
(1976) 04 DEL CK 0020

In the Delhi High Court

Case No : Civil Writ Petition Appeal No. 1615 of 1967

The Union Co-operative Society Limited

APPELLANT

Vs

R.K. Bahal

RESPONDENT

Date of Decision : 05-04-1976

Acts Referred:

Citation : (1976) ILR Delhi 862

Hon'ble Judges : T.P.S Chawla, J

Bench : Single Bench

Advocate : G.R. Chopra, for the Appellant;

Judgement

T.P.S. Chawla, J.

(1) In 1963, the respondent R. K. Bahal, was working as an Office Assistant in the head office of the Union Co-operative Insurance Society Ltd. at Delhi. By a memorandum dated 14th November 1963, he was informed that he had been transfer- red as Office Assistant-cum-Typist to the office of the Society at Kanpur, and was required to report there on 23rd November 1963. For some reason, the respondent did not wish to go to Kanpur. He wrote to the Society to extend time till 27th November 1963 for him to report at Kanpur, on the ground that his mother was seriously ill. This re- quest was granted. But, it is clear that, in fact, he utilised the time to persuade the General Insurance Employees Association, Northern Zone, of which he was a member, to move on his behalf in the matter. The Association took up his cause and raised an industrial dispute which went before the Conciliation Officer.

(2) Whilst conciliation proceedings were continuing, the Society allowed the respondent to work in its head office at Delhi because it was requested to do so by the Conciliation Officer. It appears that towards the end of January 1964, the Conciliation Officer indicated he was going to report that his attempts to settle the dispute had failed. Actually, he made a report to that effect on 7th March 1964. Meanwhile, the 30th January 1964, the Society served a notice on the

respondent again requiring him to report for duty at Kanpur. After 31st January 1964, it did not permit the respondent to work in its head office at Delhi.

(3) The report of the Conciliation Officer was submitted to the Ministry of Labour. Having considered the report, the Ministry issued a letter dated 12th May 1964 stating that, in its opinion, the transfer of the respondent from Delhi to Kanpur was made in the normal course of business and was not inspired by any ulterior motive on the part of the Society, and that the dispute raised was not considered fit for adjudication.

(4) Notwithstanding the report made by the Conciliation Officer, and the opinion expressed by the Ministry of Labour, the respondent did not report for duty at Kanpur. At no time after 31st January 1964, did he actually do any work for the Society. Nevertheless, on 30th October 1964, he filed an application (No. 291 of 1964) before the Authority constituted under the Delhi Shops and Establishments Act 1954 claiming his wages for the period 1st February 1964 to 30th September 1964. Subsequently, on 6th November 1965, he filed another application (No-224 of 1965) claiming his wages for the period from 1st October, 1964 to 31st October, 1965.

(5) Both these applications were heard together by the Authority, and decided by a consolidated order dated 17th May, 1965. An objection as to the territorial jurisdiction of the Authority to try the applications was overruled. On the merits it was held that the respondent was entitled to be paid his wages, even though he had not done any work, because his contract of service had not been terminated. Since some portions of the claims made by the respondent were barred by time, those amounts were disallowed. The Society was ordered to pay the rest of the amounts claimed.

(6) The two petitions now before me have been brought by the Society to have that consolidated order quashed. No one has entered appearance on behalf of the respondent. Indeed, he wrote a letter dated 12th March, 1968 to the Registrar of this Court, and moved an application of the same date, saying that as his outstanding claims had been settled with the Society he did not wish to file any return, and the writs may be accepted. To exclude the possibility of any misunderstanding, I ordered notice to issue to him again, but he could not be found. In the circumstances, I have had no option but to proceed to hear the case ex-parte.

(7) I do not propose to enter upon the merits of the claims made by the respondent except to say that I am far from sure that the view taken by the Authority was right. Counsel for the Society did not make any submission as regards the merits, and was content to address me only on the question of territorial jurisdiction. Accordingly, that is the only question which I proceed to decide.

(8) This question seems to be wholly free from authority. At least, none was shown to me by counsel for the Society, although he took a number of

adjournments for making research. Despite the point being rest integra, I think the answer is perfectly plain, which may well account for the absence of authority. The Delhi Shops and Establishments Act, 1954, as its name shows, applies only to Delhi. It is so stated expressly in Section 1(2), and the areas of Delhi to which it was applied in the first instance are specified in Section 1(4). As the Preamble indicates, the purpose of the Act is to amend and consolidate the law relating to conditions of work of persons employed in shops and commercial establishments. Quite obviously, the shops and establishments envisaged are those in Delhi. This conclusion necessarily follows from the territorial limits of the application of the Act.

(9) Since the Act could not apply to an establishment outside Delhi, such an establishment would not be an "establishment" within the meaning of the Act. The meaning of the word "employee" is by Section 2(7) linked to an "establishment". It means a person employed "about the business of an establishment". So, that definition must also be read with the limited territorial application of the Act in the background. It thus becomes clear that only a person employed about the business of an establishment in Delhi is governed by or can invoke the provisions of the Act.

(10) Now, in the present case, the respondent was ordered to be transferred to Kanpur. No doubt he worked in the head office of the Society at Delhi for a part of the time that the conciliation proceedings were pending, but the order of transfer was repeated or renewed by the letter of 30th January, 1964 written by the Society. In those circumstances, the question is whether the respondent was engaged about the business of the head office, which is an "establishment" under the Act, or about, the business of its office at Kanpur, which is not. Simply because both the offices belonged to the Society would not make them one establishment.

(11) To hold that the respondent was an employee attached to an establishment in Delhi, one would have to ignore the order of transfer. Considering that that order remained intact throughout, and was even approved by the Ministry of Labour, there is no conceivable reason for disregarding it. Just because the respondent did not obey it does not render it ineffective. By virtue of that order he was or must be deemed to have been actually employed in the office of the Society at Kanpur. A similar view was taken in *General Manager, N. E. Railway Gorakhpur and others v. Jamait Ram Khatnani and others* 1976 Lab & IC 98, which was a case under the Payment of Wages Act 1936. There also the question was one of territorial jurisdiction. Howsoever it may affect the merits of the claims made by the respondent on this question it is of no significance that the contract of service of the respondent was never terminated. Therefore, the Authority functioning under the Act had no jurisdiction to deal with the claims.

(12) The Authority really did not analyze the point at all. It impliedly assumed that the respondent was employed in an establishment covered by the Act, and merely observed that counsel for the Society had not drawn the attention to any

provisions of law in support of his objection. The only relevant reasoning, if any there be, is in a sentence which says that Section 21 of the Act is wide enough to cover the claims. That section deals with the nature of the claims that can be tried by the Authority. It has no bearing on the question of territorial jurisdiction. For the rest, the Authority befuddled itself by reference to matters pertaining the merits. If the Authority had only borne in mind that the Act was restricted in its application to Delhi, and that the establishments of the Society at Delhi and Kanpur were separate and distinct, it would have had no alternative but to come to a different conclusion. Perhaps, the only point which may have caused it to pause and ponder was the legal effect of the order of transfer. But it is remarkable that this is one point the Authority does not even touch.

(13) In any case, it is in my judgment, too plain that the Authority had no jurisdiction to entertain the claims made by the respondent and the error which it made is apparent from the record. The objection as to jurisdiction was taken at the earliest possible stage. So there is no question of the Society having waived the objection or submitted to the jurisdiction of the Authority.

(14) For these reasons these petitions are allowed and the consolidated order dated 17th May, 1965 made by the Authority is quashed. As the respondent has neither appeared, nor was represented, there will be no order as to costs.