

(1962) 12 MAD CK 0010
In the Madras High Court

Katheeb E. Hajee Abdul Samad Saheb and Co., Salt, Grams
and Peas Merchant and Another

APPELLANT

Vs

The Industrial Tribunal and Another

RESPONDENT

Date of Decision : 03-12-1962

Acts Referred:

Citation : (1964) 1 MLJ 84

Hon'ble Judges : K. Veeraswami, J

Bench : Division Bench

Judgement

K. Veeraswami, J.—These petitions are to quash the award of the Industrial Tribunal, Madras, directing the petitioners to pay additional

wages at particular rates. On behalf of the managements the question whether those who worked in their factories were workmen within the

meaning of the Industrial Disputes Act, 1947, was answered by the Tribunal against the managements. In this Court the petitioners challenge the

propriety of both the findings.

2. These managements are engaged in the production of varudakadalai in Panruti and Cuddalore. According to the managements, the maistry in the

factory will hand over the bags of gram to the workmen who turn up for work, one among them will receive the bags on behalf of all workmen

present, the workers allot the work among themselves and carry out various processes such as frying, breaking and winnowing, and when the

finished products are measured and handed over to the managements, payment is made to one of the workers according to the agreed rates which

is divided by the workmen among themselves. They also added before the Tribunal that the managements do not supervise or control the work

done by the workmen, either in the manner of execution or the time taken in completing the job, nor do they have control over the time of the workers as to when they came or when they return. The managements would further have it that the workers have their own other avocations such as running tea shops, agriculture, masonry and so on, that they do not also take the permission of the managements before absenting themselves from work, and that the managements have no right to compel the workers to work during any particular day or any particular hours. Nor is there any obligation on the part of the managements to give work to the workers who turn up at the factories. Those facts were denied on behalf of the workmen. They state that they are not independent contractors but work under the control and supervision of the managements, a maistry having been appointed for that purpose by the managements. They assert that they report themselves for duty at the appointed time and leave the factories only with the permission of the managements, and that if take default in that respect, they are liable for disciplinary action.

3. On behalf of the managements two witnesses were examined, one of whom only spoke to the nature of the work as mentioned above on behalf of the managements. The workmen examined one witness to speak to their case. But the Tribunal considered that it could place reliance on none of the witnesses and proceeded to examine the question on what it termed to be admitted facts and probabilities of the case. In substance the Tribunal's findings were that the workmen turned up conjointly as a team and worked in the presence of the factory maistry, that the work allotted for the day was attended to by all the workers as a team between 5 A.M. and 9 P.M., the working hours being 15 hours a day, they could come at a convenient hour which they might choose according to the quantum and urgency of work, that wages were paid on the number of bags attended to and so the managements might not have to take notice when the workers came and when they went so long as the work fixed for the day was finished, that the work for the day was fixed and determined by the managements, that such control as the nature of the work called for was exercised by the maistry in whose presence the work was carried out, that the payment of wages was made in one lump, that there was attendance register, that on one occasion there was dismissal of certain workmen but on the intervention of the Labour Officer they were taken

back by the managements on payment of back wages, and that there were cases where leave wages and bonus were paid to the workmen. On

these findings, it reached the conclusion that the relationship of master and servant between the managements on one hand and the workmen on the

other was established, and, therefore, they were workmen within the meaning of the Industrial Disputes Act. On the other question as to the

quantum of additional wages to be paid, the Tribunal was of the view that, since the workmen on an average were each receiving only Rs. 65 for

26 days in a month, the rate was fixed 10 years before and there was subsequently an enormous increase in the cost of living index, there would be

justification for additional or increased wages of 4 annas per bag in respect of frying and 2 annas per bag in respect of winnowing.

4. So far as the first question is concerned, in order to establish that the workmen were employed under the managements the following conditions,

as reiterated by the Supreme Court in *Shankar Balaji Waje Vs. State of Maharashtra*, should be satisfied ; (1) employer, (2) employee and (3)

contract of employment. It was also pointed out in that case that the employer was one who employed, that is who engaged the services of other

persons and the employee was one who worked for another for hire, and that the employment was the contract of service between the employer

and the employee whereunder the employee agreed to serve the employer subject to his control and supervision. In *Dharangadhara Chemical*

Works Ltd. Vs. State of Saurashtra, the Supreme Court referring to *Short v. J. & W. Hendersons, Ltd.* (1946) 62 T.L.R. 427 pointed out the

four indicia of a contract of service : (a) the Master's power of selection or his servant, (b) the payment of wages or other remuneration, (c) the

master's right to control the method of doing the work, and (d) the master's right of suspension or dismissal. But it was also noted in that case that,

while these four indicia of the relationship of master and servant are useful tests, it should not be lost sight of that the growth of Trade Unionism and

of the Industrial Law have qualified those conditions. It is obvious, therefore, that in finding out whether on the given facts there is relationship of

master and servant, the tests will have to be applied duly bearing in mind the qualifications.

4. Looking at the facts of this case there are no doubt certain circumstances which point to the conclusion that the relationship of master and

servant was lacking. But equally there are other circumstances which indisputably lead to the conclusion that there was the relationship of master and servant between the workmen on the one hand and the management on the other. The Tribunal has rightly referred to the fact that even according to the evidence on behalf of the managements when some of the workers were dismissed, and at the intervention of the Labour Officer, they were taken back and the managements even agreed to pay wages of the workers for the period of the strike. What is more it does appear that the managements maintained attendance register for the workmen. It is not also in dispute that the managements paid on occasions leave wages and also inam bonus. Dismissal of workmen could obviously take place only if there was the relationship of master and servant. It is unthinkable that when a person is not employed, the employer could nevertheless dismiss him, so to speak. The fact that the workmen who were dismissed were taken back and the managements paid wages for the period of their absence" unmistakably established the relationship of master and servant, and this conclusion is reinforced by the existence of the attendance register and payment of leave wages and inam bonus. Judged in the light of these circumstances, I think no importance can be attached to the factors, namely, that no separate allotment of work was given to each worker, that no individual calculation of work or wages was made but wages were paid in a lump sum, that some of the workmen could be absent because the workmen came and did the work as a team and that there was no supervision as such because as explained by the Tribunal the nature of the work did not call for a close scrutiny and the workmen themselves were trained in the job. I think the Tribunal on the whole came to the right conclusion that the workers were workmen within the definition of the term under the Industrial Disputes Act.

5. On the other question of increment in the wages, I think the Tribunal's award cannot be upheld. The Tribunal nowhere in its order considered

what the minimum wages of the workmen were. Nor did it determine what precisely was the capacity of the managements to pay increased wages

; nor did the Tribunal make any attempt to correlate the increment to the minimum wages in relation to capacity of the industry. The Tribunal merely

went upon the fact that the wages were fixed 10 years before and that there was subsequently increase in the cost of living index. These

circumstances themselves were not sufficient to justify an increment in the existing structure of wages. As the Tribunal will have to decide this question afresh, I propose to say no more on the matter.

6. The award in so far as the Tribunal fixed additional or increased wages"" is hereby quashed. In other respects the award will stand. The Tribunal will dispose of the reference afresh only on the question of additional wages. The petitions are allowed to that extent. No costs.