

**(1993) 09 RAJ CK 0019**  
**In the Rajasthan High Court**  
**Case No : C.W.P. No. 2031 of 1993**

Rajendra Kumar Soni

APPELLANT

Vs

Authority under Sec. 20 of Rajasthan Shops and Commercial  
Establishments Act and Others

RESPONDENT

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**Date of Decision :** 17-09-1993

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 25F

Rajasthan Shops and Commercial Establishments Act, 1958 — Section 2(5), 28A

**Citation :** (1994) 2 LLJ 1149 : (1994) 1 WLC 362

**Hon'ble Judges :** V.K. Singhal, J

**Bench :** Single Bench

**Advocate :** P.K. Sharma, for the Appellant; G.C. Garg, for the Respondent

**Final Decision :** Dismissed

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## Judgement

V.K. Singhal, J.—This writ petition has been filed against the award dated June 20, 1992 and the order dated January 20, 1993.

2. The brief facts of the case are that the petitioner was initially appointed as Lab Assistant with M/s. Anil Steel and Industries Ltd, Kanakpura, Jaipur and was confirmed on October 31, 1984. He was promoted on the post of Assistant Foreman and was dismissed from service on July 20, 1991. An application was filed before the Competent Authority under the provision of Rajasthan Shops and Commercial Establishments Act, 1958 (hereinafter to be referred as the Act of 1958). The Competent Authority refused to entertain the said application vide order dated June 20, 1992 on the ground that the employer is registered under the Factories Act, 1948 and, therefore, the provisions of the Act of 1958 are not applicable. It was observed by the said authority that the petitioner may raise the industrial dispute under the Industrial Disputes Act. A review application was submitted which was also dismissed on January 20, 1993.

3. The submission of the learned Counsel for the petitioner is that simply because of registration under the Factories Act, the provisions of the Act of the

1958 are not excluded. It is submitted that the petitioner being the Assistant Foreman is not covered under the definition of Factory worker and he was supervising the work of other employees and is drawing salary more than 1,600/- per month.

4. In the application submitted u/s 28-A of the Act of 1958 it was submitted that the termination of the services of the petitioner is in violation of the provisions of Section 25F of the Industrial Disputes Act and Section 28-A of the Act of 1958.

5. u/s 21 of the Factories Act, 1948 the "worker" has been defined as under-"Worker" means a person (employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employers, whether for remuneration or not), in any manufacturing process,, or in clearing any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process (but does not include any member of the armed forces of the Union).

6. The petitioner is employed in the manufacturing process as even the work of Assistant Foreman is in connection with the manufacturing process. The definition of worker includes even any work incidental or connected with the manufacturing process and, therefore, all the ingredients of the definition have been fulfilled. There is no limitation with regard to the salary to exclude a person from the definition of worker as it exists under the Industrial Disputes Act.

7. Section 28 of the Act 1958 prohibits the dismissal on account of absence from work by a woman owing to confinement. Section 28-A prohibits the procedure for issue of notice of dismissal or discharge by the employer. The definition of employee in Section 2(5) of the Act of 1958 is as under:-

"employee" means a person wholly or principally employed in, or in connection with any establishment and includes an apprentice but does not include a member of the employer's family; it also includes any clerical or other staff of a factory or industrial establishment who falls outside the purview of the Factories Act, 1948.

8. From the above definition it would be evident that if a person falls within the purview of the Factories Act, 1948 then the provisions of the Act of 1958 are not applicable. The word "establishment" has been defined in the Act of 1958 which means a shop or a commercial establishment. In the Act of 1958 Shop and Commercial Establishment have been defined as under :-

"Shop" means any premises where any trade or business is carried on or where services are rendered to customers, and includes offices, store-rooms, godowns or ware-houses, whether in the same premises or otherwise, used in connection with such trade or business but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948.

"Commercial Establishment" means a commercial or trading or banking or insurance establishment, an establishment or administrative service in which the persons employed are mainly engaged in office work, a hotel, a restaurant; boarding or eating house, cafe or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes every such establishment as the State Government may, by notification, in the Official Gazette, declare to be commercial establishment for the purposes of this Act.

9. From the definition of shop it is evident that it is restricted definition and is confined to (a) the premises where any trade or finance is carried on; (b) premises where services are rendered to the customers; (c) offices, store-rooms, godowns and ware-houses whether in the same premises or otherwise used in such premises or business (d) the definition has excluded a commercial establishment or a shop which is attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948.

10. The above exclusion clause has also to be kept in view that if a person employed in a factory is entitled for the benefits which are provided to the workers under the Factories Act, then he is excluded from the operation of the Act. The definition of commercial establishment covers a commercial or trading or banking or insurance establishment, an establishment or administrative service in which the persons employed are really engaged in office work, a hotel, a restaurant, boarding or eating house, cafe or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes every such establishment as the State Government may, by notification in the official gazette, declare the same to be a commercial establishment.

11. In Central Railway Workshop (by Works Manager) Vs. Viswanath and Others, . it was held by the Allahabad High Court that the time keepers and head time keepers are the persons who had a direct hand in handling the machinery which is used in the workshop. They are, however, persons whose work could be said to be "incidental to or connected with the manufacturing process." The manufacturing work is done by persons who work in the workshop. Such work also requires persons who have to supervise the work of persons engaged directly in the manufacturing work. The time and duties performed by such persons has to be noted, because that is necessary not only for supervision of the work but also for the payment of wages to such persons. Therefore, persons whose duty consists in working in the manner as done by the plaintiff opposite parties in the present case could be said to be persons whose work is incidental to or connected with the manufacturing process. The nature of the work has to be taken as a whole.

12. In Management of Binny Ltd. (B and C Mills), Madras-12 Vs. K. Elumalai and Asst. Commissioner of Labour, Madras-6, it was held by the Madras High Court that the Madras Mills of the petitioners is registered under the Factories Act and the Foreman on the duty of fire brigade would be a workman within the meaning

of Section 21 of the Factories Act and employed in the factory which is registered under the Factories Act. In this case the Govt. order No. 545 dated February 10, 1950 which granted the exemption from all the provisions of the Act in respect of the establishment of class to which the Factories Act, 1948 applies were taken into consideration and it was held that the workman had no right to move the Appellate Authority under the Shop Act.

13. In Rohtas Industries Ltd. Vs. Shri Ramlakhan Singh and Others, it was held that the factory worker was outside the purview of the Shop Act. Similarly, in The Works Manager, Central Railway Workshop, Jhansi Vs. Vishwanath and Others, it was held by the Apex Court that the definition of worker would include a time keeper under the Factories Act, 1948 and the said definition is very wide but includes even those employees whose work is solely clerical in nature.

14. In Ravi Shankar Sharma Vs. The State of Rajasthan and Another, this Court has held that the running of a service station which is used for cleaning, washing and oiling of vehicle is a manufacturing process and is covered by the Factories Act.

15. In Krishnanand Sharma v. The Authority appointed under the Rajasthan Shops & Commercial Establishment Act (S.B. Civil Writ Petition No 2673/89) decided on May 28, 1992 the question of termination of service of a Liaison Officer employed with the respondent company was examined. In this case reference was made to the judgment of Tourist Guide Service v. B.D. Harsh 1989 (2) RLR 1 in which it was held that if the services of the persons exercising the managerial functions are terminated they can invoke the provisions of sub-section 28-A of the Act of 1958. Reference was also made to the case of (Ranjit Singh v. General Manager, Lake Palace Hotel) 1991 (1) Lab I.C. 1706 in which it was held that the first para of the definition of employee used in Section 2(5) is widely worded and includes wholly or principally or in connection with any establishment. In the case of Krishnanand Sharma it was held on the basis of the evidence on record that the petitioner was designated as a Liaison Officer and the work of management was vested with Shri Komal Chand Patni under whose instructions the petitioner had to work. He used to do the office work which included clerical work and on this basis it was held that the petitioner cannot be termed as an employee who is covered by the provisions of the Factories Act because the definition of worker as given in Section 2(1) of the Factories Act is not attracted in the case of the petitioner. The petitioner was found to be not included in any manufacturing process or in cleaning any part of the machinery or premises used for manufacturing process, nor was he doing any work incidental to or connected with the manufacturing process or the subject of the manufacturing process. The provisions of Shops and Commercial Establishments Act, 1958 were held applicable and it was further held that the mere fact that the workshop is registered under the Factory Act by itself will not lead to the conclusion that the petitioner is covered by the Factory Act.

16. I have considered over the matter. The judgment of the Authority appointed

u/s 28 of the Act of 1958 to the effect that since the non-petitioner is a factory and registered under the Factory Act and, therefore, is outside the purview of the Act of 1958 is itself not in accordance with law. Simply by registration of a factory under the Factory Act would not exclude it from the purview of the Act of 1958. The arguments of the learned Counsel were heard with regard to the definition of worker as given in the Factory Act, 1948. It is not in dispute that the respondent is a factory as defined under the Factories Act and the petitioner falls within the category of worker. The definition of worker which includes the employment of a person in any manufacturing process or any other kind of work incidental to or connected with the manufacturing process would include the petitioner who was on the post of Assistant Foreman. The said definition does not exclude any person on the basis of the salary which he received as a worker as has been contended by the learned Counsel for the petitioner. Thus the provisions of Factories Act are fully applicable. The definition of employee would include any clerical or other staff of a factory or industrial establishment which falls outside the purview of the Factories Act, 1948. In the present case the learned Counsel for the petitioner has not been able to satisfy as to how the respondent Anil Steel and Industries Ltd. falls outside the purview of the Factories Act or the petitioner could claim himself outside the purview of the said Act. Even in accordance with the definition of clause 2(17) of the Act of 1958 the commercial establishments attached to a factory where the persons employed in shops are allowed the benefits provided for the worker in the Act of 1948 have been excluded. This definition which excludes the shop "attached to factory" makes it clear that the persons who are employed in a factory which falls within the purview of the Factories Act, 1948 are also excluded therefrom, On the basis of the above analysis I am of the view that the prescribed authority under the Act of 1958 has no jurisdiction to entertain the petition of the petitioner u/s 28-A of the Act of 1958. The order passed by the said authority is without giving the reasons and referring to the relevant provisions of the Act of 1958 but ultimately the order in rejecting the petition was in accordance with law.

17. The writ petition has no force and is dismissed accordingly.