
(2013) 05 AHC CK 0174
In the Allahabad High Court
Case No : C.M.W.P. No. 8422 of 2009

M/s. The Dhampur Sugar Mills Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-05-2013

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2(s), 2(z), 6N

Citation : (2013) 5 ALJ 460 : (2013) 138 FLR 152 : (2013) LLR 879

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Shakti Swaroop Nigam, for the Appellant; R.K. Mishra, C.S.C., U.K. Mishra, Ashish Tripathi and R.N. Tripathi, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—The petitioner has challenged the validity and legality of the award passed by the Labour Court directing reinstatement with backwages. The facts leading to the filing of the writ petition is, that the workman was appointed as a Trainee Operator in the year 1991 and eventually was working on the post of Assistant Chemist at the relevant moment of time. On 26.3.2001 a notice was served upon the workman giving him two months notice after which his services would be dispensed with. In the said notice it was indicated that there was a heavy slump in the industry and consequently, his services was no longer required. The workman was accordingly terminated on 25.5.2001. The workman being aggrieved, raised an industrial dispute which was referred to the Labour Court.

2. Before the Labour Court, the employers took a stand that the workman was not a "workman" as defined u/s 2(z) of the U.P. Industrial Disputes Act, inasmuch as, his duties was supervisory and technical in nature, and that, he supervised the work of the workers working under him. It was also alleged that since the workman was getting more than Rs. 500/- per month, he was not a workman. On the other hand, the workman in his written statement contended

that the duties were not supervisory and that he was not entitled to grant leave or take action against any worker and that he himself was subordinate and answerable to the Deputy Production Manager.

3. Before the Labour Court, a witness of the employer deposed and contended that the post of Assistant Chemist was a post of Supervisor and even though he had no power to appoint anyone, nonetheless, was authorized to recommend action against a worker and, therefore, he was working on a supervisory post and was not a workman.

4. The Labour Court, after considering the matter came to the conclusion that the workman was not working as a supervisor but was working as a workman and that his services were wrongly dispensed with for wrong reasons without complying with the provisions of section 6-N of the U.P. Industrial Disputes Act. The Labour Court found that there was no evidence to indicate that there was a heavy slump in the industry and, even assuming that there was a heavy slump, the provision of section 6-N of the Industrial Disputes Act was still required to be complied with by the employer. Since the same had not been done, the dispensation of the services of the workman was wholly illegal. The Labour Court, accordingly, directed reinstatement with continuity of service and with back wages. The petitioner, being aggrieved by the said award has filed the present writ petition.

5. Heard Sri Shakti Swarup Nigam, the learned Counsel for the petitioner and Sri Ashish Tripathi, the learned Counsel for the respondent-workman.

6. The learned Counsel for the petitioner submitted that the respondent was working as a supervisor on the post of Assistant Chemist and, consequently, was not a workman as defined u/s 2(z) of the U.P. Industrial Disputes Act. The learned Counsel submitted that substantial evidence had come up before the Labour Court to the extent that the post of Assistant Chemist was a post of Supervisor who was authorized to recommend action against the workers working under him and, consequently, the respondent was not a workman. The learned Counsel submitted that the proceedings initiated under the U.P. Industrial Disputes Act was wholly illegal and without jurisdiction. In support of his submission the learned Counsel has placed reliance upon various judgments to prove that the respondent was not a workman as defined under the Act.

7. In *Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others*, the Supreme Court held that in order to be a workman a person should be one, who satisfied the following conditions, namely,

(i) he should be a person employed in an industry for hire or reward; (ii) he should be engaged in skilled or unskilled manual, supervisory, technical or clerical work; and (iii) he should not be a person falling under any of the four clauses, i.e., (i) to (iv) mentioned in the definition of "workman" in section 2(s) of the Act. The definition also provides that a workman employed in an industry to do any skilled or unskilled manual, supervisory, technical or clerical work for

hire or reward includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, an industrial dispute, or whose dismissal, discharge or retrenchment has led to that dispute.

8. In *S.K. Maini Vs. M/s. Carona Sahu Company Limited and others*, . the Supreme Court held:

whether or not an employee is a workman u/s 2(s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any straitjacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of workman u/s 2(s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the complexity of industrial or commercial organisations quite a large number of employees are often required to do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it.

The Supreme Court further held--

But if the principal function is of supervisory nature, the employee concerned will not be workman only if he draws a particular quantum of salary at the relevant time as indicated in section 2(s).

9. In *Hussan Mithu Mhasvadkar Vs. Bombay Iron and Steel Labour Board and Another*, . the Supreme Court held--

No doubt, in deciding about the status of an employee, his designation alone cannot be said to be decisive and what really should go into consideration is the nature of his duties and the powers conferred upon as well as the functions assigned to him. Even if the whole undertaking be an industry, those who are not workmen by definition may not be benefited by the said status. It is the predominant nature of the services that will be the true and proper test.

10. Similarly in *Anand Regional Co-operative Oil Seeds Grovers" Union Ltd. v. Shailesh Kumar Harshadbhai Shah*, 2006 (111) FLR 581 (SC) . the Supreme Court held:--

For determining the question as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.

Supervision contemplates direction and control. While determining the nature of the work performed by an employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is

needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of the section alone and that too it being a small one and relating to quality control would not answer the test.

... A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence.

The Supreme Court further held--

Judging by the said standard, we are of the opinion that the First respondent did not come within the purview of the exclusionary clause of the definition of workman. Ananda Bazar Patrika (supra), was followed by the Court in a large number of cases.

11. In Bennett Coleman and Co. Limited Vs. Shri Yadeshwar Kumar, . the Delhi High Court held-

In order to decide whether a person is a workman or not, the dominant and main functions are to be considered. A person can be called a supervisor if he is entrusted with the job of supervising other workmen who work under him. There is no dispute that the respondent was not only designated as Night Supervisor but he was having job of supervision over security guards, chowkidars and sweepers. He used to forward over time claims of the persons working under him after verifying the same. He used to recommend leave of the persons working under him. He was in charge of the security of the property of petitioner and used to supervise the work of security guards etc. It is not necessary that a supervisor has to be top cadre management person. A supervisor may occupy a lower position in the organisation chart of the company where in the descending order may be CMD, MD, General Managers, Deputy Managers, Managers, Administrative Officer and supervisor etc. It has been laid down by the Supreme Court that in order to be a workman a person must be performing one of the functions as specified in section 2(s) of the Act and it was not sufficient that he was not performing administrative or managerial function.

12. In the light of the aforesaid decisions, it is clear that a workman is a person who is employed in an industry for hire or reward and who is engaged as a skilled, unskilled, manual, supervisory, technical or for clerical work. In the instant case, the Court is concerned with the meaning of the word "supervisory" and, in order to find out whether the workman was doing supervisory work, it is essential that his principal nature of duties and functions should come to the fore. Such question is required to be determined with reference to the facts and circumstances that have been brought on record and it is not possible to lay down any straight jacket formula, which could decide the dispute as to the real nature of duties and functions being performed by an employee. The designation alone cannot be said to be a decisive factor. It would be a pre-dominant nature of

the services, which the employee was putting that would be a true and proper test in finding out whether the respondent-workman was doing supervisory work, which would exclude him from the category of a workman.

13. In the light of the aforesaid decisions, the only evidence which has come before the Labour Court is, that the post of Assistant Chemist is a post of Supervisor and that the said post authorizes the Assistant Chemist to recommend action against the workers working under him even though the Assistant Chemist is not the appointing authority. There is no evidence before the Labour Court with regard to the actual duties being performed by the respondent workman. No evidence of any sort has been filed to indicate the supervisory nature of work, which the workman was doing. There is nothing to indicate that the workman had made any recommendation to his superior to take action against any worker working under him. There is nothing to indicate that the workman was giving any direction to do a particular kind of work to any particular worker. On the other hand, the workman in his deposition has categorically stated that he was only an Assistant Chemist working under the Deputy Production Manager and had no power to supervise any work or give any direction to any workman. The Court is of the opinion, that it is one thing to allege that the post carries certain duties and responsibilities, but, it is another thing to contend that the workman was doing a particular kind of work. In the instant case, the Court finds that there is no evidence which has been brought on the record by the employers to indicate that the workman was only doing supervisory work. Mere designation does not by itself indicate that the workman was only employed to do supervisory work or that he was not a workman.

14. In the light of the aforesaid, the Court is of the opinion that the award of the Labour Court does not suffer from any error of law. The writ petition fails and is dismissed.