

(1957) 05 SC CK 0001
In the Supreme Court Of India
Case No : Civil Appeal No.239 of 1956

Pratap Chandra Sen

APPELLANT

Vs

Commissioner of Labour, Bihar Patna and Another

RESPONDENT

Date of Decision : 01-05-1957

Acts Referred:

Bihar Factories Welfare Officers Rules, 1952 — Rule 5
Factories Act, 1948 — Section 49

Citation : AIR 1957 SC 794 : (1957) 5 BLJR 596 : (1957) 2 LLJ 221

Hon'ble Judges : P. Govinda Menon, J;J. L. Kapur, J;B. Jagannadhadas, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Jagannadhadas, J.—This is an appeal by special leave. It arises out of an application, to the High Court of Patna under Article 226 of the Constitution, which has been summarily dismissed. It was tiled against the Commissioner of Labour, Bihar and prayed that an order of his be quashed on the ground that he failed or refused, to exercise a statutory jurisdiction, vested in him and entitling the petitioner to certain relief, and that in doing so he acted on a palpably erroneous view of the law applicable to his case.

2. The petitioner before the High Court and the appellant before us, was an employee of the Tata Iron and Steel Co., Jamshedpur. On 23rd September 1947, he was appointed as a "Personnel" Officer in the Personnel Department of the said Company. As such he was attached to the Company's Steel Welding Shop (Factory) No. 2 from September 1947 to December 1950. Thereafter his duties were assigned and he was attached to the Company's Ores, Mines and Quarries Department at Jamshedpur.

From 29th April 1953, he was shifted to the Company's mines at Garumahishani, in the district of Mayurbhanj (Orissa State). While thus at Garumahishani the Company issued to him a letter on 27th November 1954, terminating his services with effect from 1st December 1954. This was done for alleged unsatisfactory

work but without any formal enquiry. He appears to have had some prior indication of the proposed discharge.

He accordingly sent an express telegram dated 14th November 1954, to the Labour Commissioner, Bihar, seeking immediate intervention and protection. He followed this up by a letter dated 17th November 1954, to the Labour Commissioner, Bihar (i.e., ten days prior to the order of discharge) complaining that the decision reported to have been already arrived at by the Management of the Company to terminate his services was arbitrary, unjust and amounts to victimization.

His case is that he was throughout a Welfare Officer within the meaning of the Factories Act, 1948, and entitled to statutory protection against such arbitrary discharge by virtue of certain statutory rules under the Factories Act. The Labour Commissioner rejected his request for protection on the ground that though the appellant was originally employed in the Personnel Department of the Company at Jamshedpur, he was transferred to another establishment in a different State and hence the jurisdiction of the State Government of Bihar and the Labour Commissioner automatically ceased.

It is against this order of his that the appellant went up to the Patna High Court by means of an application under Art 226, which, as already stated, was summarily dismissed. It is against the summary dismissal that this present appeal by special leave has been brought.

3. The Tata Iron and Steel Co. was not made a party to the application under Article 226 in the High Court but the General Manager of the Company was made respondent NO. 2 in the application for special leave to this Court, respondent 1 being the Commissioner of Labour, Bihar. When the appeal came up before us, we heard it for some time and then the appellant was permitted to file an affidavit for clarifying certain matters which we felt to be necessary for a proper disposal of the case in the light of the contentions raised before us.

Respondent 2 was given time to file a reply thereto. This as well as the rejoinder by the appellant have since been filed. We have reheard the appeal. For a proper appreciation of the contentions raised, it is necessary to notice a few of the provisions of the Factories Act and some of the relevant rules made thereunder.

4. The Factories Act, 1948 (Central Act No. LXIII of 1948) became law on 23rd September 1948, and by virtue of Section 1(3) thereof, it came into force on 1st April 1949. The Act defines 'factory' as "any premises where ten or more workers are working and in any part of which manufacturing process is being carried on with the aid of power." But it is expressly provided in the definition that it does not include a mine subject to the operation of the Mines Act.

'Occupier' of a factory is defined as meaning a person who has ultimate control over the affairs of the factory. Where the said affairs are entrusted to a managing agent, such agent is deemed to be the occupier of the factory. Sub-

section (1) of Section 49 provides that in every factory wherein five hundred or more workers are originally employed, the occupier shall employ in the factory such number of Welfare Officers as may be prescribed.

Sub-section (2) of Section 49 provides that the State Government may prescribe the duties, qualifications, and conditions of service of officers employed Under Sub-section (1). Section 50 empowers the State Government to make rules exempting any factory from compliance with any of the provisions of chapter v of the Act subject to such alternative arrangements for the welfare of the workers as may be prescribed. Section 112 is a provision empowering the State Government to make rules in order to give effect to the purposes of the Act.

5. By virtue of this rule-making power, rules have been promulgated by the Governor of Bihar on 5th August 1952, called The Bihar Factories Welfare Officers Rules, 1952 (hereinafter referred to as the Rules). Rule 1 provides that the Rules shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint. A notification dated 14th February 1953, published in the Bihar Gazette dated 25th February 1953, fixed 1st March 1953, as the date on which the Rules are to come into force.

Under Rule 2, in every factory wherein five hundred or more workers are ordinarily employed per day, the occupier shall employ a Welfare Officer and in every factory where two thousand or more workers are ordinarily employed per day, the occupier shall also appoint an Additional Welfare Officer to be designated as an Assistant Welfare Officer. The duties of Welfare Officers are set out in R. 3.

They are wide and varied and cast on the Welfare Officer the duty -- among others -- of bringing about harmony in the employer-labour relations and the duty of improving the welfare and amenities of the labourers. Rule 4 provides for the qualifications of Welfare Officers which are of a fairly high standard.

It is also provided that the existing Labour Welfare Officers in the factories registered under the Factories Act of 1948 shall be eligible to apply provided they fulfill the prescribed qualifications and power is reserved in the State Government to exempt any person who had been on 1st April 1949, in employment for a year or more in any factory as a Welfare Officer from the possession of all or any of the prescribed qualifications.

Rule 5 relating to conditions of service is important. Sub-rule (1) thereof provides for recruitment of Welfare Officers by advertisement. Sub-rule (2) provides that all appointments (as Welfare Officers) shall be on a permanent basis but candidates appointed will be initially placed on one year's probation. Sub-rule (3) thereof provides that a Welfare Officer whose work is found unsatisfactory during the period of probation is liable to be discharged after one month's notice by the occupier of the factory with the approval of the Labour Commissioner. Sub-rule (4) is as follows:

"No Welfare Officer shall be discharged, dismissed or otherwise punished except

with the previous approval of the Labour Commissioner, Bihar, obtained on a proceeding drawn up against the officer."

It is also provided that no punishment of any kind shall be inflicted unless the officer has first been informed in writing of the grounds on which it is proposed to take action and has been afforded adequate opportunity of defending himself. There is another provision to Sub-rule (4) to Rule 5 which enables a Welfare Officer who is subjected to punishment under Sub-rule (4) to file an appeal to the Labour Commissioner against the order of punishment within thirty days of the communication of the order to him.

The permanence of tenure and the safeguards against arbitrary punishment provided by the above rules are in order to safeguard him against victimisation by the employer having regard to the nature of his duties in the discharge of which there are chances of his incurring the employer's displeasure.

6. The contention of the appellant is that he is a Welfare Officer within the meaning of the Act and the Rules above noticed and that he is entitled to the protection of the procedure Under Rule 5 of the Rules in respect of the order of his discharge. It is with reference to this contention that the Labour Commissioner said that since the appellant's services were at the time attached to the Company's mines at Garumahishani in Orissa, the Bihar rules would not apply to him and he had no jurisdiction to give any relief.

It is this view that is strongly contested on behalf of the appellant as being erroneous. The argument for the appellant is that he was recruited as Welfare Officer in 1947 and continued to be such throughout, notwithstanding that since 1950 he was attached first to a mine at Jamshedpur and later to a mine of the Company, at Garumahishani in Orissa.

His contention is that his tenure as Welfare Officer is permanent under the rule, that the tenure was not affected by his having been transferred to a mine in Orissa and that since the disciplinary control against him was in fact exercised from Jamshedpur in Bihar, the matter relating to the validity of the exercise of such control is one that is entirely within the purview of the State Government and the State Labour Commissioner of Bihar.

It was because of this contention and because further facts were required in order to make sure about the factual foundation which raises the question, that we permitted the appellant to file fresh affidavit and give an opportunity to the second respondent to file an affidavit in answer thereto.

7. On the material now before us the facts appear to be as follows. Admittedly -- and as previously stated - the appellant was recruited as a Personnel Officer in the Steel Melting Shop (Factory) NO. 2 of the Tata Iron and Steel Co. at Jamshedpur and continued as such till 1950. In 1950 his assignment was transferred to certain mines of the Company at Jamshedpur and since 1953 that assignment was again transferred to Garumahishani in Orissa.

According to the appellant his appointment as Personnel Officer was really an appointment as a Welfare Officer right from the start and he continued as such notwithstanding that his assignment was transferred to mines since 1950. The second respondent contends that while Welfare Officers are part of the Personnel Department and therefore every Welfare Officer is also a Personnel Officer, all Personnel Officers are not Welfare Officers and that the appellant was only a Personnel Officer and not a Welfare Officer.

But whether this is so or not in general, there is, it is said for the appellant, considerable material relating to this appellant by way of correspondence between the Company and the Labour Commissioner about him, which we have been taken through and on the basis of which it is contended that the appellant was throughout understood to be a Welfare Officer presumably because he was doing the duties of a Welfare Officer or continued to be in that cadre.

In view of what follows, we do not feel called upon to decide about the correctness or otherwise of that contention. The correspondence that has been brought to our notice consists inter alia of a circular letter from the Labour Commissioner, Bihar, Patna, dated September 19, 1952, and a reply thereto of the General Manager of the Company dated December 2, 1952. Now, it is to be noticed that by these dates the Bihar Factories Welfare Officers Rules, 1952, though promulgated did not actually come into force.

As already stated they came into force on March 1, 1953. Besides, in the very letter of the General Manager to the Commissioner of Labour dated December 2, 1952, it is mentioned that the Company have applied to the Government of Bihar for the grant of exemption from the provisions of Section 49 of the Factories Act. It would appear that this application for exemption itself was pending till October, 1953. In addition, there are two facts in the way of the appellant.

Firstly, there is no specific order of the Company subsequent to the coming into force of the Factories Act or the Rules thereunder appointing the appellant as a Welfare Officer thereunder. The mere fact, brought to our notice, that the Labour Commissioner exempted him from the requisite qualifications is not enough and does not by itself show that the management took advantage of it and appointed or recognised him as such.

Secondly, even though the appellant was originally appointed as a Personnel Officer (even assuming this for the sake of argument to be an appointment of a Welfare Officer as then under, stood) there were, at the time, no service conditions applicable to his appointment, which may be said to have continued in his favour and which would have entitled him to permanency of tenure or protection against arbitrary discharge. These facts have been frankly admitted before us.

The further difficulty in the way of the appellant is that by the date when these Rules came into operation, he was no longer attached to a factory but was attached to a mine. In the circumstances, it is difficult to accept the contention of

learned counsel for the appellant that merely because he was appointed as a Personnel Officer in 1947 (which, for the sake of argument may be assumed to have been an appointment as a Welfare Officer as then understood) he must be taken to have been continued as a Welfare Officer and as appointed under the Act and the Rules, and that such continuance entitles him to protection against arbitrary discharge under the Rules.

We are, therefore, unable to interfere with the order of the Labour Commissioner in question. In the view we have taken of the facts as they appear on the record before us, it is unnecessary to decide the question whether the Labour Commissioner was right in his assumption that since the Rules are Bihar Rules he lacked jurisdiction to give relief in respect of the alleged arbitrary disciplinary action of the employer against him which was in fact exercised from Jamshedpur in Bihar as against a person working in Orissa.

8. The appeal is accordingly dismissed. As regards the costs in this case, so far as the Government-first respondent is concerned, we have not decided the point of law which was raised with reference to the Labour Commissioner's Order. The Government was interested only in that question. As regards the second respondent, he was allowed, by an order of the Chamber Judge, to continue to be a party on, the basis that his continuance would be at his own risk as to costs.

At the last hearing before us this was brought to our notice and we passed an order that not with standing that order the question of costs subsequent to the previous hearing would be considered by us. We have now given our consideration thereto.

9. Having regard to all the circumstances of this case, we do not think that in this case the appellant should be made to bear the costs of either the first or the second respondent. Each party will bear its own costs.