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(1968) 03 PAT CK 0004

In the Patna High Court

Case No : C.W.J.C. No. 408 of 1967

Umesh Chandra Agarwal APPELLANT

Vs

Bihar Raj Khadi Gram Udyog Bhawan and Others RESPONDENT

Date of Decision : 25-03-1968

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (1968) 16 BLJR 960 : (1968) 1 PLJR 433

Hon'ble Judges : R.L. Narasimham, C.J;B.D. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.L. Narasimham, C.J. and B.D. Singh, J.—This is an application under Articles 226 and 227 of the Constitution to quash the order of the Labour Court, North Bihar, dated the 30th July, 1966 (Annexure B), and appellant order of the Industrial Tribunal, Bihar, dated the 29th April, 1967 (Annexure C), holding that the provisions of the Bihar Shops & Establishment Act, 1953 (hereinafter referred to as the Act) do not apply to the employees of the Bihar Rajya Khadi Gramodyog Bhawan.

2. The petitioner claimed to be one of the salesman of the said Bhawan and he filed an application u/s 28(2) of the Act before the appropriate Labour Court for payment of certain sums, which, according to him, were unlawfully deducted from his wages. A preliminary objection was taken by the opposite party to the jurisdiction of the Labour Court to entertain such an application on the ground that the said Gramodyog Bhawan was a local authority having been established under the provisions of the Bihar Khadi and Village Industries Act, 1956. The Labour Court and the appellate authority upheld this objection relying on a Bench decision of this Court in M.J.C. No. 432 of 1963 (Annexure A), in which it was held that the Board constituted under the provisions of the Bihar Khadi and Village Industries Act, 1956, was a local authority and that consequently the employees of that Board were exempted from the operation of the Act by virtue

of item 3 of the Schedule to that Act. In that Judgment, the actual nature of the work done by the employees of the said Board was not discussed; but the main controversy between the parties was whether the said Board was a local authority or not. Mr. Krishna for the petitioner, therefore, urged that that decision should not be applied to all classes of employees under the said Board and that only those employees who were engaged in the administrative or clerical services would be exempted from the operation of the Act.

3. For the purpose of appreciating this argument, it is necessary to refer to certain provisions of the Act. Clause (6) of Section 2 of the Act defines an establishment as follows:

''establishment'' means an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to any business, trade or profession and includes:

(i) administrative or clerical services appertaining to such establishment;

(ii) a shop, restaurant, residential hotel, eating house, theatre or any other place of public amusement or entertainment ; and

(iii) such other establishment as the State Government may, by notification, declare to be an establishment to which the Act applies." Here, it will be noticed that the administrative and clerical services have been classified separately from the shop, restaurant, etc.... The definition of "shop" as given in Clause (16) of the said Section is as follows:

''shop'' means any premises where goods are sold, either by retail or wholesale or where services are rendered to customers and includes an office, store room, godown, warehouse and work place, whether in the dame premises or elsewhere, used in connection with the such sales or services, but does not include a restaurant, a residential hotel, eating house, theatre or other place of public amusement or entertainment;

In the definition of "establishment", the Legislature has included not only the premises of the establishment but also the administrative and clerical services of the establishment. In the definition of "Shop", the Legislature has deliberately given a wide definition so as to include not only the premises where the goods are sold but also what is popularly known as the office portion of the shop, where clerical and administrative staff work.

4. Sub-section (2) of Section 4 of the Act refers to the Schedule where the establishment, employees and other persons, to whom the provisions of the Act will not apply, have been specified. Here, we are concerned with item 3 of the Schedule, but, for the purpose of appreciating properly the legal question raised by Mr. Krishna for the petitioner. I shall refer to items 1 and 2 also. All the three items are reproduced below:

Serial

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Establishment em- Provisions of the No. ployees or other Act persons. 1. 2. 3. 1. Establishments, All provisions except in which only Section s 6, 7, 8 and members of 12(i) and Chapters VI employer''s and VII. family are employed. 2. Establishment for the treatment or the care of the infirm, sick, destitute, or the mentally unfit. All provisions. 3. Offices of or under Central or State Governments or of local authorities. Ditto.

Mr. Krishna''s argument is that, by using the expression "establishment" in items 1 and 2 and using the expression "office" in item 3, the Legislature intended to make a distinction, and that, consequently, only those portions of the establishment either in the Central or State Government or of local authority, which can be properly described as "offices", would be exempted from the operation of the Act. He further urged that, bearing in mind the definition of "establishment" (given above), the administrative and clerical services alone should be considered to constitute offices for the purpose of item 3.

5. This argument is clearly untenable. If it be taken as correct, the result will be that the provisions of the Act should be held to apply to those employees of the Central or State Government who cannot be properly described as included in the administrative or clerical services. Such a view will be wholly inconsistent with the object intended to be achieved by the Act. The main object of the Act was to safeguard the interests of the employees of shops and other establishments for whom there was no statutory safeguard in any other law. This is the special reason why workers in a factory were wholly excluded from the definition of "employee" in Section 2(4), and, similarly, mines were excluded from the operation of the Act by Sub-section (1) of Section 4. The Mines Act and the Factories Act contain adequate provisions for safeguarding the employees or workers in mines and factories. Similarly, the servants of the Central and State Government are amply protected by the various service rules defining their conditions of service, and they do not require protection under the provisions of the Act. Even those members of the staff of the Central and State Government, who may not be described as members of the administrative or clerical services, are also well protected. For the same reason, the employees of the local authority are exempted from the operation of the Act because, in the statutes dealing with local authorities, there are provisions for regulating the conditions of service and disciplinary matters of the staff. Hence, a narrow interpretation should not be given to the "offices" occurring in item 3, relying on Clause (1) of the definition of establishment occurring in Section 2(6).

6. The expression "office''1 has got a variety of meanings. Some of these mentioned in the Oxford Dictionary are given below:

A place for the transaction of private or public business of some kind; often including the ''staff'' by which the business is conducted or denominating the

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department of which they are officers. Applied to the room or department in which the clerical work of an industrial or other establishment is done....

It will be noticed that this expression is used both for the premises as well as for the holders of, posts. It is capable, therefore, of a narrow as well as of a wide meaning. In its widest sense, it will include all the members of the staff of a business of any employer. It can also be used in a narrow sense to include only the members of the clerical and administrative staff. But, bearing in mind the primary object intended, to be achieved by the Act, I would hold that the expression "offices" in item 3 of the Schedule is used in its widest sense, so as to include all employees of the Central or State Government or of local authority, who can be held to be holding "offices" under them.

7. It is admitted that the Bihar Rajya Khadi Gramodyoga Bhawan is an organisation under the control of the Board constituted under the Bihar Khadi and Village Industries Act, 1956. In Clause (b) of Sub-section (2) of Section 34 of that Act, the Board is given power to make regulations, with the previous sanction of the Government, regarding remuneration, allowances and other conditions of service of members of the staff of the Board. Then, the power to make regulation is not restricted to any those members of the staff who can properly be described as belonging to the administrative or clerical services : it will include salesman and other members of the staff of the Board who may not be doing clerical or administrative work. A resolution of the Board, dated the 18th June, 1958, approving the proposal to adopt the rules in force relating to disciplinary matters and other conditions of service of State Government servants has been filed before us. This shows that all the members of the staff of the Board are adequately protected either from arbitrary discharge or arbitrary deductions from their pay and other acts of highhandedness on the part of the employer, which are primarily intended to be checked by the provisions of the Act. A Bench of this Court has held in The Member Secretary, Bihar State Khadi and Village Industries Board, Patna v. Damodar Prasad M.J.C. No. 432 of 1963 disposed of on 18th January 1966 that the Board is a "local authority" for the purpose of item 3 of the Schedule to the Act. There is, therefore, no justification for holding that the members of the staff of the Board, who belong neither to the administrative nor to the clerical services, do not hold office under the Board or else that they do not come within the exemption specified in item 3 of the Schedule to the Act. It will also be impracticable to adopt the narrow view suggested by Mr. Krishna so far as the various establishments under the Board are concerned. Some of them may be quite small, and it will be difficult to divide the staff in those establishments into two water tight compartments, viz., those working in clerical and administrative services and those working in other branches. There will also be frequent transfers from one branch to the other, and a person, who is a salesman of the Bhawan today, may be transferred to the clerical line later on. One should not construe the expression "offices" in item 3 of the Schedule to the Act in such a manner as to make it practically unworkable in respect of an establishment. The widest construction of the expression

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"offices" is more in consonance with the object to be served by the Act, and will also avoid any practical difficulty in applying the exemption clause contained in item 3 of the Schedule to the Act.

8. For these reasons, we are inclined to give a more extended meaning to the word "offices" occurring in item 3 so as to include all categories of staff working under a local authority. The salesman will, therefore, be included within the scope of item 3, and the provisions of the Act will not be applicable to the petitioner.

9. The Labour Court and the Appellate Tribunal, therefore, acted correctly in rejecting the application of the petitioner as not maintainable. The writ petition is dismissed but without costs.

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