

(1959) 04 BOM CK 0029

In the Bombay High Court

Case No : Special Civil Application No. 405 of 1954

Ramakrisna Ramnath

APPELLANT

Vs

State Industrial Court, Nagpur and Others

RESPONDENT

Date of Decision : 30-04-1959

Acts Referred:

Central Provinces and Berar Industrial Disputes Settlement Act, 1947 — Section 2, 2(10)
Factories Act, 1948 — Section 62

Citation : AIR 1960 Bom 216 : (1959) 61 BOMLR 1312 : (1959) 2 LLJ 746

Hon'ble Judges : V.A. Naik, J;J.R. Mudholkar, J

Bench : Division Bench

Advocate : M.N. Phadke and V.M. Golwalkar, for the Appellant; N.L. Abyankar, Special Govt. Pleader and S.P. Oke, for the Respondent

Judgement

Naik, J.

(1) This is a petition under Arts. 226 and 227 of the Constitution of India for a writ of certiorari to quash the orders passed by the Additional District Magistrate and the State Industrial Court on 29-4-1958 and 8-10-1958 respectively.

(2) The circumstances leading to this petition briefly state are as follows: Respondent No. 3 Shamroo Kawdoo made an application to the Additional District Magistrate who was empowered to act as Labour Commissioner, complaining that he was wrongfully dismissed from service by the petitioner. Accordingly to him, he was dismissed from service with effect from 19-7-1958. The application was made under S. 16 of the C. P. and Berar Industrial Dispute Settlement Act. The petitioner contended that respondent No. 3 was not an employee in the factory, that he was working under one Shamran Mahadeo and that there was no privity of contract between the petitioners and the respondent No. 3. He further stated that he was prepared to re-employ respondent No. 3 provided the latter renounced his claim for backwages and also if he was agreeable to work under Shamroo Mahadeo. The Labour Commissioner came to the conclusion that

respondent No. 3 was an employee of the petitioner and consequently directed him to reinstate respondent No. 3 and also to pay him backwages. The petitioner went up in revision to the State Industrial Court. The State Industrial Court upheld the decision of the Labour Commissioner. That is why the petitioner has now come to this Court under Arts. 226 and 227 of the Constitution for quashing the order of the two industrial Courts.

(3) In the petition it was contended that the appointment of the Additional District Magistrate u/s 16(2) of the C. P. and Berar Industrial Disputes Settlement Act as Labour Commissioner was not valid inasmuch as the name of the person was not mentioned in this order. Mr. Phadke for the petitioner however did not press this objection before us. It was also contended in the petition that as a matter of fact, the respondent 3 was not dismissed from service, that he himself deliberately remained absent from 19-7-56 to 31-7-1956 and that is why his name was removed from the attendance register. The Labour Commissioner however recorded a finding that and this finding was upheld by the State Industrial Court. Mr. Phadke concede that it will not be open to him to challenge this finding before this Court in its jurisdiction under Art. 226 of the Constitution. Mr. Phadke therefore confined his attention to two points as follows. The Labour Commissioner has not recorded any finding as to whether respondent No. 3 was actually in the employment of the petitioner. This was a question of fact and it was the duty of the Labour Commissioner as a fact-finding Court to record a clear finding on the question. Secondly, he complained that the Labour Court have misunderstood the meaning and scope of the definition of "employee" as contained in S. 2(10) of the Act.

It is not in dispute that the name of the respondent No. 3 was entered in the attendance Register of the factory. It was the specific case for the petitioner that his name was taken off the register because of his continuous absence from duty for more than two weeks. Presumably, the attendance register was maintained under the provisions of the Factories Act. No explanation has been offered on behalf of the petitioner as to why respondent No. 3's name was entered in the register. It is contended for the petitioner that respondent No. 3 was working under one Shamrao Mahadeo who was a Relaiwala and that there was no private contract between respondent e and the petitioner. It was further suggested that respondent No. 3 was receiving his wage from Shamro Mahadeo. If that be the correct position, then it is difficult to understand why the petitioner should think of enrolling the name of respondent No. 3 in the attendance register.

(5) In this background let us turn to consider the arguments addressed by Mr. Phadke on behalf of the petitioner. He complained that the Labour Commissioner has attached a sort of presumption value to the entry in the attendance register and not considered other evidence led in the case with a view to find out whether, as a matter of fact, respondent No. 3 was in service of the petitioner or not. It was mainly on this ground that Mr. Phadke suggested that, as a matter of fact, there was no finding on the essential question of fact recorded by the Labour

Commissioner. There is no substance in this line of reasoning. It is true that the Labour Commissioner has attached considerable importance to the entry of respondent No. 3's name in the attendance register. As suggested above, the register must have been maintained under the provisions of the Factories Act. Section 62 of the Act makes it obligatory on the part of the manager of a factory to maintain a register of adult worker to be available to the culars which are required to be entered in regard that the petitioner would enter the name of a in this register. Mr. Phadke suggested that the name of respondent No. 3 may have been entered in the register with a view to avoid criminal liability that fastens on the factory manager for noncompliance with the provisions of S. 62. In the first place, such an explanation was not offered for the manager who was examined for the petitioner. Secondly, the explanation is neither logical nor satisfactory. The Labour Commissioner, in our opinion, was justified in raising a presumption in favour of respondent No. 3 to the effect that the latter was employed and therefore his name came to be entered in the attendance register.

(6) The first two issues framed by the Labour Commissioner were as follows :

(i) Whether the applicant is an employee of the non-applicant's bidi works :

(ii) Whether the applicant was working under Shamrao Mahadeo.

The Labour Commissioner has proceeded to examine the second issue in some details and has arrived at his own finding, although at the initial stage he said that no finding was necessary. It is true that he has not written a well-reasoned judgment in support of his finding. It would however be highly improper on our part to send back the case to the Labour Commissioner has said that in view of the finding on the first issue it was not necessary to record any finding on the second issue. It is because of the sentence to the above effect that Mr. Phadke complained that the Labour Commissioner has failed to record a finding on the second issue. There is no substance in the grievance.

(7) The Labour Commissioner has proceeded to examine the second issue in some details and has arrived at his own finding, although at the initial stage he said that no finding was necessary. It is true that he has not written a well-reasoned judgment in support of his finding. It would however be highly improper on our part to send back the case to the Labour Commissioner either for re-writing the judgment or for dotting the 'i's and crossing the 't's. The petitioner has not led satisfactory evidence to show that respondent No. 3 was really working under Shamrao Mahadeo. Shamrao Mahadeo was cited as witness but was examined for the petitioner. We cannot therefore accept the solitary statement of Venkatrao, the manager of the petitioner's factory to the effect that respondent No. 3 was really working under Shamrao Mahadeo, particularly because no satisfactory explanation has been offered as to why the time of respondent No. 3 came to be entered in the attendance register. It is also significant that the petitioner had given an offer to respondent No. 3 for taking him back in service although that offer was made on certain stipulations and

condition. The very fact that such an offer was made suggests that respondent No. 3 is in the service of the petitioner.

(8) That takes us to the question of law, viz. whether respondent No. 3 can be regarded as an employee within the meaning of that word as used in the C. P. and Berar Industrial Disputes Settlement Act. Section 2(10) defines "employee" to mean any person employed by an employer to do any skilled or unskilled manual or clerical work for contract or hire or reward in any industry. There are thus the ingredients in this definition (i) there is an employer; (ii) he employs a person in the industry to do certain kind of work and (iii) the person has to work for contract or hire or reward. Mr. Phadke argued that the nature of work entrusted to the relaiwalas is such that it does not involve any relationship of master and servant, that the work is in the nature of an independent contract and that the payments are made on piece rate basis. He therefore argued that even assuming that respondent No. 3 was working in his own right still he would not be covered by the definition of "employee" contained in S. 2 (10) of the Act. In this connection he relied upon two decisions of the Supreme Court viz., Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, and Chintaman Rao and Another Vs. The State of Madhya Pradesh, . In the first case their Lordships were dealing with the definition of "workman" in the Industrial Dispute Act, 1947. The question in that case was in certain seasons of manufacturing salt in certain pieces of land and who are paid on the basis of volume of salt manufacture by them were workmen. Their Lordships held that such persons must be considered as workmen within the meaning of S. 2(s) of the Industrial Dispute Act. Mr. Justice Bhagwati who delivered the judgment of the Court emphasised that the real test to find out whether a particular person is a workman or not, is to see whether the relationship was that of master and servant. His Lordship also pointed out that the main distinction between a workman and an independent contractor would largely turn on consideration of the question as to whether the work was controlled by the manufacturer. In considering the definition of "worker" as contained in S. 2(1) of the Factories Act. It was held by their Lordship in that case that a contractor is a person who, in the pursuit of an independent business, undertakes to do specific jobs of work for other persons without submitting himself to their control in respect to the details of the work. The facts of that case were as follows. The contractor was to receive tobacco from the management and he was to supply them rolled in bidis for a certain fixed price. He was not under the control of the factory management and he could manufacture bidis wherever he pleased. The management could not regulate the manner of discharge of his work. His liability was discharged by his supplying bidis and delivering them in the factory. The terms of the contract between the management and the contractor did not enjoin on the latter to work in the factory. On these facts it was held that the contractor was not employed by the management as workder buy was only independent contractor who performed his part of the contract by making bidis and delivering them at the factory. Mr. Justice K. Subba Rao, who delivered the judgment of the Court,

referred to the earlier decision of the Supreme Court and relied on the observations cited above. In the course of his judgment Mr. Justice Subba Rao has referred to another part of work which is carried on in a bidi factory. That process was described by him in the following terms : After the bidis are brought by Sattedars to the factory they are to be rebundled and wrapped after attaching labels. This process is generally carried out in the factory by the coolies or workmen employed by the management and these coolies work directly under the control and supervision of the factory management. It appears to us that respondent No. 3 was engaged in the process similar to one which fell in the second part described by Mr. Justice Subba Rao in his judgment.

(9) Mr. Phadke also referred to a decision in *Westall Richardson Ltd. v. Roulson* (1954) 2 All ER 448. In that case the definition of the word "worker" as contained in S. 23(1) of the Wages Council Act, 1945, came up for construction. Vaisey J. in the course of his judgment pointed out that the word "employer". On the facts before him he came to the conclusion that the person who was claiming the benefit of all holidays and holiday pay under the Wage Council Act, could not be regarded as a worker within the meaning of that expression because the work which he was doing was an independent type of work over which the employer had no kind of control and that the element of independence and freedom was far greater than the element of servitude. We are unable to understand as to how this decision assists Mr. Phadke in his argument. On the facts as disclosed in the record of this case, as stated above, the process of work in which respondent 3 was engaged was the process carried out in the factory and further was carried out under the supervision and control of the management. On this point we would simply refer to the admission of Venkatrao who stated :

"There is a supervision and control over the relay workers. Even though the relay workers do work on a contract basis yet they have to do work according to our supervision and under our control."

Respondent No. 3 states that he used to receive payment either through Shamrao Mahadeo or himself. The admission of the manager coupled with the circumstances that the name of respondent No. 3 was entered in the attendance register clearly establishes that there was a relationship of master and servant between the petitioner and respondent No. 3.

(10) The result is that the petition fails and is dismissed with costs. Rule discharged.

KC/V.B.B.

(11) Petition dismissed.