

(2008) 03 DEL CK 0273

In the Delhi High Court

Case No : Writ Petition (Civil) No. 21968 of 2005

Shri Anil Sen Gupta

APPELLANT

Vs

All India Harijan Sewak Sangh

RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Constitution of India, 1950 — Article 102(1)
Industrial Disputes Act, 1947 — Section 2

Citation : (2008) 03 DEL CK 0273

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Sanjoy Ghosh, for the Appellant; A.K. Hajelay, for the Respondent

Judgement

Sudershan Kumar Misra, J.—The petitioner claims to be a workman with the respondent. He states that after an illustrious career with Mahatama Gandhi, he became a curator of the Gandhi Museum. After his retirement from that post, the petitioner claimed to be associated with the respondent organization for a period of 15 years from 1988 to 2002. The petitioner contends that during all this period, although the payment was styled as an honorarium, he was regularly employed and his services were regularly obtained by the respondent and, Therefore, there existed a relationship of employer and employee between himself and with the respondent. The essence of his case, to use the old saying, is that, "a rose by any other name smells as sweet". In other words, regardless of the nomenclature employed by the respondent according to the petitioner, the fact remains that his services were engaged by the respondent for 15 long years and he had been paid a fixed regular salary and that all the ingredients of the employer and employee relationship stand satisfied. He submits that it is the essence of the relationship that must be examined and not merely the nomenclature given to it. In support of his contention, Mr. Ghosh relies on the case of Shibu Soren Vs. Dayanand Sahay and Others, for the proposition that under the circumstances; even an honorarium would amount to salary. The controversy which arose in that case was with regard to the Explanation

appended to Article 102(1)(a) of the Constitution of India and the disqualification attracted for holding an office of profit. In that case, it was held that the mere use of the word "honorarium" cannot take the payment out of the purview of profit. If there is some pecuniary gain from the payment of an honorarium in addition to daily allowances in the nature of compensatory allowances or rent free accommodation etc., the same was held to be a remuneration and a source of pecuniary gain and hence constituted profit. It is obvious that in that case, the issue before the court was whether the petitioner can be said to be holding an office of profit. In the instant case, what is to be seen is whether the honorarium given to the petitioner constitutes wages. Wages, as commonly understood, are also remuneration for services rendered. To the extent that payment received under an honorarium can be said to be remuneration, this authority is relevant.

2. The next case is the decision of Supreme Court of India and the case of Bhagaband Colliery v. Workmen (1962) 2 LLJ 356 where it was held that a fixed payment towards commission payable to "sirdars" at a particular rate of the production achieved by the miners recruited through such "sirdars", could be called wages. This question also arose because these, "sirdars", claimed the benefits of the Industrial Disputes Act on the ground that they were workmen and sought to rebut the contention of the employer that they were merely independent contractors and that commission paid to them was not wages as defined u/s 2(r) of the Industrial Disputes Act.

3. For the proper decision of this case, one must look at the definition of "workman" and the definition of "wages" laid down in Section 2(rr) of the Industrial Disputes Act. A perusal of this Section shows that a very wide definition is being given to the expression "wages" and it is stated to mean, inter alia, "all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes...." It would appear that the test of wages is quite clearly the fact that the remuneration in question should be payable if the terms on which the individual is working are fulfilled. To put it differently, it would mean that the right to receive the honorarium vested in the petitioner on the fulfillment of some terms. If he were to do certain work for the respondent he would be entitled to the honorarium. If that be true, then this honorarium is nothing but wages. It is merely recompense for the work done.

4. To buttress the claim of the workman, Mr. Ghosh relies upon paragraph 2 of the written statement filed by the management before the Labour Court where they have categorically stated that the petitioner had stopped reporting for duty in an unauthorized manner since mid of May, 2002. In other words, there is an unequivocal acceptance of the fact that some duties were regularly assigned by the respondent to the petitioner and that the petitioner was subject to the authority of the respondent. By this statement, it is also clear that whatever

would have been paid to the petitioner was by way of recompense for the duties assigned to him by the respondent.

5. According to the Counsel for the respondent his case is that the petitioner was not a workman. He, however, concedes that the petitioner was an employee of the respondent organization. He states that if the impugned award is read in its entirety, what the Labour Court has held is that the petitioner was not a workman, which is an altogether different thing.

6. After some arguments in the matter, Counsel for the parties are agreed that this matter be remanded back to the Labour Court for consideration as to whether the petitioner was a workman or not as contemplated under the Industrial Disputes Act. As regards the nature of association of the petitioner with the respondent that question need not be gone into any further because Counsel for the respondent has fairly conceded that the petitioner was in fact employed with the respondent organization. His only contention is that the nature of the work done by the petitioner during the course of his employment with the respondent would not constitute him a workman within Section 2(s) of the Industrial Disputes Act. Unfortunately, there is no reasoned finding on this aspect of the matter.

7. The impugned award passed by the Labour Court- VIII in I.D. NO. 229/2003 dated 20.5.2005 is set aside and the matter is remanded back to the Labour Court for a decision afresh on the issues as framed in paragraph 5 of the impugned award. The matter be disposed of within three months.

8. I have been informed that the Labour Court which has pronounced the impugned award has since been abolished. In that view of the matter, the in charge, Industrial Tribunal-I, Labour Courts, Karkardooma would assign this matter as per norms. Parties to appear before the in charge, Industrial Tribunal-I on 7th April, 2008.

9. Writ Petition is disposed of.