

(2009) 10 KL CK 0074
In the High Court Of Kerala
Case No : W.A. No. 1401 of 2007

Mar Baselios Medical Mission Hospital	Vs	APPELLANT
Dr. Joseph Babu		RESPONDENT

Date of Decision : 30-10-2009

Acts Referred:

Constitution of India, 1950 — Article 141
Industrial Disputes Act, 1947 — Section 2, 33C(2)

Citation : (2010) 125 FLR 151 : (2010) 1 KLT 530 : (2010) 3 LLJ 606

Hon'ble Judges : V.K. Mohanan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Renil Anto Kandamkulathy and Thomas James Mundackal, for the Appellant; Paulson C. Varghese and Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The question raised in the Writ Appeal from the decision reported in 2007 (1) KLT 783 (Mar. Baselius Medical Mission Hospital v. Joseph Babu) filed by a hospital is whether the learned single Judge was right in confirming the order of the Labour Court holding that a consultant Physician employed by the appellant is a "worker" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (for short "the I.D.Act").

2. We have heard counsel appearing for the appellant, counsel appearing for the first respondent-Medical Doctor who is the claimant before the Labour Court and the Government Pleader who, while appearing for the Labour Court, supported the case of the first respondent that the Medical Doctor is a workman within the meaning of that term contained in the I.D.Act.

3. Admittedly, the claimant in this case is a Post-Graduate Doctor in General Medicine, who was employed in the appellant's hospital on a monthly salary of Rs. 8,200/- in the year 1989. After leaving the service of the hospital, the Doctor filed a claim petition u/s 33C(2) of the I.D.Act before the Labour Court claiming wage arrears for Sundays and holidays worked by him during 1989 to 1991, i.e.,

for the period prior to his leaving the service of the hospital. The appellant resisted the claim mainly on the ground that the Doctor is not a "workman" u/s 2(s) of the I.D. Act entitling him to maintain a claim petition u/s 33C(2) of the I.D. Act before the Labour Court. The Labour Court overruled the appellant's objection and found that the first respondent was entitled to realise an amount of Rs. 66,000/- as holiday wages and Sunday wages from the appellant. When the order of the Labour Court was challenged before this Court, the learned Single Judge, relying on the decision of the Supreme Court reported in *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others*, held that Doctor is also a "workman" within the meaning of that term contained in the I.D. Act. It is against this judgment, this Writ Appeal is filed.

4. Counsel appearing for the appellant, relying on a rather recent judgment of the Supreme Court in *Muir Mills Unit of N.T.C. (U.P) Ltd. Vs. Swayam Prakash Srivastava and Another*, contended that the issue is now squarely covered by the decision of the Supreme Court and therefore, the order of the Labour Court has to be vacated. Counsel appearing for the first respondent and the Government Pleader, on the other hand, contended that there are several other judgments including that of Supreme Court wherein a contra view is taken. Even though several judgments are cited before us, since the issue is squarely covered by the above referred judgments of the Supreme Court, we have to only examine, whether there is any decision of the larger Bench of the Supreme Court contrary to the same or whether any other judgments of the Supreme Court stands in our way, in following the above judgment. It is worthwhile to note that the position that a teacher is not a workman u/s 2(s) of the I.D. Act is settled by a decision of the Supreme Court reported in *Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others*. Even though counsel for the claimant and the Government Pleader, referred to the decision of the Supreme Court in *Burma Shell Oil Storage and Distribution Company of India Ltd.*'s case (cited supra) which is a decision referred to by the learned single Judge, we notice from the judgment under appeal of the Madras High Court that the reference is only about Medical Attendant and the issue arose in 1964. However, it is worthwhile to consider the earlier judgment of the Supreme Court in the *Management of Heavy Engineering Corporation Ltd. v. Presiding Officer, Labour Court and Ors.* 1997 (1) LLJ 569 wherein the court has assumed that the Medical Officer is engaged in technical duties and he would be a workman if he is not engaged in a supervisory capacity. However, the court has not considered the question whether the Medical Officer, being a professional, is outside the scope of a worker or not. In the latter decision of the Supreme Court above referred, there is a categorical finding by the Supreme Court as follows:

31. Therefore, it is clear that respondent No. 1 herein is a professional and never can a professional be termed as a workman under any law.

5. There can be no doubt that the above is a positive declaration of law and even

though the Supreme Court was considering as to whether a Legal Assistant is a workman or not, the Supreme Court has talked about other professions besides law, viz., medical profession and missionary work which is nothing but professional religious practice. When Supreme Court declares the law positively in plain terms and when there is no other judgment contrary to the law so declared, it is our duty under Article 141 of the Constitution of India to follow the decision and decide the case based on the same. Even though the appeal is only to be allowed based on the decision of the Supreme Court, it is worthwhile to consider the argument of the counsel for the appellant, who contended that even going by the decision of the Supreme Court in Management of Heavy Engineering Corporation Ltd.'s case above referred, the test of supervisory work stands satisfied against the first respondent even if Doctor is taken as a person engaged in technical work. We are in complete agreement with the arguments of the appellant that a postgraduate Doctor, who was engaged at a fairly high salary of Rs. 8,200/- per month in 1989, obviously was engaged in the treatment of patients as a Senior Doctor in the Department of Medicine. His work is essentially diagnosis of disease of the patient and treatment for the same and a Senior Doctor is always assisted by a team of junior Doctors, Medical Attendants, Nurses etc. It is the duty of the Senior Doctor to ensure that examination of the patient like, X-ray, blood test etc. and the treatment suggested by him are carried out strictly in accordance with the instructions and no one can doubt that any subordinate employee disobeying the Doctor's instruction will do it except at the risk of disciplinary action. Therefore, in our view, a Senior Doctor, engaged in diagnosis and treatment of patients, has in his work the inherent job of supervision of subordinate medical staff in regard to the treatment of patients.

6. Since an employee, earning a monthly salary of Rs. 1,600/-, engaged in supervisory work is outside the scope of workman, we are of the view that even applying the test laid down by the Supreme Court in Management of Heavy Engineering Corporation Ltd.'s case, the claimant- Doctor in this case, who was receiving a monthly salary of Rs. 8,200/- in 1989 and who was one of the Senior Doctors of the appellant-hospital, was engaged in supervisory and technical work, even if Doctor's work is only technical in nature. We, therefore, follow the decision of the Supreme Court and in view of the finding as above, we allow the appeal by vacating the judgment of the learned single Judge and the order of the Labour Court and dismiss the claim petition filed before the Labour Court u/s 33(C)(2) of the I.D. Act.

The Writ Appeal is allowed as above.