
(1959) 09 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No's. 142 and 145 of 1958

P.A.S. Press, Madras

APPELLANT

Vs

Presiding Officer, Labour Court, Madras and Another

RESPONDENT

Date of Decision : 03-09-1959

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : AIR 1961 Mad 194 : (1961) 2 FLR 548 : (1960) 1 LLJ 792

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Single Bench

Advocate : K. Rajah Iyer and K. Hariharan, for the Appellant; Addl. Govt. Pleader, R. Ramasubba Iyer and B.R. Dolia, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopala Ayyangar, J.—W. P. No. 142/58: The management is the petitioner in this petition which arises out of an award of an Industrial

Tribunal. The petition is for the issue of a writ of certiorari to quash the order of the Labour court, Madras, D/- 3-2-1958, by which the gratuity

has been directed to be paid to the respondent 2, Mr. G.V.N. Rao. The establishment in question is one which goes by the name of P. A. S. Press

in Komaleswaranpet, Madras. By an industrial award which had been passed as the result of a settlement between the management and their

workers, the workmen in this concern became entitled to gratuity on resignation or discharge. Subsequent to this consent award, G.V.N. Rao, the

2nd respondent, who was designated the manager of this Press, tendered his resignation on 10th July 1957, and this was accepted and he was

relieved from office on 31st July 1957. On resignation he made a demand for the payment of gratuity in terms of this award. This was refused and

thereafter Mr. Rao made an application u/s 33C of the Industrial Disputes Act to the labour court for a direction to the management to pay this sum.

This claim was resisted by the management on the ground that Mr. Rao who was designated "the manager" of this concern was not a "workman

within the meaning of Section 2(s) of the Industrial Disputes Act. This definition, as now amended by Act, XXXVI of 1956, runs--to quote only

the relevant words:

"Workman" means any person employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work, for hire or

reward but does not include any person (i)..... (ii).....(iii) who is employed mainly in a managerial or administrative capacity; (iv) who being

employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by nature of the duties attached

to the office, or by reason of the powers vested in him, functions mainly of a managerial nature.

2. In the counter affidavit filed by the management, the claim of Mr. Rao to gratuity was denied by relying on paras (iii) and (iv) of the exceptions

which I have extracted.

3. At the stage of the enquiry before the labour court, the only evidence adduced was that of the "workman" Mr. Rao. In his chief-examination, he

stated,

I was the manager of the respondent concern. "But I was doing only clerical work. Myself and one Jivasankar were the only two employees on

the clerical side" and I was designated as manager and he was designated as the accountant" (Italicising (here in single quotation) mine).

There was no cross-examination of this witness. Nor did the employer lead any evidence to show that the nature of the duties performed by Mr.

Rao fell within the exceptions (iii) and (iv) or was any different from what he had stated in his chief examination. It was on this material that the

Tribunal had to reach a finding as to whether or not the respondent 2 was a workman within the meaning of Section 2(s) of the Industrial Disputes

Act. The Tribunal might properly have set out and referred to the terms of Section 2(s), proviso (iii), in its award and not have confined itself to

negating the applicability of exception (iv).

But, in my opinion, this makes no difference because on the state of the evidence the Tribunal could not have reached any conclusion, other than

that it did, namely, that the respondent 2 was a "workman" within the Industrial Disputes Act.

4. Mr. Rajah Aiyar, learned counsel for the petitioner, urged two points in support of this petition and in support of the challenge to the order of the

labour court. The first was that Mr. Rao, the workman, had represented the management before the Industrial Tribunal on the previous occasion

when the consent award was passed by which the workmen in his concern became entitled to gratuity on discharge or retirement. In the former

order of the industrial tribunal, Madras, it was stated that Mr. G. V. N. Rao appeared "for the management" and in it he is also referred to as the

manager.

In my opinion, neither this description of the respondent 2 nor the fact that he appeared for the management renders the duties, to perform which

he was employed, those of a managerial nature within the meaning of exception (iii) or (iv). The latter would depend on the functions he was called

upon to discharge as part of his duties and for which he was paid remuneration. His representing the management before the industrial tribunal

would throw no light on the nature of these duties.

5. The second fact upon which Mr. Rajah Aiyar relied was that Mr. Rao had admittedly been designated "manager". It has been repeatedly held

that in cases of this sort, the question is not one of the designation of the workman or employee, but it is the exact nature of the duties performed

by the person, that would determine whether or not he is a workman within the meaning of Section 2(s). The evidence before the Labour Court

was that the duties of Mr. Rao were of a clerical nature and as this was not contradicted, I hold that there was no error committed by the Tribunal

in holding that Mr. Rao was a "workman" and that he was entitled to the gratuity which he claimed before the court. The W. P. No. 142 of 1958

fails and is dismissed.

6. W. P. No. 145 of 1958: This petition also is concerned with the same establishment as in W. P. No. 142 of 1958, and the management is the

petitioner. The workman concerned here is Jayasankar, the accountant, referred to in the evidence of Mr. Rao, which I have extracted in dealing

with W.P. No. 142 of 1958. He also resigned and on the terms of the consent award became entitled to gratuity, and the payment of this was resisted.

The labour court has passed a similar award in favour of the employee in this case also. The objection to the award is also the same as W. P., No.

142 of 1958, viz., that the employee is not a workman, but a manager or one employed in a managerial capacity within the meaning of exceptions

(iii) and (iv) of Section 2(s). The case of Jayasankar is a fortiori, even the designation--accountant--does not help the petitioner. The only material

before the labour court was that the duties of this employee were clerical and hence its award is in order. This petition, also fails and is dismissed.

No costs in either petition.