

(1959) 02 MAD CK 0017
In the Madras High Court

Philipose (D.)

APPELLANT

Vs

Additional Commissioner for Workmen's Compensation and
Another

RESPONDENT

Date of Decision : 25-02-1959

Acts Referred:

Citation : (1959) 2 LLJ 78 : (1959) 72 LW 379

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Judgement

Balakrishna Ayyar, J.—The petitioner was an employee of the respondent 2 company. In June 1938 he was appointed as temporary advertising supervisor. Subsequently he worked in various capacities, and eventually in 1958 he was holding a post which involved travelling. On 11 July 1958 he was served with a chargesheet by the head office of the company at Calcutta, in which it was alleged that he had threatened to assault a co-employee. On this charge the company dismissed the petitioner. Against the order of dismissal he appealed to the Labour Commissioner u/s 41 of the Madras Shops and Establishments Act, 1947. Before the Labour Commissioner, the company put forward the contention that the petitioner was a person who came within the meaning of Clause (6) of Sub-section (1) of Section 4 of the Act, and that therefore, the appeal was not competent. The Commissioner referred to Ex. B. 4 from which he extracted the following passage :

The present serves to inform you that you should consider, as your headquarters, Madras city as from Monday, the 19 May 1958. Your work shall consist in working the local market when required and also help our medical representative and visit dealers in the suburbs of Madras.

On this he observed:

It is clear from the above instructions that the respondent company did not transfer the applicant to a non-travelling job and they did not intend to

discontinue his travelling work even while he was at Madras, as he was required to work the local market in Madras city and visit dealers in the suburbs of Madras. In fact, it is not the applicant's case that Ms. designation as a traveller was changed or that he could refuse to go out, when he was required to go out. The applicant has also admitted during cross-examination that he has to canvass orders, if directed to do so by the management, that the area of his activities could be changed by his manager, that he could not refuse to go out of Madras city if he was asked to go out, because it was part of his duties and that he continued to be under the impression that he was a traveller. I am therefore satisfied on the materials placed before me that the applicant continued to be employed as a canvasser even after his coming to Madras in May 1958 and the nature of his employment was such that travelling was a necessary condition of his work. I therefore find that the applicant's work did involve "travelling".

In this view he declined to entertain the appeal. The present petition has been filed for the issue of an appropriate writ to quash the order of the Additional Commissioner for Workmen's Compensation.

2. The principal point taken before me is that when the legislature excluded the various classes of persons enumerated in Sub-clause (1) of Section 4 from the scope of the Act, it was not adopting a reasonable basis of classification which can be justified by reference to the objects and purpose of the enactment, and that, therefore, the exclusion, at least so far as persons in the category to which the petitioner belonged is concerned, is bad. I am unable to agree. Chapter 2 of the Act contains various provisions fixing the hours of work and the holidays, during which a shop should remain closed. Similar provisions are made in Chap. 3 in respect of establishments other than shops. Chapter 4 deals with employment of children and young persons. Chapter 5 deals with health and safety. Chapter 6 provides for holidays with wages. It seems to me that for the purposes for which the statute makes provision it would be perfectly proper and reasonable to make a distinction between employees whose duties involve touring or travelling and employees whose duties do not; a clear line of demarcation between the two exists. An employee whose duties do not involve travelling may be required to attend at particular hours and work between particular hours. But it would be impossible to do that in respect of an employee whose duties involve travelling. If the hours of work of an employee whose duties involve travelling are fixed, say, as between 10 a.m. and 5 p.m., he would be entitled to say that he is not bound to travel outside those hours even though it may be that no train or plane or other conveyance is available during those hours. Again an employee whose duties do not involve touring can be controlled more directly by the man above him in the office; but an employee who has to travel must be left largely to his own ingenuity, resourcefulness and self-help. In that case various allowances will have to be made on account of the expenses that they have to incur. In fixing their salary the circumstance will have to be taken into account that a considerable part of their time is spent outside headquarters and away from home. I am not prepared to say that the

classification to which exception had been taken is not legitimate. It seems to me further that even if it can be said that the classification is not reasonable, the petitioner would not be entitled to any relief unless the Act is extended to persons in his category. This Court has no jurisdiction to do that.

3. This petition is dismissed.