

(2003) 08 AHC CK 0152

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10536 of 1984

K.K. Singh

APPELLANT

Vs

The Labour Court and Cooperative Textile Mills Ltd.

RESPONDENT

Date of Decision : 04-08-2003

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2

Citation : (2003) 08 AHC CK 0152

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Suman Sirohi and K.P. Agarwal, for the Appellant; K.K.S. Chauhan and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned counsel for the parties.

2. The petitioner was appointed by letter dated 13.8.1970 as Spinning Assistant in the Cooperative Textile Mills Ltd. Sahkari Nagar, Bulanshahar, hereinafter referred as "the Company" on a consolidated salary of Rs. 550/-per month. His services were purely temporary and were liable to be terminated at any time on one month's notice either side. A complaint was received from the yarn market about damage of yarn due to excessive moisture in 10s (tens) count. The yarn was examined and it was found that the complaint was genuine. Most of the bales were manufactured in August, 1974 when the petitioner was working on the post of maintenance supervisor in addition to his duties as shift in charge. The duties of the petitioner were supervisory in nature.

3. Since the petitioner was working as Shift in-charge at the relevant time as such an explanation was called for from him vide letter dated 5.10.74 which is as under.

"Mr. K.K. Singh, Shift Incharge.

There was a complaint from the yarn market about the damaged yarn due to excessive moisture in 10s count. Such yarn was examined and it was found that the complaint was genuine. Most these bales were manufactured in August, 1974. Certain bales bundles were so wet that the yarn was completely damaged, lost its clout and strength with the result that lot of bales have been rejected by the consumers and we had to replace them. It has given a set back to our yarn reputation and the mill has to suffer great losses.

You were given the duties of maintenance Incharge in addition to your own duty, were expected to exercise closer supervision on the production of yarn and its quality. From the complaint it appears that you grossly neglected your duty which has resulted in giving set back to the reputation to the mill, consequently a great monetary loss to.

Please explain within three days of the receipt of this letter why you neglected your duty and why action should not be taken against you for dereliction of duty on your part."

4. Thereafter his services were terminated vide order dated 7.6.1975 which reads as under:

"The services of Sri K.K. Singh, shift Incharge are hereby terminated with immediate effect, as his services are no longer required by the Mill.

He is allowed one month's pay in lieu of one month's notice.

Sd/Illegible (M.P. Jain) Secretary"

5. Aggrieved by the order of termination the petitioner filed a representation to the Cooperative Service Institutional Board constituted under the provisions of the U.P. Cooperative Societies Act, 1965. When no response was received from it, he filed writ petition No. 10208 of 1975. The writ petition was decided by judgment dated 27.7.79 directing the Cooperative Service Institutional Board to hear and decide the petitioner's appeal at an early date. Thereafter, the petitioner again approached the Cooperative Service Institutional Board which decided the petitioner's appeal vide order dated 27.8.79 holding that except in the matter of increasing wages no appeal lies to the Board. The order dated 27.8.79 was challenged by the petitioner in W.P. No. 9358 of 1979 which was dismissed vide order dated 30.11.79 on an application made on behalf of counsel for the petitioner to the effect that he does not want to press the writ petition as he proposes to avail alternative remedy by filing suit: The order dated 30.11.79 is an under:

"Counsel for the petitioner states that the petitioner proposes to pursue the alternative remedy of filing a suit and accordingly this writ petition is not pressed. In view of the aforesaid statement the writ petition is dismissed."

6. Thus the writ petition filed by the petitioner was got dismissed by him for filing suit which he did not file. Instead he raised an industrial dispute alleging

wrongful termination of his services.

7. On conciliation proceedings having failed, the dispute was referred for adjudication to Labour "Court, Ghaziabad where it was registered as Adjudication Case No. 199 of 1981. On receipt: of summons the parties filed their respective Written statements. Before the Labour Court he prayed for relief of reinstatement and continuity of service with consequential benefits. The petitioner claimed himself to be a workman and alleged wrongful termination of his service.

8. The employer apart from raising the plea of termination of service of the petitioner w.e.f. 7.6.75 as discharge simplicitor for loss of confidence in accordance with the appointment letter and also raised preliminary objection that the reference order was bad in law on the following grounds:

"(i) the petitioner was never in employment: of the employer in the capacity of a workman as he was shift In charge, which was a supervisory post

(ii) the dispute was raised after highly belated time,

(iii) the Labour Court had no jurisdiction to hear the present case, because the reference order is bad in law

and,

(iv) there was no industrial dispute between the parties as he was not workman within the meaning of Section 2(z) of the U.P. Industrial Disputes Act 1947.

9. Section 2(z) of the, U.P. Industrial Disputes Act, 1947 defines workman as under:

"(z) "Workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person.....

10. The petitioner has come up in this writ petition against the aforesaid award.

11. Learned counsel for the petitioner submits that from perusal of the letter dated 5.10.74 it is clear that the petitioner was looking after the supervision of production of yarn and its quality and he was riot supervising the work of others.

12. From the aforesaid definition it is crystal clear that the reason for being excluded from the definition of the words "workman" is that one must be employed in a supervisory capacity and it is not the supervision of any particular piece of work, which makes him employed in supervisory capacity. He is to supervise other workers who may be working under him.

13. The submission of the learned counsel for the petitioner is that the Labour Court had only decided the preliminary issue whether the petitioner was a workman or not and the Labour Court has not taken into consideration the evidence of the petitioner in this regard.

14. Lastly it has been contended that no evidence was produced by the employer that the petitioner was employed in supervisory capacity and even if the petitioner recommended for grant of leave to workman under him it would not make him working in administrative capacity or managerial capacity. He submits that no order was produced before the Labour Court as to how and when he was appointed as shift in charge and his appointment was of Spinning Assistant. The primary and normal duties performed by him were not supervisory or managerial in nature.

15. The contention of the applicant in nut-shell is three folds: (i) the petitioner is a workman and did not discharge any. supervisory, managerial or administrative duties, (ii) there is no evidence or pleadings before the Labour Court by the petitioner or the employer on the basis of which the Labour Court could come to the conclusion that he was not a workman according to the nature of duties performed by him in the light of the decision of the Apex Court cited above, (iii) the petitioner's appointment was of Spinning Assistant and there was no documentary evidence before the Labour Court by which it could be established that he was appointed to the post of shift in charge.

16. From the record filed along with the writ petition it is apparent that the employer had taken a plea that the petitioner was not a workman and he was working in supervisory capacity. In para 5 of the written statement the nature of duties of the petitioner are given. Para 5 of the written statement of the employer is as under:

"That the nature of work of Shri K.K. Singh as Shift Incharge was purely supervisory. He was never required to work physically and manually with his own hands. He was only to supervise and control the work of his; subordinates such as Shift Supervisors, Jobbers, Production Clerks, Spinning clerks, and helpers etc. He has worked under Production Manager and being a supervisor he used to grant and recommend the leave, loans and advances for the workers and his other subordinates."

17. The petitioner was the incharge of the shift. This is also apparent from his oral evidence before the Labour Court in which he has stated that no workman has been given the designation of shift incharge. He has admitted in his evidence that he was not working as a Jobber and he was looking after the work of setting up the Machine with regard to speed and further that no worker had a diploma in textile except him, Thus, qualification and nature of job of the petitioner were totally different from the workers. He used to write his designation in the letters/ memo etc. as shift incharge. It is admitted that the petitioner's designation was of shift incharge. The nature of duties of the petitioner establish that he was

and it has been strenuously argued that in the background of principles laid down in the aforesaid case the Labour Court has committed an error of law in holding that the petitioner was appointed in supervisory capacity.

21. From the definition of workman given in U.P. Industrial Disputes Act, 1947 it is clear that work of managerial or administrative capacity in Section 2(z) is at par with each other. However, work of supervisory nature is a class apart from the work of managerial or administrative nature.

22. The distinction is that a person may not be exercising managerial or administrative powers yet he may supervise work of other persons and if he draws wages exceeding Rs. 500/- (five hundred) per mensem he will be supervisor if he exercises supervisory functions. It is not necessary that he should also perform managerial nature of duties. It is not in dispute that the wages of the petitioner were more than Rs. 500/- per month.

23. A finding has been given by the Labour Court that the petitioner was Shift incharge which is a supervisory post. He was discharging supervisory duties by virtue of his office and was having control over production done by his assistants. He was also vested with power to grant leave and appointment of temporary workmen and to take work from them. Dominant nature of his duties are supervisory.

24. There is no quarrel with the case law cited by the petitioner. The Labour Court has given cogent reasons in its award for arriving at the conclusion that the nature of duties and pay excluded the petitioner from definition of workman even if no appointment letter was placed before the Labour Court appointing him on supervisory or administrative post. He was promoted as Shift in charge and was also incharge of maintenance and; production. He was given promotion as Shift Incharge and was discharging supervisory duties is also evident from his own statement before the Labour Court.

25. In Hindustan Lever Ltd. v. Workman (1974) SCC 510 grant of higher grade was held to be promotion. In the instant case also, the applicant was given higher grade of shift incharge. Thus his initial appointment as Spinning Assistant has no relevance to the nature of duties performed by him after his promotion to the grade of shift in-charge.

26. Applying the test of dominant nature of duties the Labour Court has not erred in holding that the petitioner was not a workman within the meaning of Industrial Disputes Act, 1947.

27. Once it is established that the petitioner was not a workman, the Labour Court has rightly not gone into the disputed question of fact as there was no Industrial dispute.

28. It would not be proper for this Court to disturb the findings of fact arrived at by the Labour Court in which no illegality, infirmity or perversity could be pointed by the learned counsel for the petitioner.

29. The counsel for the petitioner has at the end made a prayer that the matter be remanded back to the Labour Court for decision afresh. This prayer cannot be exceeded for the reasons stated in the body of this judgment. Admittedly the services of the petitioner were terminated on 7.6.1975 from the post of shift in charge. Belated Industrial dispute was raised by him in 1981 for which there is no reasonable explanation. The writ petition no. 9858 of 1979 filed by him was also withdrawn as not pressed on the ground that he wanted to file suit in respect of termination of his services. He was 52 years of age when the writ petition was filed in 1984. It is informed that the Cooperative textile Mills Ltd. Bulandshahar has also closed down. In this view of these matters, the writ petition deserves to be dismissed.

30. For all the reasons stated above, the writ petition fails and is dismissed.

31. No order as to costs.