

General Engineering Works Vs. Ram Kumar Yadav and anr.

General Engineering Works Vs. Ram Kumar Yadav and anr.

SooperKanoon Citation : sooperkanoon.com/636140

Court : Punjab and Haryana

Decided On : May-19-2003

Reported in : (2004)IILLJ143P& H

Judge : S.S. Saron, J.

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

Appeal No. : C.W.P. No. 3573/1981

Appellant : General Engineering Works

Respondent : Ram Kumar Yadav and anr.

Advocate for Def. : Arihant Jain, Adv.

Advocate for Pet/Ap. : Sudhir Mittal, Adv.

Disposition : Petition dismissed

Judgement :

S.S. Saron, J.

1. This petition under Article 226/227 of the Constitution of India, was filed by Hindustan Kokoku Wire Ltd. During the pendency of the petition, the petitioner filed Civil Miscellaneous Petition No. 16254 of 1988 for substituting the name of the petitioner to that of General Engineering Works. It was also mentioned in the

said application that Hindustan Kokoku Wire Ltd. is one of the units of said General Engineering Works. The said civil miscellaneous application for substitution of the name was not opposed and it was allowed as prayed, vide order dated February 2, 1989.

2. The facts leading to the case are that the first respondent, Ram Kanwar Yadav, was appointed as an operator in the die shop of the petitioner-factory on April 19, 1963. He was promoted as supervisor of the die Section in pursuance of letter dated October 13, 1976, with effect from October 1, 1976. His total salary was fixed at Rs. 525. The job responsibilities charge containing the duties of the first respondent have been placed on record as annexure P2. The duties and responsibilities have been placed on record with the view to primarily show that the first respondent was doing work in a supervisory capacity and, therefore, did not fall within the definition of 'workman' as defined in Section 2(s) of the [Industrial Disputes Act, 1947](#) (hereinafter referred to as 'the Act'). It is stated that the first respondent started neglecting his job of supervision in the die Section and showed slackness in getting the wires of proper gauge drawn by proper adjustment of dies for the operators to draw the wires. A large quantity of material had to be rejected because of the inefficiency shown by the first respondent. On October 5, 1979, while the first respondent was supervising the third shift, 5 coils of 2mm cycle spokes wire were rejected, as they were undersize. The management terminated the services of the first respondent, vide order dated October 6, 1979 (annexure P3). On account of his termination, the first respondent raised an industrial dispute which was ultimately referred to the Labour Court, the second respondent. The petitioner-management filed its written statement to the claim urged by the first respondent in which it was primarily contended that he was not a 'workman' because on the date of termination he was drawing salary of Rs. 525 per month and was employed in a supervisory capacity to supervise the work of nearly 10 operators in the die and drawing Section. The written statement filed by the management has been placed on record as annexure P4. The management also filed 63 documents to support their contention that the first respondent is not a 'workman'. The learned Labour Court, the second respondent, on February 29, 1980, framed the following issues:

1. Whether the workman is not a 'workman' as defined under Section 2(s) of the [Industrial Disputes Act, 1947](#). If so, to what effect ?
2. Whether the dispute in this case is covered under Section 2(k) or 2(a) of the [Industrial Disputes Act, 1947](#). If not, to what effect ?
3. Whether the termination of the services of the workman is justified and in order. If not, to what relief, he is entitled ?
4. Relief.

3. On the request of the management, issues Nos. 1 and 2, were treated as preliminary issues and after recording the statements of the parties, the learned Labour Court, vide its award dated June 18, 1981 (annexure P6), decided issues Nos. 1 and 2 in favour of the first respondent and held him to be a 'workman' within the meaning of Section 2(s) of the Act. No finding was recorded by the Labour Court with regard to issues Nos. 3 and 4. Against the award dated June 18, 1981 (annexure P6), the present writ petition was filed and on August 7, 1981, notice of motion was issued for September 25, 1981, and the passing of the final order was stayed, which was ordered to continue. The case was admitted on April 14, 1982.

4. The first respondent filed his written statement in which it was stated that the person who filed the writ petition was not the authorised person and that the corporate body never applied its mind to challenge the award of the Labour Court. The other material aspects with regard to the appointment of the first-respondent in the die shop are admitted. However, his promotion as supervisor is denied. It is stated that though the word 'supervisor' has been used in the letter dated October 13, 1976 (annexure P1), yet it was a misnomer inasmuch as the duties of the first respondent were never changed and he had no supervisory powers which were necessary incident. The word 'supervisor', it is stated, had been used with an ulterior motive to take out the first respondent from the purview of the Act on account of his union activities. The respondent could not properly understand the meaning of word 'supervisor'. His job duties were the same as those of an operator. He had to do the job of setting dies, etc. It is stated that the job he was

performing was that of an operator and not of a supervisor. On July 10, 1979, a charge was made against the first respondent that 5 coils were produced undersize and he was warned. In short, his case is that he is a 'workman' as defined in Section 2(s) of the Act. The basic question, therefore, that is involved in the present writ petition, is whether, in the facts and circumstances of the case, the first respondent is a 'workman' as defined in Section 2(s) of the Act.

5. Shri Sudhir Mittal, learned counsel appearing for the petitioner, has assailed the award dated June 18, 1981 (annexure P6), and contended that the first respondent is not a 'workman' and that, therefore, the alleged dispute raised by him is not an industrial dispute and, therefore, the reference of the matter to the Labour Court is bad in law and the second respondent-Labour Court, does not derive any Jurisdiction to deal with the matter. It is further contended that the Labour Court has confused the ingredients of exception (iii) with those of exception (iv) as contained in Section 2(s) of the Act, inasmuch as the first respondent was employed in a supervisory capacity and drawing monthly wages exceeding Rs. 500. It is contended that the first respondent had authority to grant leave, promote or appoint or remove any worker or to sanction overtime to the workmen, which was in the nature of managerial or administrative authority. Besides, while recounting his duties, the Labour Court was unable to recount any duty, which may show that he was mainly involved for manual or technical work. He was called upon to help whenever any machine faulted or whenever any operator felt difficulty. The only work that he did with his own hands in the die shop was to remove any difficulty or to set a proper die so that wire of proper gauge may be drawn and that all these duties were supervisory in nature. He was also vested with the control of supervisory character over the operators because no leave application or indent for material was entertained by the official of the company unless it was recommended by the first respondent, who alone supervised the quality of work of the operators in the die shop and made reports to the higher officers.

6. On the other hand, Shri Arihant Jain, learned counsel for the first respondent, contends that the nature of duties assigned to him were such that he was a 'workman'. The use of the word 'supervisory' was a clever ploy on the part of the

management to bring the first respondent out of the purview of the Act. Even otherwise, it is stated that the supervisory nature of duties performed by him was non-incidental to the main duties and his emoluments after excluding the house rent admissible to him fall below Rs. 500 per month. He, therefore, prays that the writ petition be dismissed.

7. In order to appreciate the respective contentions of the parties, the definition of 'workman', as defined in Section 2(s) of the Act, may be noticed, which reads as under:

"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.'

8. The italicised portion indicates the wages as Rs. 1,600 per mensem. At the relevant time of discharge of the workman the minimum wages were Rs. 500 per mensem. A Division Bench of this Court in Administrator, Municipal Committee, Amloh v. Presiding Officer, Labour Court 1999-II-LLJ-14 (P&H;) with regard to the

above definition, observed as follows at p. 17:

'9. This definition can be divided in three parts. The first part gives the meaning of the term 'workman'. The second part is inclusive in nature and the third part excludes some persons from the purview of the definition of 'workman'. In order to decide whether a person falls within the definition of 'workman', the Court has to bear in mind the following factors:

(i) Whether the person concerned is employed in an industry;

(ii) Whether he is employed to do manual, unskilled, skilled, technical, operational, clerical or supervisory work; and

(iii) Whether such employment is for hire and reward.

10. If the above mentioned factors are found present in a given case, the employee concerned will fall within the definition of 'workman' even though he may have been dismissed, discharged or retrenched from service. However, a person who is subject to the Air Force Act, 1950, the Army Act, 1950, or the Navy Act, 1957, or who is employed in the police service or as an officer or employee of a prison or who is employed mainly in a managerial or administrative capacity or who is employed in a supervisory capacity and draws wages exceeding Rs. 1,600/- per mensem is excluded.'

9. This Court further held that it can thus be said that the source of employment for entry in the service, the mode of payment of wages and the length of period of employment do not have any significance for determining the issue whether or not a person falls within the definition of 'workman'. Therefore, in order to ascertain, in the facts and circumstances of the case, whether the first respondent is a 'workman', it is to be seen whether he is employed mainly in a managerial or administrative capacity, or being employed in a supervisory capacity drew wages exceeding Rs. 500 per mensem or exercising either by the nature of the duties attached to the office or by reasons of the power vested in him, functions mainly of managerial nature. The functions and duties in respect of the first respondent have been placed on record by the petitioner-management as annexure P2, which are

of the following nature:

'1. He will attend general shift in normal days, he may be called in shifts as per drawing shop requirements by Section in charge/assistant Section in charge of drawing shop.

2. He will look after day-to-day working of die shop and will be entirely responsible of

(a) die drafting,

(b) sizes of the dies,

(c) dies geometry as per requirement,

(d) reduction percentage in area as per drafting schedule.

3. He will maintain full records of dies in stock every month and submit his report to Section in-charge latest by 5th of every month.

4. He will maintain the consumption and record of each die given for drawing.

5. He will produce records showing reasons, if any die breaks during drawing operation.

6. Monthly consumption of die shop will be maintained properly and a report of consumption of die shop/drawing shop would be submitted to the Section in charge on every 5th of the month.

7. He, will submit performance report of F.W. drawing and die consumption and suggestions to improve the die life and production.

8. He may be sent to supervise the drawing shop in shifts whenever required.

9. He will work in close contact and co-operation with his fellow supervisors and shift foreman.'

10. Besides that, it is mentioned in his promotional letter dated October 13, 1976 (annexure P1), that he has been promoted as supervisor and his salary has been refixed at Rs. 525, which includes house rent of Rs. 50. Learned counsel for the petitioner on the strength of the judgment in *Burmah Shell Oil Storage and Distribution Company of India Ltd. v. Burmah Shell Management Staff Association*, AIR 1971 SC 922 : 1970 (3) SCC 378 : 1970-II-LLJ-590 and *Sanjeev Kumar Gupta v. Presiding Officer, Labour Court* 2001-II-LLJ-35 (P&H;)(DB) as also *Arkal Govind Raj Rao v. Ciba Geigy of India Ltd.* AIR 1985 SC 985 : 1985 (3) SCC 371 : 1985-II-LLJ-401, has contended that keeping in view of the nature of duties indicated above, the first respondent is not a 'workman' and that the Labour Court has erred in treating him to be a workman. In *Burmah Shell's* case (*supra*) a set of employees were designated as junior management staff and were members of the *Burmah Shell Management Staff Association*, registered as trade union. The members of the association, who were designated as junior management staff claimed that they were 'workmen' as defined in the Act and on that basis raised an industrial dispute relating to salary, etc. The honourable Supreme Court categorised the various members of the junior management staff as blending supervisor, foreman, depot superintendent and district sales representatives. It was held that blending supervisors were not workmen because they were all drawing salary in excess of Rs. 500 per mensem. Similar was the position with respect to foremen and depot superintendents. In so far as district sales representatives were concerned, it was held that they were not 'workmen' at all. The nature of duties of the first respondent, in the present case, is more akin to that of the blending supervisors and foremen. In *Burmah Shell's* case (*supra*), inasmuch as the first respondent was initially appointed as operator in the die shop on April 19, 1963, and, thereafter, was promoted as supervisor, vide letter dated October 13, 1976 (annexure P1). The sole basis for coming to the conclusion that the blending I supervisors and foremen were not 'workmen' in *Burmah Shell's* case (*supra*) was that they were drawing salary in excess of Rs. 500 per mensem. In *Sanjeev Kumar Gupta's* case (*supra*), the petitioner therein was appointed as senior accounts assistant and was later redesignated as accounts executive with the same status, position, duties and in the same department of accounts. In the said case, the petitioner therein was admittedly redesignated as executive and

keeping in view the nature of his duties, he was held to be not a 'workman'. Reliance was placed on the case of Arkal Govind Raj Rao's case (supra), wherein, it was held that where an employee has multifarious duties and the question is raised whether he is a 'workman' or someone other than the 'workman', the Court must find out what are his primary and basic duties and if he is incidentally asked to do some other work, it may not necessarily be in tune with the basic duties and the additional duties cannot change the character and the status of the person concerned. The dominant purpose of employment is to be first taken into consideration for determining the status and the character of the person. It was further observed that a person shall not cease to be a 'workman' if he performs some supervisory duties but he must be a person who is engaged in a supervisory capacity. The argument on behalf of Junior Staff Management Association was that the definition of 'workman' which at the relevant time, also included persons doing supervisory and technical work, contemplated that all persons employed in an industry must necessarily fall in one of the other four classes mentioned in the definition, viz., doing skilled and unskilled, manual work, supervisory work, technical work or clerical work and, therefore, the Court should proceed on the assumption that every person is a 'workman' unless he falls in one of the exceptions to the definition. This contention was rejected by the Honourable Apex Court in *Burmah Shell's case* (supra). The Court held that if every employee of an industry was to be a 'workman' except those mentioned in the aforesaid four exceptions and the 'workman' could have been defined so as to include every person employed in an industry except where he was covered by one of the exceptions, would lay down that an employee was to be a 'workman' only if he was employed to do work of one of those types. There may be employees who did not do any such work and, hence, would be out of the scope of the definition. The judgment in *Burmah Shell's case* (supra), was considered by a larger Bench (five-judge Bench) of the Supreme Court in *H.R. Adyanthaya v. Sandoz (India) Ltd.* AIR 1094 SC 2608 : 1994 (5) SCC 737 : 1995-II-LLJ-303, in which case the question that arose for consideration was whether medical representatives, as they are commonly known, are 'workmen' according to the definition of 'workman' under Section 2(s) of the Act. The Apex Court in *H. R. Adyanthaya's case* (supra) after referring to the judgment in *Burmah Shell's case* (supra) also adverted to the

judgment in *May & Baker (India) Ltd. v. Their Workmen*, AIR 1967 SC 678 : 1961-II-LLJ-94 and pointed out that in order to qualify to be a 'workman' under the Act, a person had to satisfy that he fell in any 'of the four categories of manual, clerical, supervisory or technical. A reference was also made to other decisions like in the case of *S.K. Verma v. Mahesh Chandra* AIR 1984 SC 1462 : 1983 (4) SCC 214 : 1983-II-LLJ-429 and *Western India Match Co. Ltd. v. Their Workmen* AIR 1964 SC 472: 1963-II-LLJ-459; and observed that in none of the aforesaid decisions, the word 'operational' or the words 'skilled' and 'unskilled' independently of 'manual' fell for consideration as the management under which they were introduced came into operation for the first time with effect from August 21, 1984, and the dispute in the said cases involved in the aforesaid decisions were of prior dates. Therefore, in order to be a 'workman' it is now to be seen whether a person employed in an industry to be a 'workman' is doing any manual, unskilled, skilled, technically operational, clerical or supervisory work for hire or reward.

11. The nature of duties extracted above, in respect of the first respondent shows that he is also doing work which is somewhat manual, skilled, technical, clerical and supervisory for hire and reward. The main emphasis of the petitioner is that the first respondent has been designated as supervisor. It is to be remembered that designation alone is not decisive and one has to examine the nature of the employee's duties, powers and functions and predominant nature of the duties is the proper test to be applied for determining the question. Keeping in view the definition of 'workman' under Section 2(s) of the Act, apart from the aforesaid features, an employee whose duties are mainly managerial or administrative is outrightly not to (sic) be considered as a workman and where he is employed in a supervisory capacity he should not be drawing wages exceeding Rs. 500. Therefore, the mere designation of the first respondent as a supervisor could never be a decisive test. The learned Labour Court in its impugned award dated June 18, 1981 (annexure P6), after considering the evidence on record found that the witness of the management M.W.-1, Shri K.C. Kaushik, admitted that the first respondent had no power to appoint, promote, dismiss or suspend or impose any type of penalty to the workmen. He could only recommend the application to the head of the department. It was also admitted that the first respondent worked with 18 to 20 workmen, as a team of workers, and they are responsible for the

production and smooth working of the Section. He admitted that the first respondent used to remove the difficulty in the machine in the die shop whenever it arose and that the first respondent used to adjust the size of the die in the die shop and change the die. He worked according to the orders and instructions of the head of the department from whom he had to take instructions for every work. Besides, he had to recommend the leave applications to the head of the department and had no authority to sanction the leave. On the basis of the material, the learned Labour Court came to the conclusion that the first respondent was a 'workman'. The nature of duties appended as annexure P2, and as extracted above, with respect to supervisory nature, only contain in paragraph 8 that the first respondent may be sent to supervise the drawing shop in shifts, whenever required. Apart from that there is nothing which would show that he performed any work of a supervisory capacity although from the evidence of the management witness, a reference to which has been made by the Labour Court, it shows that he did perform duties of clerical nature which, however, cannot be said to be in a supervisory capacity. In this view of the matter, the ratio of the judgment in *Shrikant Vishnu Palwankar v. Presiding Officer, First Labour Court* 1992-II-LLJ-378, of the Bombay High Court, referred to by the petitioner's counsel would not apply, as in that case it was held as a matter of fact that the petitioner therein was mainly carrying out the work of technical nature and only incidentally he was doing some supervisory work. However, in the case in hand, the first respondent was not doing any supervisory work but he may be assigned supervisory work. Besides, he was only designated as a supervisor in the promotion letter dated October 13, 1976 (annexure P1), which designation as already noticed is not decisive.

12. Therefore, for the reasons aforementioned, it is to be held that the first respondent was a 'workman'. The award dated June 18, 1981 (annexure P6), of the Labour Court is, therefore, affirmed. The Labour Court, however, has not given any findings on issues No. 3 and 4 and therefore, the matter would have to be remitted back to the Labour Court to record its findings on the said issues after the preliminary findings have been determined. The matter has been considerably delayed and, therefore, it would be just and expedient if the Labour Court determines the question as expeditiously as possible and preferably not later than three months from the date the parties put in appearance before it.

13. Resultantly, the writ petition is dismissed and the parties through their counsel are directed to put in appearance before the Labour Court on July 21, 2003. Thereafter, the Labour Court shall take steps to determine the remaining two issues preferably within three months. There shall be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com