

Twenty First Century Printers Ltd. Vs. K.P. Abraham and anr.

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Court : Mumbai

Decided On : Jul-23-2008

Reported in : [2008(119)FLR883]; (2009)IILLJ378Bom

Judge : S.A. Bobde, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 2; [Air Force Act, 1950](#); [Navy Act, 1957](#)

Appeal No. : O.O.C.J.W.P. No. 1978/2005

Appellant : Twenty First Century Printers Ltd.

Respondent : K.P. Abraham and anr.

Advocate for Def. : K.S. Kalappura, Adv.

Advocate for Pet/Ap. : J.P. Cama, Sr. Adv., ;G. Gopalakrishnan i/b and ;Sanjay Udeshi & Co., Adv.

Disposition : Petition allowed

Judgement :

S.A. Bobde, J.

1. The petitioner has challenged the award dated January 28, 2005 by which the learned Presiding Officer, 4th Labour Court, Mumbai, held that the respondent No.

1 is a workman under the [Industrial Disputes Act, 1947](#), hereinafter referred to as the 'Act', and that the termination of his services with effect from August 12, 1995 is illegal. The respondent No. 1's services as a Purchase Officer were terminated without following the procedure required by the Act. The learned Presiding Officer has directed reinstatement of the respondent No. 1 with continuity of service and payment of full back wages with effect from August 12, 1995.

2. The petitioner is a company, engaged in the manufacture of printed packing material. They had appointed the respondent No. 1 as a Purchaser Officer. Apparently, in the course of employment, the petitioner asked the respondent No. 1 to carry some article from Mumbai to Ahmedabad. The respondent No. 1 declined. The incident took an ugly turn and the petitioner decided to terminate the respondent No. 1's services. Apparently, some abusive language was also used and much has been said by both sides on the merits of the dispute. However, it would be appropriate to decide the controversy on the main issues raised in this petition i.e. whether the respondent No. 1 was a workman, since that goes to the root of the matter.

3. The petitioner appointed the respondent No. 1 as a Purchase Officer by an order dated November 20, 1991 on a salary of Rs. 3,000/-. The order stated that the services of the respondent No. 1 will be governed by the rules and regulations of the company and that his appointment will be on probation for a period of six months from the date of joining the duty. The order further states that after confirmation, his services could be terminated by either party by giving 30 days' notice. The respondent No. 1 in his bio-data accompanying his application stated that he has been working as an Asstt. Manager, Print Books. In pursuance of this application, the respondent No. 1 was, however, appointed as a Purchase Officer. The letter of appointment does not disclose the nature of duties of the respondent No. 1 which are crucial for determining whether the respondent was employed and working as a workman. The parties have led evidence on the point. The respondent No. 1 stated that he was doing the work of a purchase clerk-cum-office boy of carrying certain things to various persons. He was doing clerical jobs in the office connected with purchase of materials required by the petitioner and was working under the supervision of the Commercial Manager of the petitioner. The

petitioner, inter alia, led evidence to the contrary that the respondent No. 1 was appointed as a Purchase Officer in the management cadre and that his duties were to interact with suppliers, meeting them and placing orders. He was also passing bills for payment and was co-ordinating with factory for procurement of materials. He was visiting suppliers for deciding various quality material and delivery schedule. The respondent No. 1 in the course of his deposition categorically accepted the suggestion that before the present employment, he was working as an Asstt. Manager in Print Production. Orally he denied that he was raising purchase orders on behalf of the company and affixing his signatures thereon. However, the petitioner confronted him with documents on which he had affixed his signatures which he admitted. Those documents are in the nature of quotations from suppliers and purchase orders placed by him in his capacity as Purchase Officer. It is true that some of the documents are also signed by one Naronha, who was the Purchase Manager of the Company. It is clear from the documents that the respondent No. 1 has been making inquiries from various suppliers for the purchase of equipments such as a crane and the parties have sent quotations to the petitioner in his capacity as Purchase Officer. Similarly, there are documents which show that the respondent No. 1 has passed bills by approving them. In some cases, there are two approvals, the other by one Naronha. There is no doubt that the respondent No. 1 was not working as an office boy or a clerk, but was functioning, according to his designation, as a Purchase Officer and responsible for procurement of material for the petitioner-company. The question that, owever, arises is whether such work qualifies the respondent No. 1 for the status of 'workman' as defined by Section 2(s) of the Act which reads as under:

(s) 'workman' means any person, (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a, consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the [Air Force Act, 1950](#): (45 of 1950), or the Army Act, 1950 (46 of 1950), or the [Navy Act, 1957](#) (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

The definition includes within its scope a person employed to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work and excludes categories mentioned in clauses (i) to (iv) from amongst those excluded. Apart from persons employed in the armed forces and police, etc., covered by clauses (i) and (ii), the exclusion is mainly of those who are employed in a managerial or administrative capacity.

4. Mr. Cama, the learned Counsel for the petitioner, contended that the respondent was employed as a Purchase Officer and, therefore, not employed to do any manual, technical, operational, clerical or supervisory work and, therefore, there is no question of even considering whether he was excluded by virtue of the fact that he was performing a function of a managerial or administrative capacity under clause (iii).

5. The submission of Mr. Cama is as follows:

That Section 2(s) is both inclusive and exclusive i.e. it includes an employee who does technical, clerical, etc., work within the definition of a 'workman' and then excludes any such person who belongs to any of the four categories i.e. (i) subject to the Air Force Act or the Army Act or the Navy Act; (ii) employed in the police service; (iii) employed mainly in a managerial or administrative capacity; or (iv) employed in a supervisory capacity exercising managerial functions. The learned Counsel, however, submits that the inclusive categories are not exhaustive i.e. to

say there could well be an employee who does not belong to any of the categories which are excluded and, therefore, there would be no question of considering whether he is excluded subsequently by any of the four categories. The learned Counsel relies on the example of a Sales Representative and the judgment of the Supreme Court in *Burmah Shell Oil Storage & Distributing Co. Ltd. v. Burmah Shell Management Staff Association* : (1970)ILLJ590SC followed by this Court in *C. Gupta v. Glaxosmithklin Pharmaceutical Ltd. and Anr.* : (2004)ILLJ952Bom . The Supreme Court has observed as follows at p. 960 of LLJ:16. ...If every employee of an industry was to be a workman except those mentioned in the four exceptions, these four classifications need not have been mentioned in the definition and a workman could have been defined as a person employed in an industry except in cases where he was covered by one of the exceptions. The specification of the four types of work, obviously is intended to lay own that an employee is to become a workman only if he is employed to do work of one of those types, while there may be employees who, not doing any such work, would be out of the scope of the word 'workman' without having to resort to the exceptions.

There is no doubt that the submission on behalf of the petitioner is correct. However, what must be seen is whether it applies to the present case. It is, therefore, necessary to see whether the duties of a Purchase Officer in the present case are either technical, operational, clerical or supervisory before seeing whether the duties are such that the respondent No. 1 can be exempted under any of the four exceptions.

6. The function of purchasing i.e., acquiring from the market, materials and machinery, sometimes of considerable value, necessary for carrying out manufacture is clearly not operational, clerical or supervisory. The work involves having knowledge of machinery or material which are required to be purchased and the market. This knowledge is specialised and necessary to enable the employee to carry out purchases which may be of considerable value. It is not necessary that the knowledge must have been acquired by training, but may also come by experience of that particular work. In *Bombay Dyeing & . v. R.A. Bidoo* : (1990)ILLJ98Bom , a Division Bench of this Court while expounding on the words

'technical' and 'technical work' observed as follows at p. 103 of LLJ:

14. ...Technical work requires a training or knowledge or expertise of a particular art or science to which that work pertains. It is not difficult to infer from this that a person engaged in a technical capacity must have some knowledge imparted to him or must have acquired some knowledge either by training or by experience to do that particular work. A person who has not been so trained or who has not so acquired the knowledge naturally cannot perform, at least satisfactorily, the work to which he has been assigned. The word technical embraces within itself not only the expertise and competence of a person, but also knowledge and experience relating to the particular work which may be said to be technical work.

7. In this view, the work of purchase cannot be held to be technical. In the present case, it is clear that the respondent No. 1 not only made inquiries into the market for purchasing the appropriate machinery or material, but also placed orders under his signature, which were capable of binding the company. The parties also addressed quotations to him as a representative of the company purchasing the materials. All this involved specialised knowledge on the part of the petitioner for Procurement of materials and machinery and his function may be categorised as technical.

8. What remains to be seen is whether the respondent falls within any of the four exceptions in Section 2(s). Clearly the first two exceptions are not relevant. It was contended on behalf of the petitioner that the respondent No. 1 was employed mainly in a managerial or administrative capacity and, therefore, falls within the third exception. Primarily, it appears that the work of purchasing materials or machinery cannot be said to be the work pertaining to manufacture or production. Works and functions in an industry may be hardly divided into managerial, administrative or supervisory at one level and manufacture, productions, etc., at another. It involves the exercise of good judgment as to the cost, quality and reliability of the things that are purchased or procured. In this sense, the function is managerial or administrative in nature. The work depends on special mental training or technical knowledge which is part of the management of the company. 'Management' in the sense of an organisation means regulation of an activity.

Such a person could be said to be involved in the operation of a company which is regarded as a managerial function.

9. Black's Law Dictionary (Eighth Edition) defines 'management' as the people in a company who are responsible for its operation. In *Lloyds Bank Ltd. v. Panna Lal Gupta* : (1961)ILLJ18SC , the Supreme Court held that a manager or administrator generally occupies a position of command or decision and is authorised to act in certain matters within the limits of his authority. This decision was subsequently referred to by their Lordships of the Supreme Court in *S.K. Maini v. Carona Sahu Co. Ltd.* : (1994)ILLJ 1153 SC wherein the Supreme Court observed that a manager's duty generally involves supervision as distinguished from the stereotype work of a clerk. Having regard to the duties and powers of the Purchase Officer in question, I am of view that the respondent performed mainly a managerial function and is, therefore, excluded from the definition of 'workman.'

10. It was, however, argued that the respondent could not be said to be part of the management because he had no one working under him. The true test must depend on the nature of the function and not whether the person has any other employee working under him. Indeed, an employee can be at the lowest managerial post and could still be said to perform managerial function. Having regard to the nature of the activity of purchase, it appears that the function must be classified as managerial being part of the controlling and regulating functions of the industry. In this view of the matter, the respondent No. 1 must be held to be an employee mainly in a managerial capacity and is, therefore, excepted from the meaning of 'workman' by virtue of Section 2(s)(iii) of the Act.

11. In the result, the writ petition is allowed and the rule is made absolute in terms of prayer clause (a). There shall be no order as to costs. The amount of Rs. 2,60,000/-deposited by the petitioner in this Court pursuant to the order dated July 26, 2005, be refunded to the petitioner with accrued interest, if any.