

(2018) 01 BOM CK 0118
In the Bombay High Court
Case No : 413 of 2011

Shri Damodar Mangueshkar

APPELLANT

Vs

M/s Cidade de Goa & Ors.

RESPONDENT

Date of Decision : 22-01-2018

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
Industrial Disputes Act, 1947, Section 10(1)(c), Section 2(s) - Reference of disputes to Boards, Courts or Tribunals - Definitions

Citation : (2018) 01 BOM CK 0118

Hon'ble Judges : Prithviraj K.Chavan

Bench : Division Bench

Advocate : Shivraj Gaonkar

Final Decision : Dismissed

Judgement

1. Challenge in this petition is to an award dated 22.11.2010 passed by the learned Presiding Officer, Labour Court-II, Panaji, in Ref. No.IT/95/07 by which, it is held that the petitioner is not a "Workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 ("I.D.Act, 1947" for short).

2. Facts, in brief, can be stated as follows:

The petitioner started his career as "Trainee Restaurant Cashier" with respondent no.1 from 5.1.1985 and was confirmed in the said post of "Restaurant Cashier" on 10.11.1985. The petitioner was promoted as "Front Office Assistant/Cashier" with effect from 1.4.1991 and was appointed as "Front Office Supervisor" in Grade VIII with effect from 1.10.2003. He was confirmed in the said post on 1.10.2004 by respondent no.1 as "Front Office Supervisor". The petitioner was supposed to follow the following duties mentioned in the letter dated 1.10.2004 of respondent no.1:

- "1. Supervise all cashiering activities throughout the day.
2. Check on future business of the resort - any major events/conferences/charters/groups. Assign duties to Staff on various tasks to be completed to take care of the incoming guests.
3. Conduct briefings - give instructions for the day, check grooming, brief the staff on any important activities or persons arriving for the day, rates applicable in that period/for the group, house position.
4. Coordination with Room Service, Housekeeping, Telephones, Engineering in case of guest complaints not being solved and also in the normal course of a guest checking in/checking out.
5. If a guest has a complaint speak to the guest and offer alternatives - room change, a repair job in short period of time, a different mode of transport etc.
6. Advise the guests on matters of safety of their belongings:- safe deposit lockers, double locking of doors etc.
7. Make store requisitions on the basis of future business for registration cards, folders, coupons, computer stationery, gifts etc. Also for amenities for arrivals.
8. Block rooms for the next day.
9. Solve problems that staff come across in the usual course of the duty.
10. Check the Arrivals on the Control Sheet. If there are heavy arrivals ensure that the preregistration is done well in advance.
11. Check the preregistration done for the days" arrivals.
12. Supervise the obtaining of Expected Departure times by the Front Office Assistant.
13. Planning allocation of rooms to guests on the basis of packages and guest preferences obtained through guest history. Allocating blocked rooms to incoming guests.
14. Follow up with HK Desk Attendant to get departure rooms ready for the next arrivals. Give the order/priority in which rooms are required.
15. Follow up with Room Service for placement of amenities once the room is vacated.
16. Make vouchers for charter guests and send it to Accounts (through whom).
17. Ensure that the statutory requirements of FERA and the Arrival and Departure register are completed by the Front Office Asst in Reception.
18. Keep track of guest history and align with the repeat guest.
19. Tally the blocked rooms for the next day and HK Desk Attendant.

20. After taking message from Message Cell ensure that it has reached the room, follow up with Bell Boy.

21. Allocate duties on a daily basis if there are many arrivals or departures.

22. Brief the Airport representatives on guests arriving especially VIPs. Also brief them on the mode of transport to be arranged for the guest.

23. Obtain information about changes in flight timings, restaurant timings, new facilities available in the resort. Give information to reception, Hospitality, Bell Desk.

24. Enter the total revenue earned through upselling and walk in arrivals in the Walk in Register.

25. To perform any other duty assigned to the job holder".

3. The petitioner contends that during the course of his duties as "Front Office Supervisor" respondent no.1 found that he had caused financial loss of Rs.39,508/- to the Company. Accordingly, certain deductions were made from the petitioner's salary. The petitioner, through his Union, made a representation dated 8.8.2005 to the Labour Commissioner, which resulted in Reference No.IT-92-07. The Labour Court decided the matter against the petitioner, which came to be challenged by him by a Writ Petition No.804/2010 before this Court.

4. The petitioner, thereafter was transferred and posted as "Accounts Supervisor" on 1.9.2005 where he was on training for a period of six months. The petitioner was put in charge of "Food Stores". The petitioner was drawing a salary of Rs.9876/- during the posting as "Accounts Supervisor".

5. The petitioner further contends that during his service with respondent no.1 he was actively participated in the Trade Union activities to further better service conditions and benefits for himself and his co-employees. He was also a Treasurer of the Cidade de Goa Hotel Employees Union. He had signed various settlements on behalf of the workmen representing them through the Cidade de Goa Hotel Employees Union, however, by a letter dated 28.11.2006 the petitioner's services were terminated by respondent no.1 with effect from 1.12.2006. On 28.12.2006 the Cidade de Goa Hotel Employees Union of which the petitioner was a Treasurer wrote a letter to the Deputy Labour Commissioner, Panaji, requesting for intervention in the matter of illegal termination. The petitioner's grievance is that he was terminated as he had taken the lead to get the Union affiliated to Bharatiya Mazdoor Sangh, a nationally recognized Trade Union and also because of illegal deduction which was challenged by him.

6. On 27.9.2007 the Government of Goa made a reference under Section 10(1) (c) of the Industrial Disputes Act, 1947 wherein the following Schedule was referred: "Whether the action of the Management of M/s Fomento Resorts & Hotels Limited having their hotel Cidade de Goa, at Vanguinim Beach Dona Paula, Goa, in terminating the services of their workman Shri Damodar

Mangueshkar, Accounts Clerk, with effect from 1.12.2006 is legal and justified?

7. On 13.11.2007 the petitioner filed his Statement of Claim before the Industrial Tribunal, Labour Court II (respondent no.3). The petitioner in his Statement of Claim, inter alia contended as under: "a) That he was doing the work of clerks though designated as Account Supervisor.

b) That the work was assigned to him daily by his superior and as per his instructions he was doing the work.

c) That he was not sanctioning authority of any leave of the workmen working in his department.

d) That since the commencement of the Hotel he was in continuous service.

e) That to victimize him for his Union activities his services were terminated.

f) That the termination was illegal as the Company had not obtained the required approval under Section 33 of the Industrial Disputes Act, 1947.

g) That before termination he was not paid any retrenchment compensation and that no inquiry was conducted before his termination".

8. Respondents no.1 and 2 in their written statement dated 28.12.2007 disputed that the petitioner is "Workman" within the meaning of section 2(s) of the I.D.Act.1947. It is also the contention of the respondents that the petitioner was primarily and substantially performing the duties of a managerial and/or administrative and/or supervisory nature and was drawing a salary of Rs.9935/- per month.

9. The Presiding Officer, after framing necessary issues and after going through the affidavit and evidence on record, by the impugned award held that the petitioner is not entitled to any relief.

10. I heard Mr.Gaonkar, learned counsel for the petitioner. He took me through the record as well as the impugned award. None appeared for the respondents.

11. The Hon"ble Supreme Court in Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil (2010) 8 SCC 329, has enunciated the scope of interference of the High Courts under Articles 226 and 227 of the Constitution of India. The Hon"ble Supreme Court has clarified the scope, ambit and nature of the High Court's power of superintendence/Revision under Article 227 of the Constitution of India. The jurisdiction under Article 227 of the Constitution of India is neither original nor appellate. The jurisdiction of superintendence under Article 227 of the Constitution of India is for administrative and judicial superintendence. It would be apposite to quote para 49 of the said judgment, which reads thus:

"49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* (supra) and the principles in *Waryam Singh* (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh* (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of *L. Chandra Kumar vs. Union of India & others*, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.

12. In view of the aforesaid ratio, this Court has a very limited jurisdiction to see as to whether there was any grave dereliction of duty and flagrant abuse of fundamental principles of law and justice by the Tribunal.

13. At the outset, unless the petitioner establishes that he is a "Workman" as defined in section 2(s) of the I.D.Act, 1947, there is no question of entertaining other issues as to whether he had been victimised by the respondents for being an office bearer of the Trade Union or as regards the legality of his termination and so on.

14. I have meticulously gone through the impugned award. The learned Presiding Officer has appropriately interpreted Section 2(s) of I.D.Act, 1947, which defines expression "Workman". Section 2 (s) of I.D.Act, 1947 reads thus: "Section 2(s): "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 purposes of any 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 [ten thousand 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".

15. While discussing a case law reported in 1994 (68) F.L.R. 1101 (S.K.Maini Vs. M/s. Carona Sahu Company Ltd.& ors.), the learned Presiding Officer has quoted the observations of the Supreme Court 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 and the determinative factor is the main duties of the employee and not the some work incidentally done by him". Since the petitioner had approached the Labour Court, the burden was rightly placed on him to prove as to whether he falls within the category of "Workman" as defined in Section 2(s) of the I.D.Act, 1947. Even from the record, it appears that the petitioner was initially appointed as "Trainee Restaurant Cashier" in F & B (General Department) of the employer, vide their letter dated 10th November, 1984 and then he was confirmed on the said post. He was promoted to the post of "Front Officer Assistant/Cashier" vide letter dated 1.4.1991 by the respondent and thereafter came to be transferred as "Account Supervisor" in General Section of Accounts Department by a letter dated 1.9.2005. The Tribunal has rightly observed that the petitioner failed to state the detailed nature of duties performed by him as "Accounts Supervisor" at the time of termination of his services by the employer with effect from 1.12.2006, except a bare statement that he was doing the work of clerk.

16. The learned Presiding Officer in the impugned judgment placed a useful reliance on various case laws holding the field.

17. It is apparent from the record that the respondent/employer specifically pleaded and also stated on oath that by virtue of his duties attached to his post held by the petitioner, he was primarily and substantially performing the duties of managerial or administrative and/or supervisory nature and was drawing salary of Rs.9876/- per month. The employer, however, failed to specifically plead and prove the detailed and primarily basic duties of managerial or administrative

nature performed by the petitioner at the relevant time. However, since the petitioner himself has failed to discharge the burden of showing that he is a workman, I do not find any reason to interfere with the impugned award passed by respondent no.3. The impugned award is neither perverse nor there has been a gross and manifest failure of justice.

18. Consequently, the petition is devoid of substance and hence, it stands dismissed. However, there is no order as to costs.