(1976) 08 MAD CK 0053

In the Madras High Court

S. Ramanathan APPELLANT

Vs

Saroja Mills Ltd. and Others RESPONDENT

Date of Decision : 06-08-1976

Acts Referred:
Constitution of India, 1950 — Article 226
Tamil Nadu Shops and Establishments Act, 1947 — Section 2, 41

Citation : (1977) 2 LLJ 202

Hon'ble Judges : Koshal, J

Bench : Single Bench

Judgement

Koshal, J.—The facts leading to this petition under Article 226 of the Constitution of India are more or less admitted on all hands and are these. On 28th April, 1963, the petitioner was appointed as an officer trainee by the proprietors of the Thiagarajar Mills, a factory being run in Kappalur, Madurai District, for the manufacture of textiles, through an appointment letter laying down eight conditions, of which condition No. 3 runs thus:

3. On completion of your probationary period if your services are found satisfactory, you will be con firmed as Junior Officer on Rs. 200 (Rupees two hundred only) per mensem plus dearness allowance of Rs. 115 (Rupees one hundred and fifteen only) per mensem in the grade Rs. 200-25-400.

On the 14th of August, 1963 he was confirmed on a salary of Rs. 200 plus dearness allowance of Rs. 115 per mensem with effect from 1st of August, 1963. He was transferred to the Madurai office of the factory where he was directed to attend to legal and labour matters such as might be referred to him. On the 23rd of October, 1970 his services were terminated on the plea that they were no longer required Against the termination of his services, he filed an appeal u/s 41(2) of the Madras Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947 and hereinafter referred to as the Act). In paragraphs 1 and 2 of the memorandum of appeal he stated.

1. The opposite party 1 is one of the directors of M/s. Saroja Mills Ltd. which is

running a branch mills, viz., Thiyagarajar Mills at Kappalur, Madurai District, and the said Thiyagarajar Mills is a ''factory'' and an ''industrial undertaking'' within the meaning of the provisions of the Madras Shops and Establishments Act, 1947, and opposite party 2 is the Administrative Officer of the said Thiyagarajar Mills having his office at Meenakshi Nilayam, Thirupparan kundram Road, Madurai 3 and looks after the general management of the said establishment.

2. The appellant herein was a "person employed" within the meaning of M.S.E. Act, 1947 in the said establishment, viz,. Thiyagarajar Mills (Kappalur B.O.) and the opposite party 2 is incharge of the general management of the said establishment in the capacity as a director, but without affixing any seal. The said Thiyagarajar Mills is a factory manufacturing cotton yarn and a commercial establishment selling the factory''s products in the market directly.

2. Thiyagarajar Mills and the proprietors, namely, the Saroja Mills Ltd., contested the claim of the petitioner inter alia on the ground that he did not fulfil the requirements of the definition of "person employed" as appearing in Clause (12) of Section 2 of the Act. The relevant portion of that definition is reproduced below:

(12) ''person employed'' means-

* * *

(ii) in the case of a factory or an industrial undertaking, a member of the clerical staff employed in such a factory or undertaking;

(iii) in the case of a commercial establishment other than a clerical department of a factory or am industrial undertaking, a person wholly or principally employed in connection with the business of the establishment, and includes a peon.

* * *

3. At the hearing of the appeal, it was urged by the petitioner that he was a "person employed" because ''the provisions of both Sub-clauses (ii) and (iii) of Clause (12) of Section 2 of the Act were attracted to his case. The stand taken by him was, however, repelled on behalf of the employers, according to whom, the petitioner was not a member of their clerical staff, but was. on the other hand, holding the post of a law office under them. The Additional Commissioner for Workmen''s Compensation, Madurai (hereinafter referred to as the Commissioner), acting as the Appellate Authority, framed the following two issues:

1. Whether the appellant was a member of the clerical staff of the Thiagarajar Mills at Madurai? and

2. Whether the office of the Thiagarajar Mills at Meenakshi Nilayam, Madurai, is commercial establishment (clerical department of a factory or an industrial undertaking) as defined in Section 2(3) of the Tamil Nadu Shops and Establishments Act?

4. After detailed discussion of the evidence produced before him by the parties, the Commissioner held that the petitioner did not fulfil the requirements Of Sub-clause (ii) above mentioned "or for that matter of Section 2(3) of the said Act". This finding was given by him under issue No. 1 only, and lie added that in view of that finding, he did not consider it necessary to decide issue No. 2 or to go into the merits of the case. The appeal of the petitioner was, therefore, dismissed by him as not maintainable through an order dated 14th March, 1973. It is that order which is challenged before me on behalf of the petitioner with the prayer that it should be quashed by a writ of certiorari.

5. The finding of the Commissioner that the petitioner did not fulfil the requirements of Sub-clause (ii) of Clause (12) of Section 2 of the Act is not challenged before me on behalf of the petitioner whose learned Counsel, how ever, vehemently contends that the petitioner fulfils the requirements of Sub-clause (iii) of that clause inasmuch as he was a person wholly or principally employed in connection with the business of a commercial establishment other than a clerical department of a factory or an industrial undertaking and that, therefore, he had the right to have his appeal heard by the Commissioner on merits. The expression "commercial establishment" is thus defined in Clause (3) of Section 2 of the Act:

"commercial establishment" means an establishment which is not a shop but which carries on the business of advertising, commission, for. warding or commercial agency, or which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, brokers'' office or exchange and includes such other establishment as the State Government may by notification declare to be a commercial establishment for the purposes of this Act.

It is pointed out by the learned Counsel for the petitioner that the Thiagarajar Mills where in he is employed is a joint stock company and, therefore, a "commercial establishment" within the meaning of the definition just above extracted, and that on that account, he fulfils all the conditions laid down in Sub-clause (iii) of Clause (12) of Section 2. The argument appears to me to be sound. It is true that the petitioner does not belong to the clerical department of an industrial undertaking, and that part of Thiagaraiar Mills in which he works does not fall under that portion of the definition of "commercial establishment" which talks of such a department. But a department of that type is not the only thing which is regarded as a commercial establishment. Clause (3) of Section 2 of the Act embraces within its fold various types of establishments and says that an establishment which is not a shop, but which fulfils one of the numerous other alternatives specified therein would be a commercial establishment. Thus, an establishment which is not a shop, bat which-

(i) carries on the business of advertising, or

(ii) carries on the business of commission, or

(iii) carries on the business of forwarding, or

(iv) carries on the business of commercial agency, or

(v) is a clerical department of a factory or industrial undertaking, or

(vi) is an insurance company, or (vii) is a joint stock company, or (viii) is a bank, or

(ix) is a brokers'' office, or

(x) is an exchange, or

(xi) is an establishment notified by the State Government to be a commercial establishment,

would be a commercial establishment within the meaning of Clause (3) of Section 2 of the Act. According to the petitioner. Thiagarajar Mill''s is a joint stock company. If that be so, it will have to he regarded as a commercial establishment within the meaning of Clause (3) of Section 2. Now it is a concern admittedly owned and being run by Saroja Mills Ltd. which is a joint stock company. This fact, however, is regarded by the learned Counsel for the respondents as irrelevant. He argues that Thiagarajar Mills itself should be a joint stock company, and as it is not one, we cannot look upon its ownership i00100001n order to find out whether it is a joint stork company or not. The argument has to be rejected as a fallacious. When Clause (3) of Section 2 talks of an establishment being a joint stock company, it necessarily refers to its constitution and, therefore, to its ownership and not to the type of work done by it, even though most of the other requirements of the clause would appear to make the nature of the business transacted by an establishment as the criterion for finding out whether it is a commercial establishment or not. This is so bonuses the words "joint stock company" do not envisage the nature of work transacted by the establishment concerned. In order to rind out whether an establishment is a joint stock company or not, it will have to be seen as to who is running it without reference to the nature of the business carried on by it and then to be determined whether the owner is a joint stock company or not. If it is, the establishment must be regarded as a commercial establishment.

6. I have already pointed out that the petitioner was found by the Commissioner not to be working in any clerical department of Thiagarajar Mills; but that he was a person wholly employed otherwise in connection with its business, namely in his capacity as a law officer. His case, therefore, squarely falls within Sub-clause (iii) of Clause (12) of Section 2, so that this appeal before the Commissioner was maintainable as one having been filed by a "person employed".

7. Learned Counsel for the respondents vehemently argues that the petitioner should not be given the benefit of Sub-clause (iii) of Clause (12) of Section 2 because that was not a sub-clause relied on by him before the Commissioner. With this argument I do not find myself in agreement It is true that reliance was

not specifically placed on Sub-clause (iii) by the petitioner who sad been laying emphasis on Thiagarajar Mills being a factory and an industrial undertaking and on himself being a member of the clerical staff employed in such factory or undertaking. Nevertheless, he did point out in his pleading before the Commissioner that Thiagarajar Mills was a commercial establishment. Attention to this aspect of the matter also appears to have been drawn during the arguments before the Commissioner, because he does specifically refer in the impugned order to Clause (3) of Section 2 of the Act and holds that the petitioner was not a person employed within the meaning of that clause either. That finding is unintelligible for the reason that Clause (3) of Section 2 does not talk of a "person employed", but merely defines what a commercial establishment is. That clause has to be read with Sub-clause (iii) of Clause (12) of Section 2 in order to find out whether a person would be a "person employed" or not, and it was incumbent on the Commissioner not merely to look into Clause (3) of Section 2, but also to pay attention to the relevant Sub-clause of Clause. (12), namely, Sub-clause (iii). Not having done so, he failed in his duty to decide a point put forward before him by necessary implication, if not expressly. In this connection, t may usefully remake that it has been observed over and again by the highest Courts in the country that pleadings should be liberally and not strictly construed. Looked upon in that light, the case put forward on behalf of the petitioner before the Commissioner appears to me to be based not merely on the provisions of Sub-clause (ii) of Clause (12) of Section 2. but also on those of Sub-clause (iii) of that clause.

8. Holding that the petitioner fulfils the requirements of Sub-clause (iii) of Clause (12) of Section 2 of the Act, I hold that he was a "person employed" within the meaning of that clause so that his appeal under Sub-section (2) of Section 41 of the Act was maintainable and that in coming to a contrary conclusion the Commissioner fell into an error of law. The petition is, therefore, accepted and the impugned order is quashed, and the Commissioner is directed to re-hear the appeal preferred to him by the petitioner and to decide it on merit. In view of the circumstances of this case, the parties are left to bear their own costs.