

(1991) 10 AHC CK 0003

In the Allahabad High Court

Case No : C.M.W.P. No's. 8943 and 9195 of 1978

Universal Tyres Ltd.

APPELLANT

Vs

K.C. Srivastava and Others

RESPONDENT

Date of Decision : 09-10-1991

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Uttar Pradesh Industrial Disputes Act, 1947 — Section 6H(2)

Citation : (1992) 1 AWC 390 : (1993) 3 LLJ 758

Hon'ble Judges : S.K. Mookerji, J

Bench : Single Bench

Advocate : B.C. Day, for the Appellant;

Final Decision : Allowed

Judgement

S.K. Mookerji, J.—Heard learned counsel for the petitioner. It is made clear that Writ Petition No. 8943 of 1978, has been filed by M/s. Jay Shree Tyres & Rubber Products, Naini, Allahabad and the present petition has been filed by M/s. Universal Tyres Limited. In both the writ petitions Dr. K.C. Srivastava is the respondent. Both the writ petitions have been directed against an award passed by the Labour Court, Allahabad, in proceedings u/s 6-H(2) of the U.P. Industrial Disputes Act, 1947, initiated by Sri K.C. Srivastava.

2. It appears that M/ s. Universal Tyres Limited on January 1, 1974 had appointed Dr. K.C. Srivastava , a Medical Practitioner, as a consultant for the treatment of its employees in its factory on a specific monthly remuneration. M/ s. Universal Tyres Limited was closed down and it gave its factory on a lease to Jay Shree Tyres and Rubber Products, Naini, Allahabad (hereinafter referred to as Jay Shree). This Jay Shree stopped making monthly payment to Dr. K.C. Srivastava. Thereafter he involved the machinery u/s 6-H(2) of the U.P. Industrial Disputes Act (hereinafter referred to as the Act) and made two applications in the Labour Court for the payment of a sum of Rs. 3,750/- as wages for the period from July 1, 1976 to October 1, 1977 and a sum of Rs.

1,250/- for the period October 1, 1977 to February, 1978. Both the petitioners in the connected writ petitions contested the applications on the ground inter alia, that Dr. K.C. Srivastava was a workman. This defence did not find favour with the Labour Court and by the impugned order the petitioners in the connected writ petition were directed to pay the aforementioned amounts to Dr. Srivastava.

3. The only point for determination in this writ petition is as to whether Dr. K.C. Srivastava was a workman within the meaning of the Act. His appointment letter is dated January 1, 1974. The letter discloses, "We are pleased to appoint you on "retainership" basis for the treatment of our factory employees on the following terms and conditions." The first condition was that Dr. K.C. Srivastava was to be paid a sum of Rs. 250/- per month as consultation charges. The other condition was that Dr. K.C. Srivastava was to be paid a total retail cost of the medicines used by him for the employees on submission of the monthly bill. The third condition was that Dr. K.C. Srivastava was entitled to a visiting fee of Rs. 5/- and further that the employees of the factory were made responsible to pay for any special treatment, such as bone setting, which may entail X-ray, plastering or major operation, if and when referred to the District Hospital, Medical College or any specialists. The appointment letter ended like this, "You are requested to send your bill towards the monthly consultation charges and cost of medicines along with slips of individual employees sent to you for medical treatment through our factory. Your bill after scrutiny will be forwarded to our accounts department and the same will be immediately paid thereafter". It is thus clear that Dr. K.C. Srivastava was required to go to the factory premises for rendering medical aid or administering treatment to the employees of the petitioner. It is also clear that individual employees could not approach Dr. K.C. Srivastava directly. Before they could go, they were required to obtain slips from the factory. It is relevant to point out that the letter of appointment was also silent regarding the supervision, direction and control by M/s. Universal Tyres Limited over the work of Dr. K.C. Srivastava. It emerges, therefore, that there was no relationship of the employer and employees between the petitioners and the doctor.

4. On scrutiny of the evidence led by Dr. K.C. Srivastava before the Labour Court it is clear that he deposed that he did not attend the factory every day and attended the patients who came to his clinic either during day or night with a slip or chit from the management. He used to visit the factory whenever he was called. He never received any fee for examining the patients specially when he was called to the factory premises or elsewhere. He, however, admitted that he was paid a visiting fee. It is also clear from his statement that he never signed the muster roll of the factory nor he was required under any rule to do so. He was, also not required to apply for leave and had no knowledge about the Standing Orders as deposed by him. In the records of the factory his wages sometimes were described as "remuneration allowance" or professional allowance or salary. On behalf of the petitioner one Sri N. N. Verma an assistant in the Time Office in M/s. Universal Tyres was examined. He categorically stated that none of Standing Orders applicable to M/s. Universal Tyres had been applied

to Dr. K.C. Srivastava. The provisions concerning either the E.S.I. or Provident Fund were also not applicable to Dr. K.C. Srivastava nor there was any duty hours fixed for the aforesaid Dr. K.C. Srivastava. From the material on record it is clear that neither the place of work of the doctor was fixed nor was he required to perform his job under supervision, direction and control of M/s Universal Tyres nor the time of the working of Dr. K.C. Srivastava was fixed nor were the Standing Orders applicable to the concern, were made applicable to Dr. K.C. Srivastava nor was he entitled to the benefit of Provident Fund, etc. On examining the materials on record it is held that there is evidence for recording a finding that Dr. K.C. Srivastava, in his capacity as medical practitioner, had been merely retained as a consultant by M/s. Universal Tyres Limited so as to enable its employees to receive medical aid. He was not under any employment, in view of the above facts and circumstances, as already narrated above, it is clear that there was no relationship of employer and employee or master and servant between Dr. K.C. Srivastava and M/s. Universal Tyres Limited or Jay Shree. Under the circumstances Dr. K.C. Srivastava could not be deemed or held to be a workman so as to enable him to set in motion the machinery envisaged by Section 6-H(2) of the Act. The finding of the Labour Court on the jurisdictional fact that Dr. K.C. Srivastava is a workman is wholly erroneous in law. As such, the finding cannot be allowed to remain on record and deserves to be set aside.

5. Both the writ petitions succeed and are allowed. The impugned order dated July 25, 1978, passed by the Labour Court at Allahabad in Misc. Case Nos. 78 of 1977 and 9 of 1978 is quashed. The applications made by Dr. K.C. Srivastava, u/s 6-H (2) of the Act, before the Labour Court, shall stand dismissed. However, there shall be no order as to costs.

6. It is also made clear that the amount, if deposited by the petitioner, in pursuance of the order dated 1.10.1980 passed by this Court shall be refunded to the concerned petitioner expeditiously.