
(2002) 08 AHC CK 0061
In the Allahabad High Court
Case No : C.M.W.P. No. 4769 of 1989

R.K. Tyagi, Adv.

APPELLANT

Vs

Labour Court and Another

RESPONDENT

Date of Decision : 21-08-2002

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2(3)

Citation : (2002) 4 AWC 3270 : (2002) 95 FLR 315 : (2002) 3 UPLBEC 2406

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Advocate : Shyam Narayan, for the Appellant; R.C. Saxena and V.K. Barman and Pankaj Barman, S.C., for the Respondent

Final Decision : Allowed

Judgement

Anjani Kumar, J.—Heard learned counsel for the petitioner Sri Shyam Narain. None appears for the respondents.

2. By means of this petition, the petitioner-workman has challenged the award of the labour court dated 2nd September, 1988, passed in Adjudication Case No. 195 of 1984. The workman who was working as Junior Engineer with the employer has raised an industrial dispute in which the employer has raised preliminary objection that U. P. Avas Vikas Parishad is not an "industry" as defined in Section 2(k) of the U. P. Industrial Disputes Act, 1947; that the workman Sri Tyagi was since working in supervisory capacity drawing wages exceeding Rs. 500 per month is, therefore, not a workman as enshrined in Section 2 (z) of the U. P. Industrial Disputes Act.

3. The labour court vide its Impugned award has held that the workman Sri R. K. Tyagi is not a workman and, therefore, reference cannot be answered. It is this award which has been challenged by the workman concerned.

4. Learned counsel for the petitioner Sri Shyam Narain has relied upon two decisions out of which one is of the Supreme Court in AIR 1988 329, paragraphs

7, 8 and 9 of which are relevant for the purpose and are being quoted below :

"7. In D.P. Maheshwari Vs. Delhi Administration and Others, the question whether a person was performing supervisory or managerial work was the question of fact to be decided bearing in mind the correct principle. The principle, therefore is, one must look into the main work and that must be found out from the main duties. A supervisor was one who could bind the company to take some kind of decision on behalf of the company. One who was reporting merely as to the affairs of the company and making assessment for the purpose of reporting was not a supervisor. See in this connection Black's Law Dictionary, Special Deluxe, Fifth Edition ; at page 1290, "Supervisor" has been described, inter alia as follows :

"In a broad sense, one having authority over others to superintend and direct. The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent Judgment.

8. Reference may be made to the observations of this Court in Ved Prakash Gupta Vs. Delton Cable India (P) Ltd., There on facts a Security Inspector was held to be a workman. At page 575 (of SCC) : (at p 917 of AIR) of the report this Court referred to the decision in Lloyds Bank Ltd., New Delhi Vs. Panna Lal Gupta and Others, and also the observations of this Court in Hind Construction and Engineering Co. Ltd. Vs. Their Workmen, In that case the nature of the duties performed by the appellant showed that the substantial part of the work of the appellant consisted of looking after the security of the factory and its property by deputing the watchmen working under him to work at the factory gate or sending them to watch towers or around the factory or to accompany visitors to the factory and making entries in the visitors' register as regards the visitors and in the concerned registers as regards materials entering into or going out of the premises of the factory. There it was found that he had no power to appoint.

9. In the instant case, the evidence have been summarised by the Division Bench. Reference may be made to pages 65, 73, 80, 84 to 94, 95, 96 and 97 of the paper-book which indicate the nature of duties performed by respondent No. I herein. His duties were mainly reporting and checking up on behalf of the management. A reporter or a checking clerk is not a supervisor. The respondent herein does not appear to us doing any kind of supervisory work. He was undoubtedly checking up on behalf of the employer but he had no independent right or authority to take decision and his decision did not bind the company. In that view of the matter keeping the correct principle of law in mind the Division Bench has come to the conclusion taking into consideration the evidence recorded before the labour court that the respondent is a workman and not a supervisor. That conclusion arrived at in the manner indicated above cannot, in

our opinion, be interfered with under Article 136 of the Constitution. It is not necessary for our present purpose to set out in extenso the evidence on record as discussed by the Division Bench. Our attention was, however, drawn by the counsel for the respondent to certain correspondence, for instance the letter at page 65 of the paper-book bearing the date 14th of May, 1976, where the respondent reported that certain materials were lying in stores deptt. In absence of any decision. It was further reiterated that on inspection of the pieces that those pieces were found cracked. Similarly, our attention was drawn to several other letters and we have perused these letters . We are of the opinion that the Division Bench was right that these letters only indicated that the report was being made of the checking done by the respondent. A checker on behalf of the management or employer is not a supervisor."

5. The another decision relied upon by the learned counsel for the petitioner is of this Court in 1990 (16) FLR 97. In view of the law laid down by the aforesaid two decisions, I am of the view that the view taken by the labour court that the workman concerned is not covered by the definition of Section 2 (z) of the U. P. Industrial Disputes Act, 1947, is not correct and deserves to be set aside and is hereby set aside. Therefore, the award deserves to be quashed and is hereby quashed. The matter is remitted back to the labour court for its decision on merits. Since the matter is fairly old, the labour court is directed to decide the controversy within a period of six months from the date of production of a certified copy of this order before him.

6. In view of what has been stated above, the petition succeeds and is allowed. The award of the labour court dated 30.11.1988 is quashed. The interim order, if any. stands vacated. There is no order as to costs.