because payment of bonus to a contractor was unthinkable. Bonus was a payment made ex-gratia even

according to the evidence of E. W. 1. I fail to see why a person whose real position was that of a contractor could not be paid bonus ex-gratia

Payment of bonus by itself is rather inconclusive as a piece of evidence when the question at issue is, was the labourer a servant or was he merely a

contractor ?

16. As I said there was no real evidence on record to support the finding of the Appellate Tribunal, that the persons whose names were

enumerated in the order of reference were workmen employed under the petitioner within the meaning of Section 2(s) of the Act.

17. The rule is made absolute and the petition is allowed. There will be no order as to costs.