

(1992) 02 BOM CK 0039
In the Bombay High Court
Case No : Writ Petition No. 21 of 1992

Ravindra Wasudeo Jamdagni

APPELLANT

Vs

Maharashtra Academy of Engineering and Educational
Research and others

RESPONDENT

Date of Decision : 20-02-1992

Acts Referred:

Poona University Act, 1974 — Section 42B

Citation : (1992) 2 BomCR 50 : (1992) 94 BOMLR 292 : (1993) 1 LLJ 614 :
(1992) 2 MhLj 1286

Hon'ble Judges : P.D. Desai, C.J;B.N. Srikrishna, J

Bench : Division Bench

Advocate : R.B. Jagtap, for the Appellant; Prafulia Shah, for the Respondent

Judgement

P.D. Desai, C.J.—The writ petitioner claims to have been continuously employed as Peon in the Electronics and Computer Department of the 2nd Respondent Institute which is affiliated to the University of Poona. The respondents dispute the claim and contend that he was engaged on daily wages basis to perform duties of manual nature. It is not necessary to go into and resolve this dispute since for the adjudication of the present case, it will be assumed (without deciding) that the writ petitioner was a daily rated employee.

2. The writ petitioner alleges that his employment was discontinued by an oral order passed on October 22, 1990. He preferred an appeal under S. 42B of the Poona University Act, 1974 (hereinafter referred to as "the Act") before the College Tribunal, Pune (hereinafter referred to as "the Tribunal") set up under S. 42A of the Act. The Tribunal dismissed the appeal on the ground that the writ petitioner was not an "employee" within the meaning of the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (Terms and Conditions of Service of Non-Teaching Employees) Rules, 1984 (hereinafter referred to as "the Code") and that, therefore, no appeal lay under S. 42B of the Act.

3. Hence the present writ petition.

4. Sub-sec. (1) of S. 42B of the Act, which is the relevant provision for the present purposes, reads as follows :

"42B. (1) Notwithstanding anything contained in any law or contract for the time being in force, any employee (whether a Teacher or other employee) in any affiliated College or Recognised Institution (other than that managed and maintained by the State Government or the University) who is dismissed or removed or whose services are otherwise terminated, or who is reduced in rank, by the Management and who is aggrieved, shall have a right of appeal and any appeal against any such order to the Tribunal constituted under S. 42A."

Be it stated that the Act does not define the word "employee".

5. The Code applies to all full-time non-teaching employees of the Non-Agricultural Universities and the affiliated colleges, other than those managed and maintained by the State Government and Local Authorities, appointed on time-scale of pay. The word "employee" is not defined in the Code. However, the expression "Non-teaching employee" is defined in Clause (27) of Rule 2 to mean "the person in employment of the University or the affiliated colleges, as the case may be, and appointed on a time-scale of pay other than "the teachers" or the "teachers of the University". The expression "Time scale of pay" is defined in Clause (44) to mean "pay which subject to any conditions prescribed in these rules rises by periodical increments from a minimum to a maximum." The Explanation attached to the Clause is not relevant for the present purposes and is, therefore, not adverted to.

6. The sole question which arises for determination against the aforesaid background is whether the writ petitioner was entitled to avail of the remedy of preferring an appeal u/S. 42B of the Act on the termination of his employment, even assuming that he was an employee engaged on daily wages basis.

7. Since the word "employee" is not defined in the Act as well as in the Code, it must be read in the ordinary and primary sense which it bears, unless such an approach leads to injustice, absurdity contradiction or stultification of statutory object. In the Shorter Oxford English Dictionary, Volume I, Third Edition, the word "employee" is given the following meaning "One who is employed, esp. one employed for wages or a salary by a business house or by government." Literally construed, the word thus means a person who is employed, especially one who is employed on remuneration, whether it is in the form of wages or salary. It is not necessary that such a person should be a regular or permanent or wholetime employee or one who draws remuneration in a prescribed pay-scale which provides for periodical increments; nothing in the subject or context of S. 42B of the Act requires such a constricted meaning to be given to the said word. No injustice, absurdity, contradiction or stultification of the statutory object is likely to ensue if the plain, normal and grammatical meaning which the word bears is given to it when used in S. 42B. In fact, the object underlying the said Section

and the cognate Ss. 42A and 42C to 42H would be more effectively attained and the cause of justice would be better served if all types and categories of employees of private affiliated colleges and recognised institutions are brought within the purview of the said group of Sections, so that there is speedier adjudication by a specialised Tribunal of the prescribed kinds of disputes and differences between them and the management of such colleges and institutions, to the exclusion of any civil court or other tribunal or authority.

8. The word "employee" finds place not only in statutes but also in different kinds of written instruments such as Wills, gift deeds, grants, etc. It has, therefore, come up for interpretation before Courts while dealing with statutory and other instruments. Black's Law Dictionary, Sixth Edition, assigns the following meaning to the said word :

"A person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed One who works for an employer; a person working for salary or wages.

Generally, when person for whom services are performed has right to control and direct individual who performs services not only as to result to be accomplished by work but also as to details and means by which result is accomplished, the individual subject to direction is an "employee".

In Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, :

"The principles according to which the relationship as between employer and employee or master and servant has got to be determined are well settled. The test which is uniformly applied in order to determine the relationship is the existence of a right of control in respect of the manner in which the work is to be done ...

XXXXXXXXXX XXXXXXXXXXXXX XXXXXXXXXXXXX The principle which emerges from these authorities is that the prima facie test for the determination of the relationship between master and servant 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 servant is to do but also the manner in which he shall do his work, or to borrow the words of Lord Uthwatt at page 23 in Mersey Docks and Harbour Board v. Coggins & Griffith (Liverpool) Ltd. 1947 1 AC 1, "The proper test is whether or not the employer had authority to control the manner of execution of the act in question."

The nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition

The correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the

employer"

9. It would thus appear that in legal parlance the word "employee" denotes a person in service of another, under any contract of hire, express or implied, oral or written, bringing into existence in favour of the employer the right to supervise and control the work done by the servant, against payment of salary or wages. Such right extends not only to direct that a particular result should be accomplished but also to prescribe the details and means by which such result is to be secured. In other words, the relationship between the parties must confer upon the employer the authority to control the manner and method of execution of the work in question by the employee.

10. We asked the learned Advocate for the 2nd Respondent whether the writ petitioner was engaged by his clients to perform some work for them, no matter whether the contract of employment was express or implied, oral written, and the mode of payment or the services rendered was on daily basis or otherwise. The answer was in the affirmative. We also sought information from him whether the writ petitioner had to carry out the specified work under the supervision and control of his clients and as directed by them.

The answer again was in the affirmative. We enquired of him whether the payment for the services rendered by the writ petitioner was made by the 2nd Respondent and whether they had the right to terminate the employment and the answer to this question was also in the affirmative. In fact, it is not disputed that the writ petitioner was employed to render services that were to be performed wholly under the direction of the 2nd Respondent in all respects.

11. Against the aforesaid background, it is impossible to reach a conclusion other than that the writ petitioner was an employee of the 2nd Respondent, irrespective of whether the said word is given its plain, normal and grammatical meaning or is understood in light of the attributes it has acquired in the legal parlance. The mode of remuneration, whether it is daily, weekly, fortnightly, or monthly, makes no difference so long as the real test which determines the relationship of employer and employee, namely, the authority to control and supervise the manner of the execution of the work is satisfied.

12. The Tribunal relied upon the definition of the expression "Non-teaching employee" occurring in Clause (27) of Rule 2 of the Code to arrive at the conclusion that the writ petitioner was not an "employee" and that he had, therefore, no right to prefer an appeal under S. 42B of the Act. It is difficult to agree with the reasoning and conclusion of the Tribunal for reasons more than one.

13. The material portion of Clause (27) has been extracted earlier. It cannot be overlooked that the said Clause does not define the word "employee". It defines the expression "Non-teaching employee" and that too for the purpose of the said Code. It is difficult to appreciate how the said definition could be of any assistance in construing the word "employee" in the statutory provision under

consideration. It is pertinent to recall in this connection that the Code contains a set of Rules prescribing the terms and conditions of service of all full-time non-teaching employees, who are appointed on Time Scale of Pay, of the Non-Agricultural Universities in the State (including its officers) and of the affiliated colleges, other than those managed and maintained by the State Government and local authorities, whereas the College Tribunals are constituted under S. 42A for the adjudication of disputes or differences specified in S. 42B between the employees and the management of any affiliated colleges or recognised institutions other than those managed and maintained by the State Government or the University.

14. The Code is a piece of subordinate legislation framed under S. 77A of each of the several University Acts enacted by the State Legislature. Halsbury's Laws of England, Fourth Edition, Vol. 44, page 539, para 884, deals with the question whether subordinate legislation can be used for interpreting a provision in the parent Act under the title, "Subordinate legislation as an aid to construction" and states as follows :

"It has been said that where a statute provides that subordinate legislation made under it is to have effect as if enacted in the statute, such legislation may be referred to for the purpose of construing a provision in the statute itself. Where a statute does not contain such a provision, and does not confer any power to modify the application of the statute by subordinate legislation, it is clear that subordinate legislation made under the statute cannot alter or vary the meaning of the statute itself where it is unambiguous, and only in exceptional cases may such legislation be referred to for the purpose of construing an expression in the statute, if the meaning of the expression is ambiguous."

Neither Section 77A nor any other provision of the Act enacts that the Code is to have effect as if enacted in the Statute. It is also the statutory requirement that the Code is to be placed before the legislature or on its table. Besides, the word "employee" bears a precise meaning in the ordinary as well as in the legal parlance and cannot be regarded as ambiguous. Under these circumstances, recourse cannot be had, as and by way of an exception to the general rule, to the definition of the expression "Non-teaching employee" in the Code in order to ascertain the true meaning of the word "employee" occurring in S. 42B of the Act. More so, when the two expressions are not identical.

15. The object of a definition Section is to provide legislative dictionary for appreciating the true meaning of a word or expression used in the statute. However, all definition sections normally open with the words "unless the context otherwise requires" or a similar expression. Although, therefore, the meaning to be ordinarily given to a word or expression used in the statute is that which is given in the definition section, this requirement is not inflexible. There may be provisions in the statute where such meaning may have to be departed from on account of the subject or context in which the word or expression has been used and the object sought to be achieved. Clause (2) of the Code, which defines

various expressions used in the Code, also opens with the words "unless the context otherwise requires". Now sub-sec. (1) of S. 42B, which opens with a non obstante clause, confers a right of appeal before the Tribunal on "any employee", whether a teacher or other employee, of any affiliated College or a recognised Institution (other than those managed and maintained by the State Government or University), who is dismissed or removed or reduced in rank or whose services are otherwise terminated, if he is aggrieved thereby. The words "any employee" are of wide import; they take within their sweep all categories or classes of employees. This is apparent from the use of the expression "whether a teacher or other employee" following next after the words "any employee". The apparent object of setting up the Tribunal and giving a remedy by way of an appeal thereto is to provide specialised adjudication machinery which can decide disputes of specified nature speedily and with requisite expertise. Assuming without granting that the definition given in subordinate legislation can be referred to and relied upon to construe an expression in the parent legislation it would be inappropriate to take recourse to the definition of the expression "Non-teaching employee" given in Clause (27) of Rule 2 of the Code and to give a restricted meaning to the word "employee" occurring in S. 42B keeping in view the subject and context of the said statutory provision and the underlying object.

16. In our opinion, therefore, the writ petitioner, even assuming that he was a manual labourer employed on daily wages (which question is not to be deemed to have been decided herein) is, nevertheless, an "employee" within the meaning of S. 42B of the Act and he had a right to prefer appeal before the Tribunal. The Tribunal, therefore, erred in refusing to entertain the appeal on the ground stated by it.

17. In the result, the writ petition succeeds and it is allowed. The impugned decision of the Tribunal is set aside. The case is remanded to the Tribunal for hearing on merits and for disposal in accordance with law.

18. Rule made absolute accordingly with costs which are quantified at Rs. 250/-.

19. Certified copy of the Judgment, it applied for on the payment of requisite charges, to be supplied within seven days of the case papers reaching the Department.