
(2014) 09 P&H CK 0220
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 14175/2009

Rattan Brothers

APPELLANT

Vs

Appellate Authority

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2(s), 33C(2)

Citation : (2015) 144 FLR 203 : (2015) 1 LLJ 262 : (2014) LLR 1171

Hon'ble Judges : Gurmeet Singh Sandhawalia, J

Bench : Single Bench

Advocate : Arvind Galav, Advocate for the Respondent

Judgement

Gurmeet Singh Sandhawalia, J.—Challenge in the present writ petition is to order dated 3.12.2007 (Annexure P/8) whereby respondent No. 3 has been held entitled to a sum of Rs. 46153 as gratuity along with interest at the rate of 10% from the date of filing of application. Thereafter review application was filed which was dismissed on 22.9.2008 (Annexure P/9). The said order was further upheld in appeal on 21.5.2009 (Annexure P/11) by the Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act"). A perusal of the paper-book would go on to show that initially the application was filed on 23.6.2003 (Annexure P/2) by the respondent No. 3-workman that his services had been terminated on 20.6.2003 and he was entitled to gratuity as he had worked since January, 1983. His last drawn wages were Rs. 4,000 and a sum of Rs. 48,510 was claimed in the application. The defence of the petitioner-management was that he was not on the rolls and was only a stitcher who used to get material to take to his home to stitch with the help of his family members. There was no relationship of master and servant between the workman and the management. Initially the application was dismissed on the ground that there was nothing on record to show that he had continuous service of 21 years and the Act was not applicable. The respondent-workman preferred an appeal which was allowed on 28.8.2006 (Annexure P/5) and the matter was remanded on the

strength of the judgment of the Apex Court in Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, by drawing adverse inference against the petitioner-management due to non-production of record. On remand, the Controlling Authority noticed that the management did not file any document or evidence to show that the applicant used to take material at his home for manufacturing of footballs on piece rate basis and neither produced any record in the form of attendance/wages register, cash book, ledger, voucher which were in their possession to prove their case. Accordingly, it was held that the respondent-workman was an employee and in continuous service for the said period and entitled for gratuity to the tune of Rs. 46,153 along with 10% interest from the date of filing of the application. Thereafter, the review application was filed on the ground that proper opportunity has not been given which was rightly rejected on the ground that the proceedings had remained pending for more than one year and the management could not be allowed to take advantage of its own fault. The appeal was rejected on 21.5.2009 (Annexure P/11) on similar grounds. Resultantly, the present writ petition was filed.

2. Counsel for the respondent-workman submits that in pursuance of the order dated 3.12.2007 (Annexure P/8) passed by the Controlling Authority payment of principal amount has already been made on 22.7.2009 and this fact was not brought to the notice of this Court when order of stay was passed subsequently on 9.11.2009.

3. None has put in appearance on behalf of the petitioner to assist this Court.

4. Annexure P/12 was placed on record which is a subsequent decision dated 12.10.2009 inter se the parties wherein application filed under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to "the Act") by the workman claiming wages from 1.5.2003 to 19.6.2003 along with bonus etc. was dismissed on the ground that there was nothing on record to show that respondent-workman was an employee. A perusal of the said order would also go on to show that it was admitted that respondent was a house based worker who was collecting material from the factory and returned the same after doing job with the help of his family members and it is not that it was the case of the management that there was no relationship as such.

5. Though the said order is not under challenge by the workman in the present proceedings but the said reasoning rejecting the claim on the ground that the employee was not a workman and only doing stitching work at home is not sustainable in view of the judgment of a 3-Judge Bench of the Apex Court in Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another, . In the said case the issue was as to whether the employee who was taking the clothes and stitching it at piece rate basis at home would fall within the definition of workman and whether over whom there was control of the employer. The Apex Court held that such employee would also fall within the definition of workman under Section 2(s) of the Act. The relevant observation reads as under:--

"The question for decision was whether the "agarias" were workmen as defined by Section 2(s) of the Industrial Disputes Act of 1947 or whether they were independent contractors. The Court said that the prima facie test to determine whether there was relationship between employer and employee is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the employee is to do but also the manner in which he had to do the work. In other words, the proper test according to this Court is, whether or not the master has the right to control the manner of execution of the work. The Court further said that the nature of extent of the control might vary from business to business and is by its nature incapable of precise definition, that it is not necessary for holding that a person is an employee, that the employer should be proved to have exercised control over his work, that even the test of control over the manner of work is not one of universal application and that there are many contracts in which the master could not control the manner in which the work was done."

6. Once the petitioner-management has admitted that there was inter se relationship which continued from January, 1983 to June, 2003 for 20 long years, the Controlling Authority was well within its right to direct payment of gratuity. The Controlling Authority has rightly held that once stand has been taken that he was not regular employee, it was for them to produce the record maintained by them to prove their case and as such necessary adverse inference has rightly been drawn against the petitioner-management. Thus, there is no scope for interference under Article 226 of the Constitution of India. Accordingly, the present writ petition is dismissed.