

(2010) 05 KAR CK 0027
In the Karnataka High Court
Case No : Writ Petition No. 23104 of 2005

Pam Network Limited

APPELLANT

Vs

Sri B. Balakrishna Nayak

RESPONDENT

Date of Decision : 24-05-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 2 (s), 33 (2) (c)

Citation : (2011) 128 FLR 819 : (2010) ILR (Kar) 3539 : (2011) 2 KarLJ 106 : (2011) 1 LLJ 596

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : R. Krishna and Associates, for the Appellant; Venkatesha C. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Mohan Shantanagoudar, J.—The order of the Labour Court on application No. 24/02 u/s 33(c)(2) of the Industrial Disputes Act, 1949 (for short the Act") is called in question in this writ petition.

2. The records reveal that the respondent was appointed on 24.08.2000 as Business Development Manager, by the petitioner -Company as per the terms and conditions contained in the order of appointment - Annexure Ex. A.1. The petitioner - Company agreed to pay a sum of Rs. 32,500/- per month as salary to the respondent. However, the salary for the months from April 2001 to November 2001 was not paid to the respondent by the petitioner - company and consequently the company was due totally in a sum of Rs. 2,23,522/-to the respondent towards arrears of wages. Hence the respondent moved an application u/s 33(c)(2) of the Act before the Labour Court.

3. The management of the petitioner - Company filed statement of objections before the Labour Court inter alia contending that the respondent is not entitled to get any salary from April 2001 to November 2001 since he was not working

during that period in the company and has not achieved the performance standard as agreed upon. It is further contended that as the respondent was performing the managerial functions, he is not a workman as defined u/s 2(s) of the Act.

4. Both the contentions of the management of the petitioner -company were considered by the Labour Court thoroughly. The Labour Court ultimately concluded that the respondent is a workman as defined u/s 2(s) of the Act and that the management is liable to pay the wages of the workman from April 2001 to November 2001.

5. According to the management, the respondent herein was working as a Business Development Manager in the managerial cadre and was being paid wages of Rs. 32,500/- per month: that he was incharge of marketing and sales department and was supervising the work of four employees working under him. In support of in case the management has led evidence of R.W.1 who has deposed that the respondent herein was incharge of marketing and sales of the company and was supervising the work of four employees working under him. He has further deposed that the respondent herein was in managerial cadre and therefore he is not a workman as defined under the Act. Ex. R.1 to Ex. R.13 are the documents upon which the management placed reliance to substantiate that the respondent is not a workman. But those documents do not reveal that the respondent was supervising the work of four employees and was sanctioning leave to them or that he was entitled to initiate disciplinary action against them. There is absolutely no record to show that the respondent was supervising the work of any of the employees in his section and was performing managerial functions. None of the employees working in the section were reporting to the respondent. On the other hand the respondent himself was reporting to his superiors. The respondent did not have the power to sanction leave to any of the employees who were working in his section. He is neither the appointing authority nor the disciplinary authority. No policy decision could be taken by the respondent. It is by now well settled that if a person mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of work done by him will not convert his employment as a clerk or workman into one in supervisory capacity Ananda Bazar Patrika (P) Ltd. Vs. The Workmen, . Having regard to the nature of work and the aforementioned facts and circumstances, the Labour Court was justified in concluding that the respondent herein is a workman as defined u/s 2(s) of the Act. Mere nomenclature or salary is not the criteria to assess the nature of work of an employee. 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 function. 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 strait-jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases S.K. Maini Vs. M/s. Carona Sahu Company Limited and others, . Therefore the respondent herein falls within the definition of workman as contained in Section 2(s) of the Act.

6. In the statement of objections filed before the labour Court the management has admitted that the workman has worked with them from April 2001 to November 2001. But it is contended by them that during the said period the workman was not regular and had failed to achieve performance level as agreed upon by him and therefore he is not entitled to wages from April 2001 to November 2001. From the aforementioned facts admitted by the management it is clear that the respondent herein had worked with the petitioner - company from April 2001 to November 2001. Nothing is produced before the Labour Court by the petitioner - company to show that the respondent herein has agreed to achieve certain performance level and that during the period from April 2001 to November 2001 he had failed to achieve the said performance level. There is also nothing on record to show that the respondent herein had agreed to forego his salary in case of non-performance. The appointment letter - Ex. A.1 contains the terms and conditions of appointment of workman. Ex. A.1 does not disclose any clause wherein the workman had agreed to forego his salary in case of non-performance or in the event of his failure to achieve certain performance level. In Ex. A.1 no performance level is fixed by the petitioner - company for the respondent - workman.

7. It is no doubt true that Clause 10 of the appointment order at Ex. A.1 provides that if the workman absents himself from duties for continuous period of 8 days without permission he shall be deemed to have voluntarily abandoned his appointment and deemed to have been terminated from service. Though the petitioner - company has stated that the respondent has remained absent frequently, no clear material is placed before the Labour Court to show as to how many days the workman remained absent unauthorisedly. In the absence of material evidence on record the Labour Court was justified in concluding that the petitioner -company has failed to prove that the workman has not worked regularly and that he has remained unauthorisedly absent for a period of more than 8 days continuously. On the other hand Ex. A.8 the document relating to the income tax clearly reveals that the tax is deducted at source from the salary of the respondent for the months April 2001 to May 2001. This goes to show that the respondent has worked in the petitioner - company for the said months to the satisfaction of the management. The Labour Court on appreciating the material on record, has, on facts correctly concluded that the respondent is a workman and that he was not paid salary from April, 2001 to November, 2001.

8. This Court will not generally interfere:

(a) Where there has been a mere breach of the technical rules of evidence and pleadings, not amounting to a violation of the rules of natural justice, or failure

of justice.

(b) On a question of fact which the tribunal has jurisdiction to determine, unless it is shown to be fully unsupported by evidence.

(c) On a question of error of fact, even though it is apparent on the face of the record.

(d) On a question of error of law, unless it is apparent on the face of the record.

(e) On the ground of rejection of some evidence, unless it is material.

(f) On the interpretation of an earlier award, which was within the jurisdiction of the Tribunal, merely because another interpretation was also possible.

(g) To set aside an order of the Tribunal which advances industrial justice, unless beyond its statutory jurisdiction.

In the matter on hand none of the aforementioned contingencies are available for this Court to interfere.

9. The Labour Court after assessing the material on record in proper perspective has come to the appropriate conclusion that the respondent is entitled to arrears of salary from April 2001 to November 2001 amounting to Rs. 2,23,522/-. Even on reconsidering the material this Court does not find any ground to interfere in the impugned order. Hence, the petition fails and the same is dismissed.