

(2000) 11 AP CK 0029
In the Andhra Pradesh High Court
Case No : AAO No. 1141 of 1996

P. Galireddy and another

APPELLANT

Vs

Chinna Ramaswamy Goud and others

RESPONDENT

Date of Decision : 08-11-2000

Acts Referred:

Workmens Compensation Act, 1923 — Section 2(1), 30

Citation : (2002) ACJ 1595 : (2001) 1 ALD 171 : (2001) 1 APLJ 33 : (2002) 4 LLJ 332

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : Mr. M. Panduranga Rao, for the Appellant; Mr. P. Sridhar Rao, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Ramana, J. 1. This appeal is filed by the employer questioning the award dated 31-7-1996 passed by the Commissioner of Workmen's Compensation and Assistant Commissioner of Labour, II Circle, Rangareddi District, in WC Case No.158 of 1993.

2. The legal heirs of one Chinna Mallesham Gaud, deceased in this case, filed the above case claiming compensation of Rs.87,980/- for the death of the deceased. It is the case of the claimants that the deceased was working in the industrial concern belonging to the appellants herein, on monthly wages of Rs.1,100/-. While so, on 17-6-1993, the deceased was entrusted with the work of cleaning some powder, which gathered on the electric meter board fixed in the premises of the said industrial unit. While cleaning the Board, the deceased came into contact with a live electric wire, due to which he received shock and fell down. When he was taken to the Government Hospital for treatment, the workman died. Hence, the claim under the Workmen's Compensation Act ("the Act", for brevity).

3. Counter was filed by the appellants herein contending that the deceased was engaged only on casual basis, that too intermittently, by paying him daily wages of Rs.20/- and he is not a "workman" within the meaning of Section 2(1)(n) of the Act and that their organisation is not a "factory" as they engaged only four workmen in their organisation. It is, therefore, contended that there was no "employee" and "employer" relationship between the deceased and the appellants and so the claimants are not entitled to claim any compensation under the Act.

4. On the basis of the above pleadings, enquiry was conducted before the authority wherein two witnesses were examined and two documents were marked on behalf of the claimants. On behalf of the appellants, one witness was examined and three documents were marked. On a consideration of the entire evidence on record, the Commissioner held that the deceased is a "workman". In regard to quantum of compensation, the Commissioner determined the age of the deceased as on the date of his death as 23 years and that he was earning a monthly wage of Rs.910/- (26 days @ Rs.35/- per day) and on that basis fixed compensation of Rs.80,061/- and in all a sum of Rs.80,521/- was awarded as compensation. Aggrieved by the same, this appeal is filed.

5. It is contended by the learned Counsel for the appellants that the deceased is not a "workman" within the meaning of Section 2(1)(n) of the Act as he was engaged only on casual basis and not on permanent basis; that as on that day, the unit was being run only on trial basis and there was no manufacturing process carried on in their unit on the date of accident and that there were only four persons engaged in the said unit. It is, therefore, contended that the appellants' unit cannot be termed as "factory". It is also contended that the deceased workman was not engaged for the purpose of any "trade" or "business" so as to bring him within the purview of Section 2(1)(n) of the Act and consequently the provisions of Workmen's Compensation Act cannot be made applicable in this case for the purpose of granting compensation to the claimants. It is also contended that the appellants are not the "employers" and the deceased is not a "workman" even under Schedule-II of the Act and, therefore, there was no "employer" and "employee" relationship between the appellants and the workman.

6. On the other hand, learned Counsel for the respondent-workman supported the award contending that the award does not suffer from any serious legal infirmity and therefore no interference is warranted by this Court.

7. I have perused the award of the Commissioner. The contentions, which are raised before this Court, were already raised before the Commissioner and they were answered by the Commissioner in the negative. There is no substantial question of law involved in this appeal. It is settled law that in an appeal filed u/s 30 of the Act, the High Court should not interfere with the award passed by the authority when there is no question of law involved. In *Ranga Cotton Ginning Mills Vs. Ginjupalli Ratna Kumari and Another*, this Court held that a High Court

can interfere with a finding of fact recorded by the primary authority only when the same is based on no evidence or insufficient evidence. In this case, it is not the contention of the learned Counsel for the appellants that the findings of the Commissioner are not based on evidence. Therefore, the appeal is liable to be dismissed on this sole ground.

8. Coming to the next contention of the appellants that the deceased is not a "workman" within the meaning of Section 2(1)(n) of the Act, admittedly, the deceased was working under the appellants, of course, on casual basis as on the date of accident and the accident took place during the course of his employment under the appellants. Now, the question is whether the deceased can be termed as a "workman" within the meaning of Section 2(1)(n) of the Act. For this purpose, a reading of the main part of Section 2(1)(n) of the Act is relevant, which is extracted hereunder:

"(n) "Workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business)..."

9. As per Section 2(1)(n), a person who is employed on a casual basis and who is employed otherwise than for the purposes of employer's trade or business, is not a "workman" within the meaning of the Act. Thus, the two ingredients which disentitle a person to be termed as a "workman" are: he must be employed on casual basis and he must be employed otherwise than for the purposes of employer's trade or business. On a careful scrutiny of the language employed in the provision, it appears to me that even if one of the two ingredients is absent, then such a person can be termed as "workman". Thus, the word "and" occurring in between the words "other than a person whose employment is of a casual nature" and "who is employed otherwise than for the purposes of the employer's trade or business" must be read conjointly. As a necessary corollary, a person who falls within the ambit of one of the two ingredients and does not come under the other ingredient, can still be termed as a "workman". For example, even though the employment of a particular person may be of casual nature and thereby falling within the ambit of one of the ingredients, but if that particular person is engaged for the purposes of employer's trade or business, he must be termed as a "workman" within the meaning of Section 2(1)(n) of the Act. Similar is the view expressed by a learned single Judge of this Court in Divisional Engineer, Telecommunications, Palasa, Srikakulam Vs. I. Sankara Rao and another, which is cited by the learned Counsel for the respondents. The learned single Judge of this Court held in that case that a casual worker, who was engaged as a driver on daily wages by the Telecom Department, is a "workman" within the meaning of Section 2(1)(n) of the Act. The findings of the learned Judge in the above cited case are apposite, which are extracted hereunder:

"Thus, it would be seen that if respondent No.1's services were utilized for the purpose of trade or business of the appellant department, then he will fall within the term "workman" as defined under the Act. The admitted evidence in the case

is that respondent No.1's services were being utilized whenever there was need of drivers in the department. His services were utilised for the work of the department. His services have been utilised on various dates. In the circumstances, having regard to Section 2(2) of the Act read with Section 2(1)(n) of the Act it follows that the services of respondent No.1 were utilized for the trade or business of the appellant department. That being so, the respondent No.1 was a workman within the meaning of Section 2(1)(n) of the Act."

10. Further, in *Kerala Balagram v. Kochumon*, 1997 (3) LLN 921, cited by the learned Counsel for the respondents, a Division Bench of the Kerala High Court dealing with Section 2(1)(n) of the Act, held that a workman engaged in farming and agricultural operations comes within the definition of "workman". In that case, the employer, a charitable society, which is conducting agricultural operations and farming, even though carrying such operations on charity basis, must be termed as an "employer" within the meaning of the Act. The Division Bench held therein that even if private individual or society conducts agricultural operation for in-house use and consumption and not for the purpose of sale, there will be a profit element in the conduct of agriculture. No society or individual will, under normal circumstances, without expecting a surplus, will invest funds for agricultural operations and that the society conducting a destitute home is conducting agricultural operations and so it was held that the said society is an "employer" within the meaning of the Act and will not get absolved from liability to compensate the workman under the Act in the event of his accident during the course of employment in connection with its business. It is further held that even if the employment of the deceased workman is of casual nature, he will not come within the exclusion clause contained in the definition section.

11. Thus, as per the law laid down in the aforementioned cases, it must be held that even a casual worker is a "workman", provided he is engaged by the employer for the purposes of his trade or business. In view of what is stated supra, it must be held that even though the deceased workman in this case was engaged on casual basis, he shall be termed as "workman" within the meaning of Section 2(1)(n) of the Act, as he was engaged for the purpose of "trade" or "business" of the appellants.

12. Learned Counsel for the appellants tried to contend that on the date of accident, the workman was not engaged for the purposes of any "trade" or "business" of the appellants, much less any profit making trade or business and so, the deceased cannot be termed as a "workman" within meaning of Section 2(1)(n) of the Act. It is the contention of the appellants that on the date of accident, the factory was run only on trial basis and no production was taken up on that day for making any profit. Admittedly, even though the appellants were not actually producing any finished product, the unit was run on trial basis. But, the appellants cannot deny the fact that the said attempt was made only with a view to put the machinery into motion. This process had been taken up by the

employer as part of a preparatory measure before commencing the actual process of production on large-scale commercial basis and thus it is an incidental activity which is connected to the main business of the employer. Even though the manufacturing process undertaken by the appellants at the time of accident might not have earned immediate profits to the appellants, since the said process undertaken on that day was only in the pursuit of earning profits, the said process must be held to have undertaken in the course of "trade" or "business" of the appellants on that day. Therefore, in exceptional cases, a trade or business may be carried on although the purpose aimed at is not to secure profit, at all events direct profit and the case on hand squarely comes under one of such exceptional cases. In this connection, the judgment of the Punjab and Haryana High Court in *Ganesh Foundry Works Vs. Bhagwanti and Others*, wherein it was held that the work of setting right some electric defect in the employer's industrial concern is connected with or subsidiary to the industrial concern and that the employer's trade or business or subsidiary to it comes within the ambit of the words "for the purpose of the employer's trade or business" - is apposite. Therefore, the contention advanced by the learned Counsel for the appellants on this score is liable to be rejected. The learned Commissioner, on a reading of the evidence adduced on record, rightly held that the said activity is connected with trade and business and, therefore, it can be brought within the purview of Section 2(1)(n) of the Act.

13. The contention of the learned Counsel for the appellants is that since there were only four persons employed in the unit on the date of accident, it cannot be treated as a "factory" and so the claimants are not entitled to claim any compensation for the death of the deceased in such factory. But, I am not inclined to attach any importance to this contention. Because, in a case which is filed under the Workman's Compensation Act, what is relevant to be gone into is: (1) whether there is any employee and employer relationship; and (2) whether the accident took place during the course of employment or not. Insofar as the first requirement is concerned, no doubt, the appellants denied the relationship of "employee" and "employer", in which case, the onus is on the employer to prove the same by adducing cogent evidence. But, in this case, the appellants did not take any steps to establish the same by marking any documents or registers like muster rolls etc., which were maintained by them at the relevant period. Therefore, in the absence of any proof, it must be presumed that there existed employee and employer relationship between the deceased and the appellants as on the date of accident. Insofar as the second requirement is concerned, it is not the case of the appellants that the accident did not occur during the course of the employment. Thus, it must be held that the two requirements have been duly satisfied in this case. In such an event, it is wholly irrelevant to embark upon an enquiry as to whether how many workers were actually employed in the factory as on the date of accident. Therefore, this contention too is liable to be rejected. There are no merits in this appeal and the same is liable to be dismissed.

14. In the result, the appeal is dismissed. Respondents 1 and 2 shall be entitled to withdraw the interest accrued on the amount of compensation deposited. No costs.