

**H.M. Khatri and Co. Vs. their Workmen**

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**Court :** Mumbai

**Decided On :** Sep-10-1960

**Reported in :** (1960)IILLJ605Bom

**Judge :** P.D. Sawarkar, J.

**Acts :** [Industrial Disputes Act, 1947](#) - Sections 10(2)

**Appeal No. :** Reference (I.T.) No. 69 of 1960

**Appellant :** H.M. Khatri and Co.

**Respondent :** their Workmen

**Judgement :**

1. This industrial dispute was referred to me under S. 10(2) of the [Industrial Disputes Act, 1947](#), under No. A.J.K. 1060, dated 31 March, 1960, of the office of the Deputy Commissioner of Labour (Administration), Bombay.

2. This concern was established in 1949. It is a partnership firm with two partners. It manufactures brassiere of various types. For that purpose it engages daily-rated tailors and piece-rated tailors. It has also a cutter who along with one of the partners cuts cloth into different sizes. The cut pieces are then distributed among the tailors. Stitching charges for the different types of brassiere are different. Every one is paid his wages on Saturdays. The piece-rated tailors get according to the quantity and type of brassiere they stich. Ironing and packing is done by daily-

rated helpers. In May 1959 the union sent a charter of demands to the firm and there was a settlement in the office of the conciliation officer. The question whether the piece-rated workers were 'workmen' under the Act was agreed to be referred to the industrial tribunal. Sri Balooch for the company submitted that this question should be decided as a preliminary issue at it would determine whether this tribunal has or has not jurisdiction to try this case. Sri Narayan Shetye consented to the suggestion. Demand 1 is in the following terms :

'Whether piece-rated persons employed are workmen within the meaning of the definition of 'workman' contained in the [Industrial Disputes Act, 1947](#).'

3. Sri Shetye urged that demand 1 used the phrase 'piece-rated persons employed.' The word 'employed,' he said, itself suggests that the piece-rated persons are the employees of the firm. He drew my attention to the definition of the word 'workman' in the Act where it is stated :

'workman means any person employed in any industry.'

From the use of the same word 'employed' in the definition and in demand 1 Sri Shetye urged that these persons must be taken to be workmen. I do not think there is any special force in the use of the verb 'employed.' A man wants a house to be built. He employs a contractor. The contractor does not therefore become a 'workman.' To employ means to give work to. That itself does not make the person employed a 'workman.' We must look to the work that is done, the mode in which it is done, the control and supervision that the employer exercises over the person employed, the place where the work is done, the hours of the day when it is expected to be done and so on.

4. For the purpose of proving that the piece-rated persons employed in this firm are 'workmen' Sri Shetye examined three such persons. All the three of them have stated that they go to work at 9 a.m. every day, that they have lunch recess from 1 p.m. to 2 p.m. and that they continue to work till 6 p.m., that they and the daily-rated persons aft together in one large hall, that the proprietor also sits in the hall and cuts cloth, that the proprietor supplies the sewing machines, thread, scissors, buckles, etc., and that whenever they remain absent, the proprietor demands an

explanation from them. They have also stated that whenever they go on leave they orally take the proprietor's permission. Witness 1 has also stated that the proprietor shows him the design of the brassier, that he inspects the finished articles and that if any of the articles is spoilt he gives it back to the tailor concerned and gets it repaired. All the three witnesses have stated that they received bonus through their union.

5. On behalf of the firm one of the partners, Sri Umar Hussein, has given evidence. He says that his factory manufactures brassiers in large quantities, that they are sold wholesale mostly in Bombay and Calcutta, about 5 per cent being sold in Ahmedabad and Floona, that he and another cutter cut cloth into required employees and distribute the cut pieces among the daily and piece rated tailors. Then he says that they have engaged place rated tailors because if business is slack the firm need not give them work whereas whether there is work or no work the daily-rated workers have got to be paid. He further says that the factory working hours are from 9 a.m. to 1 p.m. and from 2 p.m. to 6 p.m. but that he does not keep a note as to when the piece-rated workers come and go. They can come and go as they like. One of them, Laxman Ganpat brings a helper with him, gets work done by him and pays him; that these piece-rated workers never applied for or got leave, that they just absented themselves whenever they liked; that only since the formation of the union have they started making written application for leave which he (the partner) has consistently refused; that the firm gave Rs. 1,500 to the union by way of bonus but the firm never intended to pay bonus to the piece-rated workers; that in January, 1960 the factory inspector asked him to maintain a muster of the piece-rated workers also; that he has never taken any disciplinary action against any piece-rated worker; that the piece-rated workers stitch the articles and go away, that there is no supervision over their work.

6. From the agreement entered into between the firm and the union (Ex. U. 1) it would appear that it was agreed that

'The company shall pay a sum of Rs. 1,500 in full settlement of the demand of bonus for the year 1957-58 to all the workmen'

It was also agreed that

'The questions whether piece-rated persons are workmen under the [Industrial Disputes Act, 1947](#) . . . be referred to the industrial tribunal by joint application . . . '

It is therefore clear that the bonus was to be paid to all 'workmen' but that whether piece-rated persons were workmen or not was not agreed upon. They could not therefore get any bonus. But the union seems to have paid bonus to them also as can be seen from the receipts Exs. U-W-1, U-W-8 and U-W-9. But in my opinion whether bonus was intended to be paid to piece-rated workers or not, that would not necessarily prove that the piece-rated workers were treated by the firm to be 'workmen.' The Madras High Court observed in the case of Kesava Reddiar : (1957)ILLJ645Mad :

'Bonus was a payment made ex gratia even according to the evidence of E.W. 1. I fail to see why a person whose real position was that of a contractor could not be paid bonus ex gratia. Payment of bonus by itself is rather inconclusive as a piece of evidence when the question at issue is, was the labourer a servant or was he merely a contractor ?'

The Madras High Court also observed :

'one of the main tests to be applied in deciding whether the relationship of master and servant was present is whether the time of the person who worked was at the disposal of the master.'

The same view was expressed by the Madras High Court in the later case of Modern Match Industries 1958 I L.L.J. 69. In that case his lordship also observed that one of the tests for deciding whether a person is a workman or a contractor would be to find out whether the employer could compel that person to work.

7. We must finally turn our attention to the case of Dharanghadra Chemical Works, Ltd. : (1957)ILLJ477SC , where the Supreme Court discussed this question from all angles. Their lordships held that the prima facie test which is applied to determine the relationship of employer and employee or master and servant is the existence of the right of control in respect of the manner in which the work is to be done. Their lordships drew a distinction between contract for service and contract

of service. They stated that a contract for service was one where the master ordered what was to be done, whereas a contract of service was one where the master not only ordered what was to be done, but how it was to be done. It was also held that the nature and extent of control varied from business to business, that what must be seen is whether having regard to the nature of the work there was due control and supervision. Their lordships also held that the fact that the persons so engaged were paid on piece-rate basis and that they could employ their own labour and pay for it could not be considered to be decisive factors to hold them as independent contractors when the employer had power of supervision and control at all stages of the work from beginning to end. It was also held that there was abundant authority that a person could be a workman even though he was paid not per day but by the job. And their lordships also observed that recent English decisions held the view that not actual control and supervision but the right to control and supervise was all that was necessary. Finally their lordships said that if a person worked personally and also took outside assistance, he would still continue to be a workman.

8. Let us now apply these tests to the facts of the case now under consideration. Although it does appear that the piece-rated workers could stop away from work whenever they liked, the proprietor did have the right to control their work. The partner who gave evidence has not definitely said that these men used to come any time after 9 a.m. or that they went away any time before 6 p.m. All that he says is :

'The daily-rated workers come at 9 a.m. We do not check the time when the piece-rated workers come for work. They can come whenever they like and go away whenever they like.'

That means that these men were free to come late if they chose, not that they actually came late or went away early. Witness 1 for the workmen says :

'If we want to leave early we tell the proprietor that we would go early.'

It may therefore be taken that these men worked from 9 a.m. to 6 p.m. as a rule. There is no dispute that all the workers-daily-rated, piece-rated and monthly-rated-

took lunch between 1 p.m. and 2 p.m. when the partner himself also went for lunch either locking the hall or giving the key of the hall to his other partner. So we may take it as proved that the time of these workers was at the disposal of the partners. It is not alleged that between 9 a.m. and 6 p.m. these workers did anybody else's work. They spent their time stitching brassiers for this firm alone.

9. Now, as regards supervision I am of the opinion that the partners did supervise and inspect the work of the piece-rated workers. In the first place, the partner who gave evidence sat in the hall where all the tailors and helpers sat. He cut cloth into different sizes. It is but natural that he would at the same time keep an eye on all the workers. It was not necessary for him to go from tailor to tailor and see what he was stitching or how he was stitching. Then this partner has stated :

Paragraph 4. - 'The piece-rated workers finish the articles given to them, hand them over to us and go away.'

Paragraph 10. - 'The workers cannot come to the factory before 9 a.m. It is not true that if they want to finish their work they can stay on beyond 6 p.m. They finish their work the next day. They must finish their work within the factory premises.'

The evidence of this partner had to be continued the following day and the witness had an opportunity to improve upon the previous day's evidence. He said :

Paragraph 12. - 'The tailors leave the finished or half-finished articles at their places of work and go home. We collect and keep them. Piece-rated workers do take half-finished work home to complete. It is not true that no piece-rated worker takes work home.'

10. It must be taken as proved that after a piece-rated worker finishes stitching for the day, he takes the articles to the partner who notes down the day's work in a diary. One such diary is produced at Ex. U-W-2. The witness who produced it said that everything that was written in this diary was written by the partner. And that is as it should be. The partner must know the number and types of brassiers stitched by each piece-rated worker so that his wage could be calculated at the end of the

week. The rates of different types are admitted to be different. It is also in evidence that if a tailor spoils or damages an article he is not paid for it (Para. 10 of the partner's evidence). In order to see whether an article is properly stitched or not, whether it is in any way damaged, whether it is spoilt by oil stains, the partner must inspect the articles, he must take out the damaged or spoilt articles and note down the good ones in the diary. This is nothing but supervision and control. Supervision and control are necessary because the firm has to maintain its reputation. If he were to send to his agent articles which were not perfect in every way, it would affect the sales. Therefore it is clear to my mind that the proprietor does control and supervise the work of the piece-rated workers. It must at once be conceded that the degree of control and supervision in a firm which stitches garments for individual customers is greater than in a firm where garments are mass-produced. But it cannot be said that there is total absence of control and supervision.

11. Then there is one more piece of evidence which suggests that the partner did not differentiate between a daily-rated worker and a piece-rated worker. Since February, 1960 the names of the piece-rated workers are entered in the muster and their presence or absence is noted down (see Ex. C-W. 11). Even half-day's presence is marked (see the month of February in Ex. C-W. 11). The partner's explanation is to be found in Para. 7 of his evidence :

'In January last the factory inspector had come to our factory. He asked us to write the names in the muster of those whose names we had not written. We told him that these men were contractors. He said that their names may be written in the muster as contractors.'

Beyond the bare word of the partner there is no proof that the names of the piece-rated workers were written in the muster at the behest of the factory inspector.

12. Although we do not find in the musters prior to February 1960 mention of the presence or absence of the piece-rated workers, it does appear that the partners must have been noting down the presence or absence of these men even prior to February 1960. It may be that they had a separate book for it. Exhibit C. 2 is a statement produced by the company giving the names of these piece-rated

workers, the number of days they were present and the amounts they earned during the whole year 1949. When I asked Sri Balooch what he had to say about this, he had long consultation with the partner and then explained. The employer knows how many dozen brassiers of a particular type can be stitched in a day. He knows how many dozen brassiers a worker stitched in a month. From those figures the employer has calculated the days present. This explanation is far from satisfactory and must be ignored. There is therefore every reason to believe that the presence or absence of even the piece-rated workers used to be noted down by the partner.

13. The fact that one of the piece-rated workers, Laxman Ganpat, used to take the assistance of an outsider, Bharat by name, and used to pay him, is of no consequence in view of what the Supreme Court laid down in the case of Dharangadhra Chemical Works, Ltd. : (1957)ILLJ477SC (supra). The test is whether the person who took the assistance of an outsider personally worked or did not work.

14. From all these circumstances I have come to the conclusion that the piece-rated workers are 'workmen' as that word is defined in the [Industrial Disputes Act, 1947](#). I direct that after this Part I award is published, the case should be set down for hearing on the remaining demands.