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Court : Delhi

Decided On : Apr-30-1976

Reported in : 13(1977)DLT259; 1976LabIC1708

Judge : T.P.S. Chawla, J.

Acts : Delhi Subsidised Industrial Housing Scheme (Allotment of Houses) Rules, 1963; Factories Act; Public Premises (Eviction of Unauthorised Occupants) Act, 1958; Industrial Disputes Act, 1947

Appeal No. : Civil Writ Petition Appeal No. 1423 of 1967

Appellant : Parbhat Singh

Respondent : The State and ors.

Advocate for Pet/Ap. : B.R. Kohli and; R.N. Dixit, Advs

Judgement :

T.P.S. Chawla, J.

(1) The question to be decided in this case is whether the petitioner, Parbhat Singh, is a, 'worker' as defined in the Factories Act 1948. It has arisen in a somewhat devious way. For over two decades the petitioner has been employed by Indian Oxygen Limited who manufacture oxygen and acetylene gases. He started as a, labourer ('mazdoor') in the factory of the company at Delhi.' On 1st

October 1953, he was promoted and became a 'booking sircar'. He has been working as such ever since. In a letter written by the company the duties of booking sircars have been described as follows:

'THEYcome in the morning to take cash from the cashier and to give accounts of the previous day's work. After this they go out to the Railway Station and Goods Transport Companies, where they book full cylinders to outstations and also arrange to collect empty cylinders received from outstations.'

(2) In 1952, a scheme known as the Government of India Subsidised Housing Scheme for Industrial Workers was formulated. Under the scheme, houses were to be constructed by Government and allotted to industrial, workers. To regulate allotment of such houses in Delhi, the Delhi Subsidised Industrial Housing Scheme (Allotment of Houses) Rules 1963 were made. It is common ground that both under the scheme and the rules the allotment of a house could be made only to a 'worker' as defined in the Factories Act, and he could retain it only till such time as he continued to fulfill that requirement.

(3) The petitioner was allotted a house covered by the scheme on 5th August 1958. It was situated in an Industrial Housing Colony built by the Government at Karampura, Najafgarh Road, New Delhi. Simultaneously, two other booking sircars employed by the company were allotted houses in that colony.

(4) Till the beginning of 1961, all three of them occupied their respective houses without any further questions being asked. But, in the early part of that year, the Estate Manager of the colony received an anonymous complaint against one of them (not the petitioner) to the effect that he was neither a 'worker' within the meaning of the Factories Act nor covered by the Employees State Insurance Scheme. So the Estate Manager inquired from the company, the employer, whether the three booking sircars had ceased to be 'workers' under the Factories Act. The company replied that there had been no change in the nature of duties of these three employees, and that all its employees working in its factory were 'covered under the Factories Act'. There was further correspondence in the course of which the company admitted that the three booking sircars were not covered by the Employees State Insurance Scheme. Ultimately, the petitioner's allotment was

cancelled on 28th August 1961, and he was directed to vacate the house within fifteen days.

(5) As a result of further representations being made on behalf of the petitioner, the whole question was referred to the Chief Inspector of Factories for his opinion. In a note recorded on 2nd November 1961, the Chief Inspector said :

'.....it is clear that the booking sircars have little connection with the manufacturing process. They also do not work inside the factory premises. thereforee they are not considered to fall within the definition of the term 'worker' under the Factories Act.'

(6) The petitioner then filed a suit in the court of the Subordinate Judge directed against the order by which his allotment was cancelled. That suit was dismissed for default of appearance on 16th May

(7) Proceedings for eviction, under the Public Premises (Eviction of Unauthorised Occupants) Act 1958, were started against the petitioner in 1963. The Estate Officer came to the conclusion that a booking sircar was not a 'worker' and, hence, made an order of eviction on 22nd September, 1966. In appeal, the Additional District Judge concurred with the view of the Esta,te Officer and made an order of dismissal on 18th March, 1967. An attempt to have that order reviewed did not succeed. The petitioner now moves to have those various orders quashed.

(8) As I have said, the only question which this case poses is whether the petitioner falls -within the definition of 'worker' in the Factories Act. Without a doubt, that is a question of law as was recognised in The Management of Government Soap Factory, Bangalore-12 v. The Presiding Officer, Labour Court, Bangalore and others, Air 1970 kar 225, and the preliminary objection raised on behalf of the respondents that it is a question of fact which cannot be examined in these proceedings is unsusta,inable. I overrule that objection and proceed. The definition of 'worker' is in section 2(1) of the Act, and it reads :

'(1)'Worker' means a person employed directly or through any agency, whether for wages or not, in any manufacturing process, or in cleaning any part of the

machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process;'

(9) There are two observations to be made. First, the definition embraces not only a person directly employed in any manufacturing process, but also one involved 'in any other kind of work incidental to, or connected with, the manufacturing process. . . . - .'. By these additional phrases the connotation of 'worker' is considerably enlarged. The phrases 'incidental to' and 'connected with' are capable of very wide application. Having regard to the endless chain of causation in nature, in their literal sense, there is hardly any human activity which these words could not include. Obivously. that could not have been the intention of the legislature. So, it has been held, that the relationship between the work in question and the manufacturing process should be proximate : see The Management of Government Soap Factory, Bangalore-12 v. The Presiding Officer, Labour Court, Bangalore and others, Air 1970 Kar 225 (supra).

(10) Second, it has been held in the same case, that the coneluding words of the-definition-'the subject of the manufacturing process'-refer to the raw materials or other articles used in the manufacturing process. They do not allude to the finished product which thereby emerges.

(11) It is apparent that the concept of 'worker' is constructed around and made to depend on a 'manufacturing process'. This latter phrase is defined in section 2(k) of the Act as follows :

'(K)'Manufacturing process' means any process for- (I)making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal,..... . . '

THEother sub-clauses of the definition are not relevant, and I need not read them. To comprehend this definition, it is first necessary to settle what, in the context, the words 'any article or substance' mean. Counsel for the respondents contended that they meant the same as 'the subject of the manufacturing process' in the

definition of 'worker' and relied again on The Management of Government Soap Factory, Bangalore-12 v. The Presiding Officer, Labour Court, Bangalore and others, Air 1970 Kar 225 (supra). I do not think there is any basis at all for this contention. On the contrary, there is much against it. It is contrary to all canone of contsruction that one should equate two wholly different phrases occurring in two wholly different definitions found in a statute. The fact that one definition is followed immediately by the other, or that the phrase earlier defined is employed in the later definition, does not give rise to any new and strange rule of interpretation. Of course, it would be a different matter if in their own context, and on their own construction, the words 'any article or substance' in the definition of 'manufacturing process' were found to have the same content as 'the subject of the manufacturing process' in the definition of 'worker'. But that would be merely fortuitous. thereforee, one must ascertain the meaning of 'any article or substance' from the setting in which those Words occur.

(12) It is plain from the syntax of the sentence forming clause (i) of the definition of 'manufacturing process' that the 'article or substance' must be such that each of the gerunds at the head of the clause will make sense with reference to it. Reading the definition with only the first gerund and omitting the rest makes the position clear. The definition will then read : ' '. v. Inspector of Factories, U.P., : AIR1969 All547 , that the 'packing' envisaged by the definition is that. of the 'finished manufactured article and not of' the raw material. This is direct authority for my view.. because the meaning of 'article or substance' must remain constant regardless of which of the' named processes is considered. It also demolishes the far-fetched suggestion of counsel for the respondent that 'packing' was intended to indicate 'material closing a joint or assisting in lubrication of a journal', which is one of the meanings of that word mentioned in the Concise Oxford Dictionery.

(13) Coming to the present case, the basic question is whether the duties performed by the petitioner are in any way linked with a 'manufacturing process'. Gas, being what it is, cannot possibly be sold except in some kind of container. Normally it is a cylinder. Until it is put into a cylinder, the gas is not capable of 'use, sale. transport, delivery or disposal'. In the commercial sense, an article is only 'finished' when it is put in a condition in which it can be sold in the market. It

follows, that in the case of gas, the manufacturing process is not over until the gas has been filled into a cylinder. The corollary is that the process of putting the gas into the cylinder is also a manufacturing process. It would be covered by the word 'making' if understood in its fullest commercial sense. Or. the word 'adapting' is wide enough to apply. In New Grand High Class Bakery v. Employee's State Insurance Corporation, (1974) 45 Fjr 410, the slicing of bread, after it had been baked, was held to be a manufacturing process as this was 'adopting' it for 'sale' to or 'use' by customers. Gas is filled into cylinders with exactly the same object.

(14) Furthermore, since gas cannot be 'transported' except in cylinders, and that is one of the modes in which it is generally 'delivered', the process of filling could conceivably be regarded as 'packing'. One of the meanings of 'packing' given in Punk and Wagnalls 'Standard College Dictionary' is : 'to fill compia,ctly, as for storing or carrying'. All the dictionaries agree that putting foodstuffs in tin containers is 'packing'. On principle I see no difference between that operation and filling gas in cylinders. Making bundles of tobacco leaves and putting them in gunny bags so that they can he transported has been held to be 'packing' and a 'manufacturing process' : see v. P. Gopala Rao v. Public Prosecutor, Andhra Pradesh, 1970 S.C. 66. By a parity of reasoning, I think the same conclusion is possible here. But whichever be the head under which the process is correctly to be classified, I have no doubt that filling gas in cylinders is part of the process of manufacturing.

(15) Though the petitioner does not himself fill the gass into the cylinders, his work is 'incidental to. or connected with' that manufacturing process. Unless he brought in the empty cylinders the process of filling gas into them could not begin. If his only task had been to carry away the filled cylinders and dispatch them to places outstation, the reasoning in Ramlanshan Jageshar v. Bombay Gas Co. Ltd., : (1961)ILLJ38Bom , might well have applied. There, it was held, that a coolie digging trenches outside the factory in which pipes were to be laid for carrying gas to consumers was not a 'worker', The ratio of the decision is that: 'Distribution or transport of an article after it is manufactured is not a manufacturing process'. That proposition is unexceptionable, but obviously it will not apply to the bringing in of the empty cylinders into the factory, which occupies the petitioner for at least half

his working time. This part of his work is done before the finished article is fully manufactured, and is, indeed, vitally connected with the manufacturing process. So much so, that if he failed to perform his function, the manufactured gas would have to be blown off or production would have to cease. Were they so minded, he and the other booking sircars, could wellnigh bring the working of the factory to a stop.

(16) Reflection on these lines suggests apractical test for determining whether the relationship between a particular kind of work and the manufacturing process is proximate or remote. The question to be asked is : if the work be not done, what is the effect on the manufacturing process If the result be a tangible adverse effect on the manufacturing process, the work under consideration is not too remote. Otherwise, it is. In the case of the petitioner I have already used this test, and shown the conclusion.

(17) Also, it must be remembered that in examining the question of remoteness the approach should be liberal. This is because the Factories Act has a social purpose, and is designed to promote the general welfare. The words 'incidental to' and 'connected with' should be so implemented as to achieve this purpose. Thus, it is not necessary that a person should do manual work to be a 'worker'. Even those who perform clerical duties have been held to be such: see Works Manager, Central Rly. Workshop, Jhansi v. Vishwanath and others, : (1970)ILLJ351SC , which affirmed Works Manager, Central Railway Workshop, Jhansi v. Vishwanath and others, 1966 (12) F.L.R. 388. In accordance with this beneficent approach : cooks, helpers, store issuers and stock keepers employed in a canteen attached to a factory have been held to be 'workers' because they supplied essential amenities to the workers actually engaged in the manufacturing process: sec N. Jagga Rao and others v. Union of India and others, 1975 (30) F.L.R. 38.

(18) It is instructive to observe how the definition of 'workman' in the Industrial Disputes Act 1947, another piece of social legislation, has been dealt with by the courts. The relevant words of that definition are : ' 'Workman' means any person (including an apprentice) employed in any industry.....' No words of extension like 'incidental to' or 'connected with' are found in that definition. Still, in

J. K. Cotton Spinning & Weaving Mills Co. Ltd. v. The Labour Appellate Tribunal of India, Iii Bench, Lucknow, and others and Badri Mali and others, 1963 (7) F.L.R. 289, the Supreme Court imported the concept of 'incidental connection' or 'relationship' and ruled that a person 'employed in connection with operations incidental to the main industry' would be a 'workman'. It held that gardeners (malis) employed to tend the gardens attached to bungalows occupied by officers of an industrial concern were within the definition. One of the examples taken in the discussion was that of drivers of buses used solely for transporting workmen to and fro between the factory and their homes. The opinion expressed was that the drivers were 'workmen' By analogy it was held that the work done by the gardeners was not too remote. Likewise, in M/s. British India Corporation Ltd. (Cawnpore Wollen Mills Branch), Kanpur v. Their workmen. 1967 (14) F.L.R. 175. not only a gardener, but some chowkidars. a jamadar and a cook working in the official residence's provided by a company to its officers were found to be 'workmen'.

(19) Guided by the instances provided by these cases and the principles expounded therein, I would have no hesitation in concluding that the petitioner fulfills the requirements of the definition of 'worker'. It is irrelevant whether the petitioner is covered by the Employees State Insurance Scheme or not. The definition of 'employee' in the Employees State Insurance Act 1948 is rather different, as was noticed in v. P. Gopala Rao v. Public Prosecutor, Andhra Pradesh, : 1970 CriLJ22 , (supra) and Works Manager, Central Rly. Workshop, .jhani v. Vishwanath and others. : (1970)ILLJ351SC (supra). But. if. contrary to my opinion, this a,spcct be thought to be relevant, then the petitioner has further established his case by swearing in a supplementary affidavit that he has been registered under the Employees State Insurance Scheme since the very beginning of his employment except for a very short break. A copy of his identity card issued under that scheme is annexed to the affidavit. This statement of the petitioner has not been controverter.

(20) But, although I have held that the work done by the petitioner is 'incidental to or connected with' a manufacturing process, and the requirements of the definition of 'worker' in the Factories Act are satisfied, that is not the end of the matter. A

formidable obstacle in the path of petitioner yet remains. 'Factory' is defined in section 2(m) of the Factories Act as meaning 'any premises including the precincts thereof which fulfill certain specified conditions. For purposes of the Act, the territorial limits of a factory are circumscribed by those words. It is true that the definition of 'worker' makes no reference to the place of work, but the Supreme Court has held that it must be read in combination with the definition of 'factory' : see State of Uttar Pradesh v. M. P. Singh and others, : 1960 CriLJ750 . Hence to be a 'worker' a person must work within the 'premises' or.'precincts' of a factory. The Preamble intimates that the Act is concerned with 'regulating labour in factories'. Nearly every section in the Act making reference to a 'worker' us?s the phrase 'in a factory' or a suitable variation thereof. These features caused the Supreme Court to reach the conclusion that the Act was 'intended to benefit only workers employed in a factory, i.e., in the precincts or premises of a factory'. On that ground it was held that field workers who guided, supervised and controlled the growth and supply of sugarcane lor use in the factory were not 'workers' as they worked outside the 'premises' or 'precincts'. This in-built constraint on the statutory notion of 'worker' was affirmed in The Nagpur Electric Light and Power Co. Ltd. etc. is the Regional Director, Employees' State Insurance Corporation, etc.. : (1967)IILLJ40SC , and it was pointed out that in this respect the definition of 'employee' in the Employees' State Insurance Act was wider.

(21) I do not think that the statement in Ahmedabad . (Calico and Jubilee Mills. Ahmedahad) and District Judge, Ahmedabad and others. : (1960)ILLJ770Bom , by a Division Bench of the High Court of Bombay. that 'even if the person employed is required to perform the duties outside the precincts of the factory' he may still be a 'worker' can now be regarded as good law. In that case lorry drivers who transporter raw materials and finished goods from one factory to another were held to be 'workers'. It is not clear whether the judgment in this ease was delivered before or after the judgment in State of Utter Pradesh v. M, P. Singh and others. : 1960 CriLJ750 (supra). At any rate, that judgment of the Supreme Court was not cited before the Division Bench in Bombay. The passage from the Bombay judgment which I have quoted, is totally opposed to the judgments of the Supreme Court to which I ha,ve just referred, and must be treated as impliedly overruled. the Bombay case was distinguished because of its 'peculiar facts' by a Mngle

Judge of Madras in Buckingham and Camatic Mills Ltd. v. Natarajan (C.A.) and another. (1964) II L.L.J. 160, and thejudgment of the Supreme Court in Slate of Uttar Pradesh v. M. P. Singh and others. : 1960 CriLJ750 was followed. It was held that a person working outside the premises or precincts of a factory was not a 'worker'. However, it may still be possible to sustain the decision in the Bombay case on the finding of fact 'that the major portion of the duty of the motor-lorry drivers was in the mill premises and they must be deemed to be employed in the factory'.

(22) Now, it is clear that this additional requirement for being a 'worker' introduced by the cases is not fulfillled by the petitioner. No doubt he and the other booking sircars have to report for duty at the factory every morning. They have to prepare vouchers for the previous day's expenses and submit various papers, They also collect railway receipts and goods receipts from the store department and draw cash from the cashier. Yet, even according to letter issued by the company, a copy of which is attached to the petitioner's supplementary affidavit. all this is done by 11 A.M., at which time they leave the factory. The rest of their working day is spent outside the 'premises' or 'precincts'. It cannot, thereforee, be said that the major portion of their duty is performed inside the factory.

(23) In September 1966, a fourth booking sircar was allotted a house under the Housing Scheme. The petitioner's case was then before the Estate Officer. An application was moved on behalf of the petitioner for permission to lead additional evidence with the object of showing that this recent allotment had been made on the basis of a certificate granted by the Chief Inspector of Factories to the effect that the fourth booking sircar was a 'worker'. The Estate Officer rejected this application. Before me, this allotment was sought to be justified and distinguished on the ground that the allottee ordinarily worked in the office inside the factory premises as a peon in the accounts department, and was required to take over the duties of a booking sircar only when any one of the three of them was absent. To this the petitioner has rejoined that in fact all four are booking sircars, three of them on regular duty and one kept available as relief. He has cited a letter written by the company to the Chief Inspector of factories in which this is said. But, even if what the petitioner says be the truth, my decision remains unaffected. Essentially

they are all appointed as booking sircars, and the judgment whether they are 'workers' must rest on that. If, between times, one of them, by rotation or otherwise, works as a peon. the real position does not change. Besides, it was never before the case of the petitioner that he partially worked as a peon in the office inside the factory.

(24) The upshot of the discussion is that whilst, in my opinion. the petitioner's work is 'incidental to. or connected with' a manufacturing process, since that work is not done within the 'premises' or 'precincts' of the factory the petitioner is not a 'worker' under the Factories Act. thereforee, the petition fails, and is dismissed. Considering that the question raised in the case was not entirely free from difficulty, I will make no order as to costs.