
(2010) 07 JH CK 0106
In the Jharkhand High Court
Case No : W.P.L. No. 2139 Of 2005

Sanjay Kumar Upadhyay

APPELLANT

Vs

Presiding Officer Labour Court & Ors

RESPONDENT

Date of Decision : 23-07-2010

Acts Referred:

Bihar Shops And Establishment Act, 1953 — Section 2(4), 26(2)

Citation : (2011) 1 JLJR 482

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. In this writ petition, the petitioner has prayed for setting aside the judgment/order dated 23-7-2004 passed in B.S. Case No. 6/2002 by Presiding Officer, Labour Court, Ranchi whereby he has held that the petitioner is not an employee under the provision of Section 2(4) of the Bihar (now Jharkhand) Shops and Establishment Act, 1953 (hereinafter to be referred as the said Act) and the complaint under Section 26(2) of the said Act against his dismissal is not maintainable.

2. The said order has been challenged on the ground that the order is perverse and arbitrary, The Labour Court has decided the maintainability, as preliminary issue, without giving opportunity to the petitioner to adduce the evidence in support of his claim. Learned Labour Court referred three documents, which have no relevance in deciding the issue: whether the appellant is an employee within the ambit of Section 2(4) of the said Act. The same have been relied upon to hold that the complainant was in the managerial cadre of the company and he does not come within the definition of 'employee' under Section 2(4) of the said Act. According to the petitioner, he was holding the post of Field Officer in the company. He suddenly fell ill on 25-10-2001 at Begusarai. The doctor advised him for complete bed rest. The petitioner, in that circumstance, could not move and attend duties up to 7-1-2002. The petitioner had given intimation regarding

his illness, on telephone as well as in writing, to the Area Manager, Patna. He had resumed his duty on 8-1-2002. He had also submitted medical certificate. Suddenly, he received letter dated 11-1-2002, terminating his services w.e.f. 26-10-2001 i.e. with retrospective effect on the ground that he had not been attending his duties since 26-10-2001. It has been stated that there was no such service condition for awarding punishment of dismissal from service in case of overstaying or absence from duty, and that too without initiating any proceeding and affording him opportunity of representation.

3. The petitioner had, thus, filed a representation requesting the company to recall the said order, but the same was not heeded upon. He, thereafter, filed a complaint under Section 26(2) of the Act in the Labour Court, Ranchi.

4. The opposite party - management contested the petition stating, inter alia, that the petition is not maintainable under Section 26(2) of the Shops and Establishment Act, as the opposite party is not an employee within the provision of Section 2(4) of the said Act. He was holding a post in managerial cadre.

5. Learned Labour Court entertained the said preliminary point and framed a question as to whether the complainant was an employee as per Section 2(4) of the Bihar Shops and Establishment Act.

6. While deciding the said preliminary issue, learned Labour Court took notice of letter dated 11-1-2002 addressed to the complainant by the opposite party-company, stating that no executive shall be absent without prior written approval of his immediate superior.

7. There was nothing to show that the service of an executive would be liable to be dismissed for absence from duty. The document dated 21-1-2002, which is a hire purchase termination notice, shows that the complainant was authorized signatory of the company and had authority to take decision of termination of hire purchase agreement.

8. On the basis of the said document, learned Labour Court held that the complainant was in managerial cadre of the company of the opposite party and not an 'employee' as per Section 2(4) of the B.S. Act. He further held that the complaint under Section 26(2) of the B.S. Act is not maintainable. Learned Labour Court, thus, dismissed the complaint.

9. Learned counsel appearing on behalf of the petitioner submitted that the conclusion arrived at by learned Labour Court is without any basis. The learned Labour Court erroneously interpreted the definition of 'employee' given in Section 2(4) of the said Act and decided the said preliminary issue without giving opportunity to the complainant to adduce evidences.

10. Learned counsel appearing on behalf of the respondents, on the other hand, submitted that since the petitioner held managerial post, he does not come within the definition of 'employee' under the said Act. Learned Labour Court rightly held that the complaint petition is not maintainable and dismissed the

petition holding the same not maintainable. He referred to and relied on a decision of Supreme Court in Rohtas Industries Ltd. v. Ram Lakhan Singh (reported in 1978 BLJ 187).

11. Section 2(4) of the Jharkhand Shops and Establishment Act defines 'employee' as follows:-

((4) "employee" means a person wholly or partially employed for hire, wages including salary, reward, or commission in and in connection with any establishment and includes 'apprentice' but does not include member of the employer's family. It also includes person employed in a factory who are not worker within the meaning of the Factories Act, 1948 (63 of 1948), and for the purpose of proceeding under this Act, include an employee, who has been dismissed, discharged or retrenched for any reason whatsoever;)

12. On bare reading of the said definition, it is evident that a person who is wholly or partially employed for hire, wages including salary, reward or commission in and in connection with any establishment including apprentice, is an employee within the meaning of the Act. It further includes the person employed in factory who are not worker within the meaning of the Factories Act, 1948, and for the purpose of proceeding under this Act dismissed, discharged or retrenched for any reason, whatsoever is also an employee.

13. Section 2(4) of the Act has not distinguished the managerial employee or workman. Learned Labour Court relied upon the decisions of Patna High Court reported in 1999 (2) BLJR 1110 (Gautam Banerjee v. State of Bihar; 1996 (1) PLJR 297 (ITC Limited v. State of Bihar) and decision of the Supreme Court in M/s. Rohtas Industries Limited reported in 1978 BLJ 187, and has come to the finding that the petitioner was holding the post of Field Officer, which was an executive post and he had authority to take decision of termination of hire purchase agreement as an authorized signatory of the company and as such he is not an employee under Section 2(4) of the B.S. Act.

14. Learned counsel for the respondents has placed heavy reliance on the decision of Rohtas Industries Limited (supra) for supporting the impugned order.

15. On going through the said decision I find that the fact of the said case was entirely different and the same has no relevance in the context of the instant case. The plain reading of the definition under Section 2(4) of the said Act suggests that even a person, employed in a factory who is not worker is 'employee' within the meaning of the Act. But two exceptions have been carved but from the category of such persons, namely (1) who are not working within the meaning of the Factories Act, such worker comes within the inclusive definition of the term 'employee*' and (2) who are the family members of the employer.

16. So as to say that even a person employed in a factory and who is not a worker within the meaning of the Factories Act will be an employee under Section

2(4) of the said Act, even if he is working in a managerial capacity. In the above referred case the person was employed in the paper factory, whereas in the instant case it is nobody's case that the complainant was employed in any factory. The petitioner is, thus, an employee within the meaning of the exception mentioned in Section 2(4) of the said Act. Since the impugned order is based on the said decision, which is not applicable to the facts of the instant case, the same is wholly perverse and unsustainable. The impugned order of learned Labour Court is, accordingly, set aside.

17. However, since the petitioner's case has not been decided on merit and the other controversies were not taken up for decision by learned Labour Court, the matter is remitted to the Labour Court, Ranchi for hearing the petition afresh on merit on all the issues which may arise in the case in accordance with law. Since the matter is pretty old, learned Court is directed to expedite the same, so as to conclude within a period of three months from the date of receipt/production of a copy of this order.

18. Let a copy of this order be sent to Labour Court, Ranchi.

19. This writ petition is, accordingly, allowed in the above terms.

20. Petition allowed.