

(1987) 02 DEL CK 0013

In the Delhi High Court

Case No : Civil Writ Petition No. 2614 of 1981

Madan Mohan Marwaha

APPELLANT

Vs

Delhi Cloth and General Mills Co. Ltd. and Another

RESPONDENT

Date of Decision : 06-02-1987

Acts Referred:

Citation : (1987) 13 DRJ 65 : (1987) 54 FLR 500

Hon'ble Judges : B.N. Kirpal, J

Bench : Single Bench

Advocate : P.R. Monga, B.R. Iyengar, B.R. Ghaya and A.B. Dayal, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) The challenge in this writ "petition is to the Award of the Labour Court who had held on a reference being made, that the petitioner was not a workman.

(2) The petitioner as appointed as a Fire Fighting Officer by letter dated 7th January, 1963. He was subsequently confirmed as such in a scale of Rs. 510-555. The duties of a Fire Officer are enumerated in the Fire Manual. The duties of a Fire Officer, as per the manual, are as under : (1) Fire fighting. (a) Operational and maintenance of fire fighting equipment in the mills (springlers, hydrants hand appliances, overhead tanks and pumps, etc.). (b) Prepare equipment for inspection and send test and inspection reports. (c) Organise, arrange drill for fire fighters and supervise their day-to-day work. (d) Fight fires and prepare reports after investigation. (e) Keep contact with the Delhi District Fire Fighting authorities and seek their help when needed. (f) Inspect the fire equipment installed at various places outside the mill e.g. Head Office building near Nazz Cinema, City Shop, C.D.S., D.C.S., Shi ram Institute for Industrial Research, etc. (2) Safety Engineering. (a) Attend meetings of safety Committee ; (b) Observe and make a note of unsafe practice ; (c) Take steps to minimise or eliminate unsafe practices in consultation with Mechanical Engineer and

Maintenance Superintendent; (d) Organise publicity for education of the workers on safety, etc. by posters, writing articles, etc. (3) To organise Civil defense Programme in consultation with Mr. Mittar. In all matters he will take steps in consultation with Mechanical Engineer and Maintenance Superintendent." In the year 1974 the petitioner was appointed as Assistant Security Officer-cum-Fire Officer. His functions as Assistant Security Officer were as follows :

1. Recruitment, transfer, promotions and placement of security, sanitation and fire fighting staff.

2. Grant of leave to security, sanitation and fire fighting staff.

3. Regularisation of absence/overstay of leave cases.

4(A) to instate disciplinary action proceedings. (b) to represent the Management in disciplinary action proceedings. (c) to issue warnings to security, sanitation and fire fighting staff .

5. Recommending of rewards/incentives.

6. To place indents for purchase of material for the security Fire Fighting Sections.

7. To represent the Management in Court & disciplinary case.

8. To work as shift officer and as such was responsible for all security matters during his shift.

9. To supervise security arrangement and security personnel at the residence of Managing Directions and other high officers of the company.

10. To maintain liaison with police authorities Delhi Fire Services, etc.

11. To officiate on occasions as Security Officer and to discharge all his functions in his absence.

12. To rationalise working of the Security departments.

13. To submit work reports, suggest improvements and to take follow up action.

14. To undertake specific projects like elimination of thefts, etc,

15. To import training in fire preventive measures and fire fighting to other officer watch and ward staff and workers.

16. To suggest improvement? and effect economics in fire fighting equipment and to supervise the fire fighting equipment and to supervise the fire fighting operations. Vide letter dated 13th September, 1977 the services of the petitioner were terminated by the respondent. The petitioner raised a dispute and after report had been made by the conciliation officer by order dated 5th April, 1978 the following industrial dispute was referred to the Labour Court for its adjudication:

"Whether the termination of services of Shri M.M. Marwaha is illegal and/or

unjustified, and if so, to what relief is he entitled".

(3) Before the Labour Court a preliminary objection was raised by the Management. The contention of the respondent-management was that the petitioner was not a workman and, Therefore, the reference itself was not valid. Evidence was lead before the court by the petitioner as well as the Management. The Labour Court vide its order dated 21st August, 1981 came to the conclusion that since 1974 the petitioner was essentially working as a supervisor even though he had certain technical duties. The Labour Court came to the conclusion that the technical or manual work done by the petitioner was ancillary and his main function was clearly supervisory in nature and Therefore, he was not a workman because he drew salary of more than Rs. 500. The aforesaid decision of the Labour Court is challenged in the present writ petition.

(4) The first contention of the learned counsel for the petitioner is that the Labour Court has erred in not deciding the reference which was made. It is true that in the present case the Labour Court has not adjudicated on merits as to whether the termination of the petitioner was valid or not. The Labour Court has not decided the case on merits because it came to the conclusion that the petitioner was not a workman and, Therefore, the reference itself was not valid. It has now been held by the Supreme Court in the case *The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others*, that such jurisdictional facts have to be determined by the Labour Court Tribunal. The question as to whether the petitioner was a workman was a jurisdictional fact and the Tribunal had the jurisdiction to decide the same. If the Tribunal came to the conclusion that the petitioner was not a Workman then the question of proceeding further did not arise. This is what the Labour Court did in the present case. It was then submitted by the learned counsel for the petitioner that Labour Court erred in coming to the conclusion that the petitioner was not a workman. The question as to whether the petitioner is a workman or not is a question of fact and under Article 226 of the Constitution the court will not ordinarily investigate facts. But where on the face of the Award it appears that the decision on a jurisdictional fact arrived at by the Labour Court is unsustainable then writ court would be entitled to determine the correct jurisdictional fact.

(5) In the present case before 1974 the petitioner was admittedly working as a Fire Officer. His duties had been the one enumerated above and they are those which are provided in the Fire Manual. The very first duty which the petitioner was required to undertake was that of Fighting Fire. The said manual also provides that he was required to fight fires and prepare reports after investigation. These duties contained in the Manual are undoubtedly manual in nature. The petitioner had to fight fires with his own hands and he was, Therefore, certainly working as a workman.

(6) What impressed the Labour Court is that after 1974 he was required to work as Assistant Security Officer, and according to the Labour Court, these duties

were supervisory in nature. The Labour Court, however, seems, to have ignored the fact that when the petitioner was a Workman prior to 1974 he could not have ceased to be a Workman thereafter merely because he was required to perform additional duties. If the petitioner had been absolved of his responsibilities to perform the duties as a Fire Officer and had been required to perform duties only that of an Assistant Security Officer then, of course, it could possibly have been held that the petitioner ceased to be a Workman w.e.f. that date. In the present case, however, possibly for fuller utilisation of the services of the petitioner he was asked to perform additional duties. The fact that these duties which the petitioner was asked to perform were in addition to his duties as Fire fighter is borne out from the evidence of Mr. R.K. Ahuja, M.W. 2 who had appeared on behalf of the respondent wherein he said, "Shri Marwaha approached me that he may be given duties of Assistant Security Officer in addition to his duties to his office as Fire Officer. This clearly shows that whenever the fire would take place the petitioner was required to work as Workman namely he had to fight fire himself. It is true that there were persons who were working in a capacity which was subordinate to that of the petitioner but that did not mean that the petitioner ceased to be a workman. A person is required to fight fires only when the fire breaks up. In the present case in 1973 the petitioner had fought fire with his own hands and he suffered burns and he had been duly compensated by the mills. The petitioner presumably fought fire because that was expected of him. This position was not altered after the re-designation of the petitioner as Assistant Security Officer cum Fire Officer. The petitioner was still obliged, even after 1974, to perform the functions of Fire Officer which primarily require him to fight fire whenever such fire breaks out. The petitioner, Therefore, never ceased to be a workman as he continued to perform the duties of a Fire Officer. If any other person had been appointed as Fire Officer in place of the petitioner and the petitioner was required to perform duties of Assistant Security officer only then, possibly, the contention of the respondent may have been correct next para. In the present case, however, this has not happened. I, Therefore, do not agree with the conclusion arrived at by the Labour Court when it says that the main functions of the petitioner were supervisory. In fact, is erroneous the evidence of Shri R.K. Ahuja shows that the petitioner has no power or authority entrusted to him when Shri Ahuja in the course of his cross-examination deposed as under: "Shri Marwaha had no power to appoint, promote, dismiss any workman nor could be rewarded for good services rendered or imposed punishment for misconduct. He had power to make recombination? in this regard, as the ultimate power vests with the head of the unit. The management did not delegate any power of authority to Mr. Marwaha. He had no power to issue gate pass on behalf of the company. He was not empowered to issue the excise gate pass He had no financial powers for issuing vouchers with regard to petty payments etc."

(7) For the aforesaid reasons, I am of the opinion that the jurisdictional fact found by the Labour Court was incorrect. The evidence on the record clearly

shows that the petitioner was a workman at the time when his services were terminated.

(8) For the aforesaid reason writ of certiorari is issued quashing the award dated 21st August, 1981. The Labour Court is directed to decide Therefore once on merits. If possible the reference should be decided within one year. The petitioner will be entitled to costs. Counsel fee Rs. 1,000.