

(1975) 04 MAD CK 0008
In the Madras High Court

T.P. Chandra

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 03-04-1975

Acts Referred:

Tamil Nadu Shops and Establishments Act, 1947 — Section 41

Citation : (1975) 2 MLJ 371

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—The petitioner was employed as the Regional Superintendent by an order of appointment dated 5th July, 1962 of the

second respondent company, hereinafter referred to as the Management. His salary at the time of the appointment was Rs. 400 per month and on

his work being found to be satisfactory, the salary was raised subsequently to Rs. 450. In or about 1965, the management made certain allegations

of inefficiency against the petitioner and sent its officers to check the working of the office at Madras, and after receipt of the report from them, it

terminated the petitioner's service with effect from 1st December, 1965 without holding any sort of enquiry.

2. As against the order of termination, the petitioner filed an appeal u/s 41 of the Tamil Nadu Shops and Establishments Act, 1947 hereinafter

referred to as the Shops Act, to the Additional Commissioner for Workmen's Compensation. In the said appeal the management raised a

preliminary objection to the maintainability of the appeal, firstly invoking Section 4 (1) (a) of the Act alleging that the petitioner is a person

employed in the position of management and secondly, invoking Section 4 (1) (b) of the Act alleging that the petitioner's work involved travelling

and canvassing. The management in fact filed two successive applications u/s 51 of the said Act before the Commissioner of Labour for his

decision as to whether the petitioner is a person employed in the position of management or as canvasser. The Commissioner of Labour held by his

orders dated 9th December, 1966 and 22nd April, 1969 that the petitioner was not a person employed in the position of the management or as a

canvasser. After the said decisions of the Commissioner of Labour u/s 51 of the Act, the Additional Commissioner for Workmen's Compensation

before whom the appeal against the order of petitioner's termination of services was pending rejected the preliminary objection and held on the

materials placed before him that the termination of services of the petitioner by the management was not for reasonable cause and that, in any

event, the termination of services of the petitioner having been made without due enquiry on the charges levelled against him it is void. He,

therefore, by his order dated 11th November, 1969, set aside the order of termination passed by the management.

3. Consequent ,on the aforesaid order of the Additional Commissioner for Workmen's Compensation setting aside the order of termination, the

petitioner filed the following five claim petitions before the first respondent u/s 33-C (2) of the Industrial Disputes Act, with reference to the various

periods, for computation of the monetary benefits which he is entitled to.

1. C.P. No. 800 of 1970.

Back wages from 11th

December, 1965 to 25th

March, 1970 at the rate Rs. P.

of Rs. 450 per month 23,175 00

Bonus from 1962 3,550 00

26,725 00

2. C.P. No. 777 of 1970.

Wages from 26th March,

1970 to 25th May, 1970

at the rate of Rs. 450 per

per mensem 900 00

900 00

3. C.P. No. 1921 of 1970.

Wages from 26th May,
1970 to 25th July, 1970
at the rate of Rs. 450
per mensem 900 00

4. C.P. No. 343 of 1971.

Wages. from 26th July,
1970 to 25th June, 1971
at the rate of Rs. 450
per mensem 5,400 00

5. C.P. No. 451 of 1971.

Wages from 26th June,
1971 to 25th September,
1971 at the rate of Rs. 450
per mensem
1,350 00

From a perusal of the reliefs claimed in the various claim petitions set out above, it will be seen that the petitioner has claimed wages from 11th

December, 1965 to 25th September, 1971 at the rate of Rs. 450 per month and bonus of Rs. 3,550 for the year 1962.

4. The petitioner's case before the first respondent was that the legal effect of the order of the Additional Commissioner for Workmen's

Compensation is that he continues to be in service and therefore he is entitled to wages for the period of his non-employment as also the bonus

declared for the year 1962 while he was, in service. The management resisted the petitioner's claims on the ground that in 1967 they had closed

their Madras Office and, therefore, the relationship of Master and Servant did not exist between the management and the petitioner, and that, in

any event, the petitioner cannot claim any relief before the first respondent u/s

33-C (2) as he was not a workman as defined in Section 2 (s) of the Industrial Disputes Act.

5. The first respondent, Labour Court, had held that the petitioner . is not a workman as defined in Section 2 (s) of the Industrial Disputes Act and, therefore, he is not entitled to maintain the petitions. The first respondent also held that it is not open to the petitioner to file successive applications u/s 33-C (2) in view of the decision of Sadasivam, J., in W. P. No. 2097 of 1966. In that view the first respondent dismissed the application. In

these writ petitions the petitioner questions the said decision of the first respondent.

6. According to the petitioner, the decision of the Commissioner of Labour rendered u/s 51 of the Shops Act holding that the petitioner has not

been employed in a managerial capacity is final and conclusive and cannot be questioned in any Court of law, that the same should have been

accepted by the first respondent, that even otherwise, the evidence adduced before the first respondent clearly established that the petitioner was

not employed in a managerial capacity as alleged by the Management and that, therefore, the first respondent's finding that the petitioner was

employed in a managerial capacity cannot legally be sustained. It is also the petitioner's case that the view of the Labour Court that successive

applications cannot be filed u/s 33-C (2) is quite untenable and it is opposed to the object and policy behind the said section which is intended to

give summary relief without the necessity for the workman to resort to the ordinary Courts of law.

7. Though Section 51 of the Act specifically provides that any decision rendered by the Commissioner of Labour under that section shall be final

and shall not be liable to be questioned in any Court of law, it is not possible to say that the first respondent, acting u/s 33-C (2) of the Industrial

Disputes Act, was bound by the said decision. The finality given to the orders passed by the Commissioner of Labour u/s 51 can only be for the

purpose of that Act and not for the purpose of all other statutes. The decision of the Commissioner of Labour related to the, interpretation of

Section 4 (I) read with Section 2 (12) of the Shops Act. But the question which the first respondent has to decide was as to whether the petitioner

is a workman as defined in Section 2 (s) of the Industrial Disputes Act so as to

enable him to file an application u/s 33-C(2). It is true that the definition of "person employed" in Section 2 (12) of the Shops Act is more or less similar to the definition in Section 2 (s) of the Industrial Disputes Act and that the definition in Section 2 (s) of "person employed" read with Section 4 (1) excludes persons employed in a position of management, But the similarity in the provisions of two different statutes will not make the decision under one statute conclusive with reference to the other statute. The main question that has to be considered by the first respondent in the claim petitions was whether the petitioner was a workman as defined in Section 2 (s) of the Industrial Disputes Act so as to enable him to file an application u/s 33-C (a). Therefore the petitioner must satisfy the definition of Section 2(s) and it is not sufficient for him to say that he was held to be a person not in a managerial or supervisory capacity in an earlier proceeding against the same management under the Shops Act.

8. The further question is whether the order of the first respondent that the petitioner was not a workman as defined in Section 2 (s) could be sustained on the materials on record. Section 2 (s) defines a workman as a person employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, but does not include any such person who is employed mainly in managerial or administrative capacity or who receives wages exceeding Rs. 500 per mensem either in a supervisory or managerial capacity. Admittedly the petitioner was receiving only a sum of Rs. 450 as his salary, and, therefore, the question whether he was employed in a supervisory or managerial capacity on a salary of over Rs. 500 a month, does not arise. It has only to be seen whether the petitioner was employed mainly in a managerial or administrative capacity as set out in Section 2 (s) (3).

9. The first respondent has proceeded on the basis that the management advertised for the post of a Regional Superintendent to take charge of its Madras Office, that the petitioner in his application for appointment had stated that he possessed 25 years of experience in sales, propaganda, sales organisation and as administrative branch manager in reputed firms, and that the petitioner was appointed as Regional Superintendent at Madras to look after the Madras Office. It found that the petitioner had called for applications to the post of an attender and had forwarded the

same to the management at Bombay who had ultimately made the appointment, that the petitioner called for explanations for certain misconduct from one of the employees, and that the petitioner had usually signed as Regional Superintendent. All these facts were taken to show that the petitioner was appointed only in a managerial capacity as a Branch Manager at Madras and that the petitioner was in complete charge of the conduct of the business in the Madras Office. On these facts the first respondent has held that the petitioner was employed mainly in a managerial or administrative capacity and, therefore, he is not entitled to file an application u/s 35-C (2) as a workman.

10. The first respondent also referred to the judgment of this Court in T.P. Chandra Vs. The Commissioner for Workmen's Compensation, Madras and Another, wherein the petitioner was found to have been employed in managerial capacity by another company, M/s. Kemp and Co. Ltd., and said as to how after the said judgment the petitioner could claim that he was not employed in a managerial capacity. It is true in the said decision a Division Bench of this Court held, after considering the nature of work entrusted to by that management and rendered by the petitioner that the petitioner was employed in a position of management within the meaning of Section 4 (1) (a) of the Shops Act. But that decision has no relevance to the question as to whether the petitioner's employment under the present management was in a managerial or administrative capacity, though the tests laid down in that decision for deciding a question of this kind may be useful. Therefore, the first respondent is not right in relying on the said decision as conclusive on the question as to whether the petitioner's employment under the present management was mainly in a managerial or administrative capacity. In the said decision it has been held that the designation given to an employee may not be decisive and that it is only the nature of the duties performed by him that is material and decisive.

11. The reasons given in the said case for holding the petitioner to be a person employed in a position of management within the meaning of Section 4 (1) (a) of the Shops Act are these : The petitioner was acting in general management and control of the employer's establishment in Madras. He was in charge of the correspondence of the Madras branch, supervised the work of the clerks employed therein, operated the bank

account made payments to and entered into contracts with third parties on behalf of the employer and generally represented the company in all its dealings at Madras and he also appointed some of the staff members and granted leave to them. His name was not entered in the register of employees maintained under the Shops Act. He never signed the register of employees. His name was not found in the muster rolls where the names of all the other employees had been noted.

12. The question is what are the factors in this case from which one could infer that the petitioner was employed in mainly a managerial or administrative capacity. Though the management has generally stated that the petitioner was in administrative charge of the Madras branch, and that there was no superior to him, the facts proved do not establish the same. The order of appointment dated 5th July, 1962 shows that the petitioner had no power to operate a bank account, that he had no power to appoint staff nor fix their salaries, that the salary of the staff was to be disbursed by the petitioner only at the advise of the Bombay office, that the petitioner had no power to sign contracts on behalf of the company, that if any order is procured by the petitioner it has to be accepted by the Bombay office, that he had no power to make any commitment on behalf of the management, that the petitioner had no power to grant leave to the staff and that even if disciplinary action is taken against the staff it should be confirmed by the Bombay Office. The first respondent took the view that even though the petitioner had no initiative to do things as he likes, he, having been named as the Regional Superintendent, should be taken to have been employed mainly in a managerial or administrative capacity and that the fact that he obeyed the directions issued by the head office and had no authority to incur any expenditure not sanctioned by the head office will not make him nonetheless a person in the position of management. As already stated, the fact that the petitioner was designated as the Regional Superintendent, could not be taken to be conclusive on the question as to whether he was employed mainly in a managerial or administrative capacity.

13. It has been held by this Court in Salem Sri Ramaswami Bank, Ltd. Vs. Additional Commissioner for Workmen's Compensation and Another,

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Whether a person is employed in a position of management is a question of fact which has to be decided with reference to the circumstances of the

particular case and that it is the valid assignment of work by the employer that should furnish the real test in deciding whether a given employee is a

person employed in a position of management within the meaning of Section 4 (1) (a) of the Act... For purpose of Section 4 (1) (a) of the Act

what was the work the employee actually did under the proper assignment of work by the employer would appear to be the real test.

In *T. Prem Sagar Vs. The Standard Vacuum Oil Company Madras and Others*, , the Supreme Court, while laying down certain tests to determine

the status of an employee for the purpose of determining the question as to whether he is a person in the position of management within the

meaning of Section 4 (1) (a) of the Shops Act has expressed:

It is difficult to lay down exhaustively all the tests which can be reasonably applied in deciding this question as several considerations would

naturally be relevant in dealing with this problem. , It may be enquired whether the person had a power to operate on the bank account or could

make payment to third parties and enter into agreements with them on behalf of the employer; was he entitled, to represent the employer to the

world at large in regard to the dealings of the employer with strangers; did he have authority to supervise the work of the clerks employed in the

establishment; did he have control and charge of the correspondence; could he make commitments on behalf of the employer; could he grant leave

to the members of the staff and hold disciplinary proceedings against them; has he power to appoint members of the staff or punish them; these and

similar other tests may be usefully applied in determining the question about the status of an employee, in relation to the requirements of Section 4

(1) (a). The salary drawn by the employee may have no significance and may not be material, though it may be treated the critically as a relevant

factor.

It is argued by the petitioner's counsel that as per the tests laid down in the above cases, the petitioner would not be a person in the position of a

management. It is said that the petitioner had no right to operate on the bank account or make payments to third parties without the approval of the

head office, that he cannot also enter in to contracts on behalf of the employer

without prior approval, that he could not make commitments on behalf of his employer and that he could not grant leave to the members of the staff nor can be hold disciplinary proceedings against the staff though he had the control and charge of the correspondence of the branch office. Having regard to the facts established in this case, it is claimed that the petitioner cannot be said to be a person mainly employed in a managerial or administrative capacity merely because he was held to be a person employed in such a capacity previously under another management. It is seen that the first respondent has not kept in mind the principles laid down in the above cases and had not analysed the facts in this case in the light of those cases. In my view, the first respondent has to consider the matter afresh after a due consideration of the terms of the appointment of and of the duties performed by the petitioner.

14. As regards the second contention that the view of the first respondent that successive applications u/s 33-C (2) cannot be maintained, the learned Counsel for the petitioner points out that the reliefs claimed in the various applications u/s 33-C(a) are for different periods and, therefore, neither the principle of Order 2, Rule 2, Civil Procedure Code, nor the principle of resjudicata will apply. The learned Counsel refers to the decision in C.G.G. Panicker Vs. T.M. Eapen and Others, , wherein the Kerala High Court held that if the claims relate to different periods the subsequent claims cannot be held to be barred by res judicata. Reliance also is placed on Town Municipal Council Vs. Mirzabhai (A.R.) and Another, , In that case a Division Bench of the Mysore High Court has held that the bar under Order 2, Rule 2, Civil Procedure Code, cannot be applied to an application u/s 33-C (2) of the Industrial Disputes Act and once the dismissal order has been held to be null and void in a suit, the salary payable to the employee whose services have not been lawfully terminated can apply u/s 33-C (2). In this case the petitioner filed the said applications u/s 33-C (2) for various periods. The petitioner's applications have been dismissed by the first respondent mainly on the ground that the petitioner is not a workman as defined in the Industrial Disputes Act. Now that this Court has held that the matter has to be considered afresh, the dismissal of the applications u/s 33-C (2) other than the first one filed by the petitioner has to be set aside. The dismissal of the applications was

mainly based on the fact that the petitioner was not a workman and the other reason that successive applications cannot be maintained appears to

be merely an obiter. Therefore, the question whether successive applications for the amount of salary as and when accrued could be maintained

has also to be considered in detail by the first respondent with reference to the decision of Sadasivam, J., as also the other subsequent decisions on

the point. The Labour Court is, therefore, directed to decide the question fully in the light of the finding to be given on the question as to whether

the petitioner is a workman as defined under the Industrial Disputes Act.

15. The result is all the writ petitions are allowed with costs only in W. P. No. 49 of 1973. Counsel's fee Rs. 150. The first respondent will

dispose of the matter afresh in accordance with law.