
(2000) 09 GAU CK 0040
In the Gauhati High Court
Case No : Civil Rule No. 4348 of 1994

Manager, Tarajuli Tea Estate

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 12-09-2000

Acts Referred:

Constitution of India, 1950 — Article 136
Industrial Disputes Act, 1947 — Section 15, 2, 2(5)

Citation : (2000) 09 GAU CK 0040

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : S.N. Sarma and H. Sarma, for the Appellant; A. Dasgupta, for the Respondent

Final Decision : Dismissed

Judgement

1. I have heard Mr. S.N. Sarma, the learned Advocate for the petitioner and also heard Mr. A. Dasgupta, the learned Advocate for the respondent No.2.

2. This writ application has been filed by the Management challenging the legality and validity of the award dated 30.8.1994 passed in Reference Case No. 19/93 by the Labour Court, Guwahati. The reference was made with regard to three issues. We are not concerned with all of them as the main question before us is Issue No. 1 which is quoted below:-

"(1) Whether Shri Thomas Veeji is workman of Tarajuli Tea Estate?"

The Labour Court, on consideration of the materials on record, considered the matter in paragraphs-19, 11 & 12 and the finding in paragraph-12 is quoted below: -

"After scrutinising the evidence and documents on record it appears that although in the appointment letter it was mentioned that the workman was appointed as Superintendent. But in fact, he was a F Grade employee who was admittedly the workman under the Act in view of exts.A and B. His functions

appeared to supervise the works of other staff but not to discipline and command them. He was not assigned any power to take any decision or command and control the staff. He verified the records before they were put to the manager for taking decision thereupon. Such functions appeared not to be managerial. Accordingly it is held that he is a clerk and a workman as defined in S.2(s) he is not included in the category of person as defined u/s 2(s) clause (IV) of the Act."

3. Mr. Sarma strenuously argues that the respondent No. 2 is not a workman and, as such, the award of the Labour Court is to be set aside and quashed. Before we go to that aspect of the matter, let us have a look at Section 2(s) of the industrial Disputes Act, 1947. The definition is two parts. In the 1st part "workman" is defined to include a person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. Such hire or reward must be fixed under a contract between the employer and the employee. The contract may be express or implied.

4. Explicitly, excluding certain categories, the definition is very wide. It includes 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.

5. The definition in the first part includes a person employed to do supervisory work, but in the second part is excludes specifically from the scope of the definition certain categories of employees. Under exception (iii), even a workman, who is employed mainly in a managerial or administrative capacity, goes out of the definition of "workman", while under exception (iv), persons, who are employed in a supervisory capacity, go out of the definition, provided they either draw wages exceeding Rs. 1600 per mensem or exercise, by the nature of the duties attached to the office or by reason of the powers vested in them, functions mainly of a managerial nature; and the test provided is the nature of the duties attached to the office or the powers vested in the person employed.

6. It is on this background that we must decide the present dispute.

7. Let us have a look at the written statement filed by the management in this case. The letter of appointment with the terms is exhibited before the Labour Court. It is not necessary to quote the conditions mentioned therein. Let us have a look the duties of the workman as mentioned in the written statement of the management. In paragraph 3 of the written statement, the duties are mentioned and they are quoted below:-

"(A) The employee in this capacity as Office Superintendent was required to verify and sign the stores requisition-cum-issue slip after the stores clerk make necessary entries.

(B) The employee also used to check, verify and sign the Provident Fund and

Gratuity Settlement Registers.

(C) The employee was required to conduct physical verification of stores independently as in the case of Managerial staff.

(D) The employee used to verify the coal stock Register as also the Cash Register slips. He was also required to check, verify and sign the ration issue book.

(E) The employee had also to check, verify and sign the Sirdars and Panniwallahs plucking commission book as also the miscellaneous items purchase slips which was to be independently signed by him.

(F) The employee had also to verify and submit the daily employment reports.

8. We must find out whether these duties which were assigned to the workman can bring him in the capacity of supervisor. A bare perusal of these duties will show that the workman did not have any power to supervise, he only did clerical work. This aspect of the matter came up for consideration before the Apex Court in (1967) SC 428, *Lloyds Bank v. Panna Lal Gupta and Ors*, that was a case with regard to the Accountants of the Bank. The Supreme Court in this case pointed out that in a Bank there may be certain Accountants who may be officers, there may be other Accountants who are merely Clerks. The Supreme Court, in paragraph-5 pointed out as follows :-

"(B) Industrial Disputes Act (1947), Section 15 - Bank (Sastri) Award - Construction - Special allowance to supervisor - Workman whether supervisor is mixed question of law and fact - Clerks doing work of checking in audit department held not supervisors - Constitution of India, article 136 - All India Industrial Tribunal (Bank) Disputes award, Para-164, CI9.

In exercising Its discretion under Article 136, the Supreme Court does not entertain pleas on questions of fact and in dealing with the question of status of a workman, the Supreme Court will take the facts found by the Tribunal to be correct.

The status of a workman has to be Inferred as a matter of law from facts found and if the question involved is one of drawing a legal inference as to the status of a party from facts found that is not a pure question of fact. If the inference drawn by the Tribunal in regard to the status of the workman involved the application of certain legal tests that necessarily becomes a mixed question of fact and law.

It must, however, be remembered that even if the question raised is one of mixed fact and law the Supreme Court would not readily interfere with the conclusion of the Tribunal unless it is satisfied that the said conclusion is manifestly or obviously erroneous."

9. The same was considered in another case i.e. *National Engineering Industries Ltd. Vs. Shri Kishan Bhageria and Others*, That was a case wherein the employee worked as Internal Auditor of the Company and it was found that he was doing

his audit work and he had no independent right or authority to take decision hence, on that background the employee was held to be workman u/s 2(s) of the Industrial Disputes Act, 1947. On the other hand, the learned counsel for the petitioner relies on the following decisions:-

(a) 1977 Labour & Industrial Cases, page- 721, Pabbojan Tea Co v. Labour Court, Assam;

(b) *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others*,

(c) *Heavy Engineering Corporation Ltd. Vs. Presiding Officer, Labour Court and Others*,

(d) *H.R. Adyanthaya Vs. Sandoz (India) Ltd., etc. etc.*, Let us take these cases cited by the learned Advocate for the petitioner.

10. In 1977 LIC (supra), the person concerned was practising lawyer. He was appointed as Welfare and Labour Officer by the Company for a period of one year on a basic salary of Rs. 900 per month and it was further provided that he will be governed by the Company's rules relating to the Indian Members of the Management staff. He was given other fringe benefits similar to those of the covenanted staff of the Company and, subsequently, he was re-designated as Personnel Officer and the duties are mentioned in paragraph-4 by giving long list and taking all these things into consideration, the Division Bench of this court held that the person is not a workman. This case is of no help to the petitioner, inasmuch as, I have indicated above the duties of this case.

11. In *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others*, it is pointed out that quite a large number of employees are employed in Industries to do work of more than one of the kinds mentioned in the definition. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does or does not go out of the definition of "workman" under the exception. For this purpose, a workman must be held to be employed to do that work which is the main work he is required to do, even though he may be incidentally doing other type of work and applying that test, the Supreme Court came to the finding that the principal and substantial work done was merely that of workman.

12. The learned advocate for the petitioner relied on paragraphs 19, 20, 31 & 32, these are not necessary to be discussed in view of the position of law as indicated above.

13. In 1994 (5) SCC 752 (supra), in paragraph 24 the Supreme Court pointed out as follows:-

"We thus have three -Judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any

of the four categories viz, manual, clerical, supervisory or technical and two-Judge Bench decisions which have be referring to one or the other of the said three decisions have reiterated the said law. As agr.inst this, we have three three-Judge Bench decisions which have without referring to the decisions in May & Baker, WIMCO and Burmah Shell cases have taken the other view which was expressly negatived, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the ID Act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation."

14. In this case the finding arrived at by the Labour Court is that the workman was doing clerical work and he was a clerk of F Grade.

15. In Heavy Engineering Corporation Ltd. Vs. Presiding Officer, Labour Court and Others, that was a case of a doctor having under him male nurse, nursing attendant, sweeper and ambulance driver. The doctor, along with his colleagues worked in shifts and it was held that he worked in a supervisory capacity. Hence, he was not a workman.

16. That being the position of the law, there is no merit in the writ application and the same shall stand dismissed.