

(2006) 07 AHC CK 0196

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1849 of 2004

Sagari Leathers (P) Ltd.

APPELLANT

Vs

Presiding Officer, Industrial Tribunal and Others

RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 6N

Citation : (2006) 6 AWC 6008 : (2006) 110 FLR 1043 : (2006) 3 UPLBEC 2192

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Avinash Swarup, D.B. Yadav and R.C. Maurya, for the Appellant;
Shyam Narain and Sudhanshu Narain and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—By means of present writ petition, the petitioner has challenged the order/award dated 30.05.2002 (published in Gazette dated 21.11.2003) passed by the Presiding Officer, Industrial Tribunal, U. P. Agra in Case No. 93/97.

2. The brief facts of the case are as follows:

The petitioner is a Private Limited Company incorporated under the Indian Companies Act, 1956. The petitioner's Company is a manufacturer of Leather Tops for the Shoes. It is a government recognized Export House mainly engaged in exporting the Leather Tops of Shoes. It's registered Office is located at 17 Kucha Chodhary Opposite State Bank Building, Chandani Chowk, Delhi and has a branch Office at 164 F. M. Cariappa Road, Babuganj, Agra. In the petition, it is, stated that the Company engaged several workers for the preparation of Leather Tops for the Shoes. These Shoe Tops are made on orders received from foreign Countries. To supervise the manufacturing of these Shoes Topes, few supervisors are also engaged. The working condition and service conditions are governed by the Standing Orders. These Standing Orders are duly certified by the Competent Authority. Amendments made from time to time are also incorporated. The

respondent No. 3 was engaged by the petitioner's Company on the post of Cutting Inspector on 01.02.1989. He continued to work till 16.11.1992 and thereafter, he expressed his desire to leave employment. Petitioner's Company had no objection and accepted the oral resignation and he ceased to work from 16.11.1992. The respondent No. 3 had accepted Rs. 6,723.85 as the amount due and issued a receipt for the same. A copy of Experience Certificate was issued to him. The respondent No. 3 again approached the petitioner and expressed his desire to work as Cutting Supervisor/Inspector. Petitioner's Company had no objection as such as per the procedure laid down in the Standing Orders, the respondent No. 3 had applied for job. An appointment letter was issued and he joined the job from 08.12.1992 as a Cutting Supervisor/Inspector. Copy of the appointment letter is Annexure-5 to the writ petition. The appointment letter clearly states the appointment of respondent No. 3 as a Cutting Supervisor on a consolidated salary of Rs. 1850/-. It further says that the service is governed by the Standing Orders of the Company as well as administrative orders enforced from time to time and the services may be terminated on one calendar months notice in writing being given by either or payment of one months salary in lieu of notice. After the appointment, respondent No. 3 was supervising the work of other Leather Cutting Mistri. The work of these Leather Cutting Mistry was to cut Leather as per pattern given to them. The work of the respondent No. 3 was to see whether all Mistries were working according to the pattern given to them and minimum wastage was being caused to the leather in the work. The patterns were prepared as per the specification of the shapes of the Shoes approved by the foreign Companies and this technical work was to be supervised by the respondent No. 3. The respondent No. 3 had to supervise that leather was to be cut according to the patterns approved with minimum wastage. It is true that some time the respondent No. 3 had also done the cutting of the leather alongwith other Cutting Mistry only to educate them so that there should be minimum wastage in the work. It was not his regular work. The respondent No. 3 is a Bachelor of Arts degree with Economics, English Literate and Hindi and thereafter, he did his post graduate in Urdu language. Thus, he was an educated employee and was capable to read what he has signed. It is, stated that the respondent No. 3 on his own accord, desired to leave the job for better opportunity and he left the service on 15.3.1997.

3. According to the petitioner, it was not the case of retrenchment and a case of mutual agreement for leaving the service to which, the employer had no objection. It is, further stated that the respondent No. 3 when could not get the job in any other establishment, he again approached the petitioner to get the job which has been refused. The respondent No. 3 was paid all his balance salary, retrenchment allowance as a good gesture. Although, the petitioner's Company was not obliged to pay the leave encashment amount but it was also paid. The total amount was calculated at Rs. 19,555.40 out of which a sum of Rs. 1,700/- advance due against the respondent No. 3 was deducted. The total amount of Rs. 17,855.40 was paid to the respondent No. 3 vide voucher dated 22.3.1997.

All the stipulated details were given in the voucher on which respondent No. 3 put his signature after reading. The voucher receipt is Annexure-7 to the writ petition. It may be mentioned here that the Cheque of Rs. 17855.40 was accepted and got encashed. When the respondent No. 3 finds that the Company was not interested to take him back in the job, he filed a Case before the Deputy Labour Commissioner, Agra which was referred to the Industrial Tribunal.

4. The reference was made on the question whether the termination of service of Sri Nazim Iqbal son of Sri A. R. Khan, Cutting Mistry from 15.3.1997 by the employer was justified and legal and if no, then for what benefits, he is entitled. The Prescribed Authority, Industrial Tribunal, Agra vide impugned order/award held that verbal order of removal of respondent No. 3 on 15.3.1997 was illegal and he was directed to be reinstated in service. It was further directed that from 15.3.1997 till the date of retrenchment he may be paid complete wages.

5. Heard Sri Avinash Swaroop learned Counsel for the petitioner, Sri Shyam Narain, learned Counsel for the respondent No. 3 and the learned Standing Counsel appearing on behalf of respondent Nos. 1 and 2.

6. Learned Counsel for the petitioner submitted that the present is not the case of retrenchment but a voluntary desire to leave the service which is clearly established from the fact that he has signed the payment voucher and accepted the payment as a full and final settlement without any objection. The respondent No. 3 being a literate person was fully aware where he has put the signature and about its contents. Thus, it is wrong to say that the respondent No. 3 was retrenched. It is, further submitted that the respondent No. 3 was appointed as a Supervisor and thus, was not the workman within the definition of workman u/s 2(s) of the Act. He further submitted that the respondent No. 3 has continuously worked from 01.02.1989 to 15.11.1992 and had left the service on 16.11.1992 and was further employed on 08.12.1992. He submitted that it was the practice of the respondent No. 3 to leave the job to search a better employment and when he could not get, he again approached the Company. This time, the Company refused to give the employment to the respondent No. 3 and thus the present dispute has been raised. He left the service on his own accord after receiving the entire dues as a full and final settlement. He submitted that the Tribunal has erred in holding that it is a case of retrenchment. In support of his contention, he relied upon various decisions.

7. Learned Counsel for the respondent No. 3 Sri Shyam Narain vehemently submitted that nomenclature of the respondent No. 3 as he was appointed, as a Supervisor is not sufficient. He submitted that for the purposes of definition of workmen u/s 2(s) of the Industrial Dispute Act, it has to be seen that what was the actual work done by the employee. He submitted that the work done by the employee was a Cutting Mistri and not of a Supervisor and thus, the case of the respondent No. 3 does not fall within the exclusion Clause of definition of workman. He further submitted that the Tribunal has recorded the finding after appreciating the evidences on record that the respondent No. 3 was the

workmen and his service was retrenched without following the procedure provided u/s 6N of the Act. Finding of the Tribunal is the finding of fact and may not be interfered by this Court. Learned Counsel for the respondent No. 3 relied upon various decisions.

8. Having heard learned Counsel for the parties and perused the impugned orders and documents relied upon.

9. During the course of proceedings, Presiding Officer has recorded the statement of the respondent No. 3 and also the statement of Sri Ravindran, Director of the company. Respondent No. 3 has also been cross examined. In the written statement respondent No. 3 stated that he was appointed as cutting mistry from 01.02.1989 and was in regular employment and has been removed from the service without issuing any show cause notice and without any basis. In his statement he stated that in the factory he was doing the cutting work by his own hand. The work of the workmen was being looked after by Shri D.K.Singh and Shri Raghu Verma and he has been shown as supervisor only in the name sake. In the cross-examination dated 12.02.2001 on the query that every day how many pattern was being cut ? He stated that he was not cutting every day and in 10-15 days only 50-60 pattern was being cut while the single workmen cut it only in one day. In written statement, petitioner case was that the respondent No. 3 continuously worked from 01.02.1989 to 15.11.1992 and had left the services on 16.11.1992 and thereafter, further employed on 08.12.1992. He was further appointed as a supervisor on a consolidated salary of Rs. 1,850/-. He was subsequently left the service on 15.03.1997 voluntarily after receiving the cheque of Rs. 17,855.40p. He has signed the voucher for the payment in which complete details of the payment was mentioned and it was also mentioned that it was towards full and final settlement. The voucher was duly signed by him and the cheque has also been got encashed. It was submitted that since his appointment was as cutting supervisor, therefore, he was not workman within the definition of Section 2(s) of the Act, in as much as it falls under the exclusion clause. Presiding Officer on a consideration of the entire facts held that merely his designation was shown as cutting supervisor is not sufficient to cover his case within the exclusion clause in as much as his nature of work has to be examined and according to the Presiding Officer his nature of work was not of supervisory but was of workman as he was involved in cutting of the leather. Presiding Officer further held that he was removed from the service without any notice in violation of Section 6 N of the Act and the payment received was only due to his compulsion to survive his family. Presiding Officer accordingly, held that the removal of the respondent No. 3 from the service was not justified and he is liable to be reinstated. Presiding Officer has directed for the payment of entire back wages. Though the Presiding Officer has observed that burden lies upon the respondent No. 3 to prove that he was not supervisor and was workman, the Presiding Officer held that the petitioner was not able to produce the record showing the nature of the work done by the respondent No. 3 to establish the work done by him.

10. Section 2(s) of the Act reads as follows:

"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950(45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

11. It may be mentioned here that in the cross examination the respondent No. 3 has not disputed about the leaving of the service on 15.11.1992 and the further employment w.e.f. 08.12.1992. He has not disputed about the contents of the appointment letter, appointing him as cutting supervisor. He has not disputed his signature on the cash voucher and receipt of the character certificate. Respondent No. 3 is a literate person. He was Bachelor of Arts degree with Economics, English Literature and Hindi and has also done his Post Graduate in Urdu language. Therefore, it can not be said that he has joined the service without reading the appointment letter and left the service voluntarily after signing the voucher and receiving the cheque without knowing its contents. It is not the case of the respondent No. 3 that the signature on the cash voucher was obtained by threat and coercion. The cash voucher clearly states that the payment was towards full and final settlement. The cheque issued by the petitioner has also been got encashed. This shows that the respondent No. 3 has voluntarily left the service and has not been removed from the service. The view to the contrary taken by the Presiding Officer is erroneous.

12. In the case of H.R. Adyanthaya and Ors. v. Sandoz (India) Ltd. and Ors. reported in 1994 (69) FLR 593 Constitution Bench of the Apex Court held as follows:

However, the decisions in the later cases, viz. S.K. Verma, Delton Cable and Ciba Geigy cases did not notice the earlier decisions in May & Baker, WIMCO and Burmah Shell cases and the very same contention viz. if a person did not fall within any of the categories of manual, clerical, supervisory or technical, he

would qualify to be a workman merely because he is not covered by either of the four exceptions to the definition, was canvassed and though negated in earlier decisions, was accepted. Further, in those cases the development officer of the LIC, the security inspector at the gate of the factory and stenographer-cum-accountant respectively, were held to be workmen on the facts of those cases. It is the decision of this Court in A. Sundarambal case which pointed out that the law laid down in May and Baker case was still good and was not in terms disowned.

We thus have three three-judge bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz., manual, clerical, supervisory or technical and two two-judge bench decisions which have, by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three three-judge bench decisions which, without referring to the decisions in May & Baker, WIMCO and Burmah Shell cases have taken the other view which was expressly negated, viz., if a person does not fall within the four exceptions to the said definition, he is a workman within the meaning of the ID Act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation.

(Emphasis provided).

13. In view of the law laid down by the Constitution Bench of the Apex Court referred hereinabove, it is clear that merely because the case of workman is not covered by either of the four exceptions to the definition he must be a workman, is not correct. A person to be workman must be employed to the work of any of the categories, namely, manual, unskilled, skilled, technical, operational, clerical or supervisory, A person, who is employed as a workman and is doing the work of the above nature is workman and is a person employed is not doing the work of the abovementioned is not a workman. Clause (iv) of Section 2(s) of the Act provides that who being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature does not fall within the definition of the workman. For the purpose of Clause (iv) what has to be seen is the employment of the person in a supervisory capacity. The main part of the definition treat a person as a workman, who is employed as a workman in any industry but was looking after the supervisory work for hire or reward but if a person is employed in a supervisory capacity by virtue of his appointment letter he is not a workman within the definition of Section 2(s) of the Act and in my opinion no other consideration is required to be looked into.

14. Apex Court in the case of S.K. Maini Vs. M/s. Carona Sahu Company Limited and others, while interpreting Section 2(s) of the Act held as follows:

After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned Counsel for the parties, it appears to us that whether or not an employee is a workman u/s 2(s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any strait-jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of workman u/s 2(s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the complexity of industrial or commercial organizations, quite a large number of employees are often required to do more than necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it. In this connection, reference may be made to the decision of this Court in *Burmah Shell Oil Storage and Distribution Co. of India Ltd v. Burmah Shell Management Staff Assn.* In *All India Reserve Bank Employees' Assn. v. Reserve Bank of India* it has been held by this Court that the word "supervise" and its derivatives are not words of precise import and must often be construed in the light of context, for unless controlled they cover an easily simple oversight and direction as manual work coupled with the power of inspection and superintendence of the manual work of others. It has been rightly contended by both the learned Counsel that the designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The determinative factor is the main duties of the employee concerned and not some works incidentally done. In other words, what is, in substance, the work which employee does or what in substance, he is employed to do. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or for a fraction of time also does some manual or clerical work, the employee should be held to be doing supervisory works. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of "workman" as defined in Section 2(s) of the Industrial Disputes Act.

15. In the above case, Apex Court observed that it has been rightly contended by both the learned Counsels that the designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The Apex court held that the determinative factor is the main duties of the employee and not the some works incidentally done. In other words, what is, in substance, the work which employee does or what in substance he is employed to do. Thus, the case of the respondent No. 3 is to be examined in the

light of the aforesaid rule.

16. The respondent No. 3 was admittedly appointed as a supervisor, thus, burden lies upon the respondent No. 3 to prove to the contrary. In the present case, except his own statement-in- chief in which he has stated that he was involved in cutting the leather, no other evidence has been adduced. In the cross-examination he has stated that he was not involved in cutting the leather everyday and in 15-20 days used to cut only 40-50 pcs. which a single workman cut in one day. In the statement Sri Chandran stated that there were 40 cutters and he was involved in supervising their work and sometime to explain the work, he was also cutting the leather and work was only incidental and his main work was to supervise. To controvert the version of the petitioner, no contrary evidence has been adduced. Presiding Officer has misdirected itself and merely on the ground that the record relating to the work taken from the respondent No. 3 has not been produced by the petitioner, inferred that his nature of work was not of supervisory and was of workman. In my view, respondent No. 3 was covered under Clause (iv) of definition of Section 2(s) of the Act and was not the workman.

17. Perusal of the record shows that he was not removed from the service but had voluntarily left the service as stated above. He has signed the payment voucher in which complete details of the payment was mentioned and received the cheque of Rs. 17,855.40p as a full and final settlement. In the voucher it was clearly mentioned that the payment was towards full and final settlement. Cheque has also been got encashed. Respondent No. 3 was literate person and therefore, it can not be said that he had signed the cash voucher and received the cheque without reading the contents of the cash voucher and without understanding its contents. It is not the case of the respondent No. 3 that the signature has been obtained under threat and coercion and therefore, in my view it is a case of voluntarily leaving the service and not a case of retrenchment. Presiding Officer has illegal held to the contrary.

18. In the result, writ petition is allowed. Order of the Presiding Officer dated 30.05.2002 is set aside.