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Court : Chennai

Decided On : Apr-17-1958

Reported in : (1958)2MLJ346

Appellant : S. Palaniappa Mudaliar

Respondent : Additional First Class Magistrate and ors.

Judgement :

ORDER

Balakrishna Ayyar, J.

1. The petitioner in all these cases is the same and he is the owner of a weaving concern in Karur. He has put up a thatched shed where he has installed a certain number of hand-loom. On these, towels and bed-sheets are manufactured. His office staff consists only of two clerks and they are the only permanent members of his establishment. The residents of the neighbourhood when they have time on their hands and when they feel inclined to do so, go to the petitioner's shed where they are supplied with yarn. These they weave into towels and bed-sheets and they are paid at certain agreed rates for the articles they so weave. These persons come in when they like and go out when they like. In other words, they work on the premises only when it suits them to do so. The principal occupation, of the residents of Karur is agriculture and weaving is only their spare-time occupation. They accept work only according to the time they are able to spare from their

agricultural avocations. No one is required to attend on any fixed day. In fact, they are free not to come at all. There are about a hundred similar establishments in Karur and a person who works in one establishment is at liberty to work in any other establishment.

2. In 1955, the petitioner took out a license for his premises under the Factories Act because he was threatened with prosecution if he failed to do so. All the establishments in Karur which are engaged in weaving towels and bed sheets formed an association called the Karur Weaving and Knitting Factory Owners' Association. This Association submitted memorials to the Chief Inspector of Factories and to the Government of Madras to exclude their establishments from the operation of the Factories Act, but these memorials were rejected.

3. Thereafter the Inspector of Factories began to insist on the observance of the rules framed under the Factories Act and the Payment of Wages Act, 1936. The petitioner protested that his concern did not fall under the purview of either of these Acts. But the Inspector of Factories ignored his protests and laid a complaint against him in the Court of the Additional First Class Magistrate, Kulitalai, for violation of Rule 103 framed under the Factories Act, the allegation being that he had failed to maintain a muster-roll in the prescribed form. The petitioner was also prosecuted under Rule 105 on the ground that he had failed to keep a bound inspection book containing the particulars prescribed in Form No. 79. He was also prosecuted for violation of Rule 79 read with Section 61, for violation of Rule 80 read with Section 62, for violation of Rule 87 read with Section 83, for violation of Rules 34 and 36 read with Section 18, and, for violation of Rules 40 and 62 read with Sections 19 and 42. He was further prosecuted for violation of Rule 6-A of the Madras Payment of Wages Rules and Rule 8 of the same Rules, the gravamen of the charges being that he failed to display notices specifying the maximum and minimum rates of wages payable to different classes of workers and the days on which the wages would be paid to them. Yet another prosecution launched against him was under Rule 5 of the Madras Maternity Benefit Rules, the charge being that he had failed to maintain a separate muster-roll of women workers.

4. These petitions have been filed for the issue of appropriate writs or directions restraining the Inspector of Factories, Tiruchirapalli, the Chief Inspector of Factories, Madras and the State of Madras from enforcing the provisions of the Factories Act, the Payment of Wages Act and the Madras Maternity Benefit Act against the petitioner.

5. The first question that has to be decided in these petitions is whether the persons working in the establishment of the petitioner are workers within the meaning of the Factories Act, 1948. Section 2(m) of the Factories Act defines 'factory' in these terms:

'factory' means any premises including the precincts thereof (1) where ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (XXXV of 1952), or a railway running shed.

6. Then we have got Section 2(l) which defines a 'worker' as follows:

'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.

7. There was no controversy as regards two facts: It was common ground that power was not being used on the premises of the petitioner; it was also common ground that there were days on which more than, twenty persons were working on the premises of the petitioner. The controversy turned on the meaning of the word 'employed' occurring in Clause (i) of Section 2. The contention of the State was

that the persons who worked on the premises of the petitioner were persons 'employed' within the meaning of that definition. The petitioner controverted that position. A number of cases were cited before me and I shall at once refer to them.

8. The earliest of these is reported in *State Government, M.P. v. Jiwa Bhai* A.I.R. 1953 Nag. 172. The facts there were as follows. The owner as also the manager of a rice mill were prosecuted for contravention of various provisions of the Factories Act. When the mill in question was inspected on 10th January, 1951, by the Inspector of Factories he found that (1) the register of workers was not properly maintained (2) three women were found working after 7 P.M. and (3) the mill was working 13 1/2 hours instead of 10 1/2 hours. So far as the three women were concerned the judgment shows:

Two of the three women in question are the wives of two of the factory workers and the third woman is the daughter of another factory worker. They had, it appears, brought food to these workers; and while they were consuming it, the three women deputised for them by placing 'dhan' in the mill.

It was contended on behalf of the owner and manager of the mill that those women were not acting as employees of the mill but were only doing what may be called a good turn for their male relatives. A Bench of the Nagpur High Court took the view that these women must be considered to be employed in the factory. According to the learned Judges the word 'employed' does not only connote employed on wages but also being occupied or engaged in some form of activity. This view is in consonance with the spirit of the Factories Act which strictly inhibits the employment of woman in a factory after 7 P.M. and before 6 A.M. With respect I find it difficult to agree with the view that these women can be considered to be persons employed within the meaning of the word in Clause (I) of Section 2 of the Factories Act.

9. As will presently appear, the word 'employed' means different things in different places. But, it seems to me that in the context of the Factories Act the word 'employed' means something more than doing some work inside the factory; there must be in addition at least one further element. There must be some sort of agreement between the person doing the work and the manager or the owner of

the factory. The women in the Nagpur case were really in the position of volunteers and I find it difficult to agree that a volunteer can be considered to be 'employed' in the factory. If the view of the learned Judges of the Nagpur High Court were correct, even a person who trespasses into a factory and there does any work of his own choosing would be a person employed within the meaning of Clause (l) of Section 2 even though the management may not be aware of his being in the premises and if they had known, would have disapproved of his presence in the place.

10. The next case is reported in *The State v. Alisaheb* : (1955) 11 LLJ 182 Bom . The respondent before the High Court was a manager of a factory called Pistol Bidi Factory. On 13th September, 1952, the Junior Inspector of Factories visited the premises and found 110 persons working there. He also found that various registers required to be maintained under the Factories Act were not maintained. He also found that sufficient drinking water as required by the rules had not been provided. He also found that the names of certain persons who were allowed to work in the factory were not shown in the register of workers. Following the decision of Bavdekar, J., the learned Magistrate acquitted the accused. The State appealed. The controversy before the High Court was whether it was necessary that the relationship of master and servant should exist before a person could be said to be employed within the definition of Clause (l) of Section 2 of the Factories Act. Dixit, J., observed.

On the whole, therefore, I am inclined to take the view that the expression 'employed' as used in Section 2(l) does not necessarily involve the relationship of master and servant. It may be that if one is employed upon the basis of wages, then in that case, there may be a relationship of master and servant, but there are other conceivable cases in which there may not be a relationship of master and servant and yet such persons would be workers.

11. That view was concurred in by Vyas, J.

12. The third case is reported in *Annamalai Mudaliar & Bros. v. R.P.F. Commissioner* (1955) 2 M.L.J. 271. That case was in respect of a weaving concern in Karur similar to that of the petitioner here. Rajagopalan, J., observed at

page 274:

What would be the position if these principles were applied to the facts in issue in this case? The owner of the factory had really no control over the time taken by the worker to complete the work the latter had undertaken to do for the remuneration specified. The worker was under no obligation to attend on any particular day or at any particular hour. It is no doubt true that the worker had to do his work within the precincts of the factory, and I presume the hours of work in the factory would be regulated under the Factories Act. But even during those hours no compulsion could be brought to bear upon the worker to do the work. Further as in *Smith's Case* L.R. (1911) A.C. 188, the owner of the factory was under no obligation to provide work for any given worker on any given day, that is, the owner was under no obligation to provide for a reasonable continuity of service or the work. These features would appear to militate against the existence of a jural relationship of master and servant.

13. It is possible to say in respect of that case that it was given under the Employees Provident Funds Act and that the definition of 'employee' in that Act which runs as follows:

'Employee' means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of a factory and who gets his wages directly or indirectly from the employer and includes any person employed by or through a contractor in or in connection with the work of the factory.

is different from the definition of 'worker' in Clause (l) of Section 2 of the Factories Act. But if we read the two definitions side by side it will be found that from the point of view from which we are now examining the matter there is only one important difference between the two definitions. The Employees' Provident Funds Act requires that the person should be employed for wages whereas the definition in the Factories Act does not require that he should be employed for wages. But the word 'employed' is common to both the definitions and the decision of *Rajagopalan, J.*, is important as showing how the word 'employed' should be construed not merely in relation to that Act but in similar situations.

14. I shall now refer to the decision in *Abdul Kader Sahib v. State of Madras* : (1956)1MLJ574 . There Rajagopala Ayyangar, J., had to deal with a case under the Industrial Disputes Act. The material facts there were as follows. The petitioner was an exporter of beedies. He used to purchase tobacco and store them in his godowns. This tobacco and the other raw materials required for making beedies, he used to hand over to some contractors in pursuance of written arrangements. These contractors were at their own expense and risk to manufacture beedies or cause them to be manufactured with the materials supplied by the petitioner. These contractors engaged certain employees for manufacturing beedies. The persons engaged by the contractor made claims for increased wages, etc., on the petitioner who denied his liability. The matter was then taken to the Labour Officer who reported to Government that the dispute was an industrial dispute which might be referred for adjudication. Rajagopala Ayyangar, J., ruled that the reference was incompetent because the workers were not the employees of the petitioner. His decision is accurately summarised in the head-note.

The existence of a relationship of employer and employee is necessary before there can be any industrial dispute between them within the meaning of the Industrial Disputes Act. Where the proprietor of a company employs contractors to manufacture and supply goods to him out of the raw materials provided by him the responsibility and cost of employing labour, etc., being on the contractor, though the license for the trade, etc., stood in the name of the proprietor, there is no relationship of employer and employee between the proprietor and the labourers employed by the contractor and as such a reference to arbitration of a claim by the workers for increased wages, etc., from the proprietor is without jurisdiction.

15. The next case I shall refer to is reported in *Massey Harris Ferguson Ltd. v. Piper* (1956) 2 All. E.R. 722. In that case the appellants were the occupiers of a factory which was subject to the Regulations for the generation, etc., of electrical energy. The appellants engaged a firm of contractors to paint the walls and crane work in the bay of the factory. Before the painter employed by the contractors started the work he asked crane driver employed by the appellants whether the electric power was turned off. The crane driver, not knowing that the switch near the bay had been disconnected, turned it into the 'off' position and informed the

painter that the power was switched off. The painter came into contact with the trolley wires and was electrocuted and killed. The appellants were prosecuted under Section 133 of the Act of 1937 on the ground that they had contravened Regulation I of the Regulations of 1908. The relevant statutory provision ran as follows:

Where the Minister of Labour and National Service is satisfied that any manufacture, machinery...used in factories is of such a nature as to cause risk of bodily injury to the persons employed, or any class of those persons, he may, subject to the provisions of this Act, make such special regulations as appear to him to be reasonably practicable and to meet the necessity of the case.

The appellants contended that they were not liable because the Regulations were made only for the benefit of persons employed by the occupier of the factory and that there had been no danger to the servants of the occupier. The Court overruled the objection and dismissed the appeal. They held that the word 'persons employed' included persons engaged in the work and not only persons employed by the occupier of the factory. If I may say so with respect this decision, in the context of the Regulations and the facts is undoubtedly right. The Court held that the benefit of the Regulations was available to all persons lawfully occupied in working inside the premises of the factory. The manifest purpose of the Regulation makes the meaning of the word plain.

16. The case reported in *Dhrangadhra Chemical Works Ltd. v. State of Saurashtra* : (1957)ILLJ477SC , arose under the Industrial Disputes Act. The appellants in that case were lessees of certain salt works in the former State of Dhrangadhra. Certain persons described as agarias worked for the appellants. In that locality the salt is manufactured not from sea water but from rain water which soaking down into the ground becomes impregnated with saline matter. The entire area is parcelled out into plots called pattas and each agaria is allotted a patta. If the patta is extensive it is allotted to two agarias who work as partners. The agarias then undertake the manufacture of salt.

The agarias work themselves with their families on the pattas allotted to them. They are free to engage extra labour but it is they who make the payments to

these labourers and the appellants have nothing to do with the same. The appellants do not prescribe any hours of work for these agarias. No muster-roll is maintained by them nor do they control how many hours in a day and for how many days in a month the agarias work. There are no rules as regards leave or holidays. They are free to go out of the works as they like provided they make satisfactory arrangements for the manufacture of salt.

In 1950 disputes arose between the agarias and the appellants as to the conditions of their employment. The Government of Saurashtra referred the dispute to the Industrial Tribunal. The appellants contended that the status of the agarias was that of independent contractors and not of workmen and that in consequence the State was not competent to refer their disputes for adjudication. The Court held that the agarias were workmen within the meaning of the term as defined in the Industrial Disputes Act and not independent contractors. The Court ruled:

The prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work. The nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition. The correct method of approach therefore would be to consider whether having regard to the nature of the work there was due control and supervision by the employer.

A person can be a workman even though he is paid not per day but by the job. If a person is a worker and not a contractor it makes no difference that this work is piece work. What determines whether a person is a workman or an independent contractor is whether he has agreed to work personally or not. If he has, then he is a workman and the fact that he takes assistance from other person would not affect his status.

17. In *Modern Match Industries v. L.A.T.I. Madras* : AIR1957 Mad688 , which was a case under the Industrial Disputes Act, Rajagopalan, J., repeated the conclusion

he himself had come to in an earlier decision and which has already been referred to:

In my opinion, unless the relationship of master and servant is proved a person who claims to be a workman within the meaning of Section 2(s) of the Act cannot be said to be employed within the meaning of the clause; and as I said, if he was not employed he would not be a workman as defined by that clause.

18. One last case remains to be referred, and, this is the decision of the Supreme Court in Criminal Appeal No. 93 of 1955-1 The first appellant before the Supreme Court was the managing partner of a firm which manufactured beedies. The second appellant was the manager of the factory. The management used to deliver tobacco and in some cases beedi leaves to certain persons called Sattedars. Some of these Sattedars maintained small factories of their own. Some others handed over tobacco and beedi leaves to outsiders who rolled beedies in their houses. The Sattedars collected the beedies and delivered them at the factory. On 9th December, 1952, the Inspector of Factories inspected the factory of the appellants and found nine persons working there. Seven of them were sorting beedies and packing them into bundles while the last two were bringing in the beedies for being warmed. The Chief Inspector prosecuted the appellants for contravention of Sections 62 and 63 of the Factories Act in that they had failed to maintain the register of adult workers, etc. The Magistrate convicted the appellants and the conviction was confirmed in appeal. A revision petition filed in the High Court failed. The appellants went on Special Leave to the Supreme Court. The Supreme Court set aside the convictions and held that Sattedars were independent contractors and not workmen within the meaning of the Factories Act:

We, therefore, hold that neither the Sattedars nor the coolies found by the Inspector to be working in the factory were workers, as they were not employed by the factory.

The principal ground on which that conclusion was rested was that the Sattedars were not under the control or subject to the supervision of the factory.

19. I may here make one general observation on the decisions that have been rendered under the Industrial Disputes Act. In that Act the word 'workman' is defined as follows:

'Workman' means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, and includes for the purposes of any proceeding under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air services of the Crown.

The word 'industry' is defined in Clause (j) as meaning

any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

A comparison of the definition of 'worker' in the Factories Act and 'workmen' in the Industrial Disputes Act will show that the words are not used in the same sense. From one point of view the definition of 'worker' in the Factories Act is wider because it includes persons who may not be receiving wages. In another sense the definition of 'workman' in the Industrial Disputes Act is wider because it includes persons employed in any industry whereas in order to be a worker within the meaning of the Factories Act he must be employed in any manufacturing process or in cleaning the machinery used in a manufacturing process or the premises in which a manufacturing process is carried on or other work incidental to manufacturing process. In other words, before a person can be a worker within the meaning of the Factories Act there must be some connection between him and a manufacturing process. That requirement does not exist in the Industrial Disputes Act. I am mentioning this merely to show that one must be careful before applying the decisions given under the Factories Act to decisions given under the Industrial Disputes Act and vice versa.

20. An examination of these decisions confirms what one was inclined to suspect at the outset, viz., that 'employed' is a word with a varying content of meaning and

that it signifies different things in different places. When we say for instance that the persons in a village are employed in agriculture we mean that agriculture is their principal occupation. On the other hand, when we say that X is employed by (we ordinarily imply that (remunerates X for his services and that he has a certain measure of control over his time and skill and labour. But the degree and extent of control may be nominal or extensive. When for instance a surgeon is employed by a municipality, the municipality may require him to work between certain hours or on so many days a week, but it cannot tell him how he should treat a particular patient or how he should perform a particular surgical operation. That would be entirely in the judgment of the surgeon and the municipality can give him no directions in that regard. But, because of that we cannot say that the surgeon is not employed by the municipality. At the other extreme there would be the case of a soldier who is employed by Government. In his case control goes to be utmost extent possible. He can be told not only what he should do, but how he should do it. He can be told how many buttons there should be on his shirt, how he should roll his patties and how he should hold his gun. In between lie infinite grades of control and supervision. But a certain amount of supervision or control is necessarily implied in the connotation of the word 'employed.'

21. Now, as I said before, we have to consider the meaning of the word 'employed' in the Factories Act. The employment there referred to is in connection with a manufacturing process which is carried on in a factory. Such processes normally call for a large measure of co-ordination between various sections inside a factory and between various individual workers even inside the same section. Otherwise it may happen that plant lies idle or that workmen are left with nothing to do. The management in a factory may therefore properly require that certain hands should do some particular work and not some other work. The management may also have to tell the hands how they are to do that work. The workers will have to be guided by the directions given by those placed in supervisory positions whether the directions relate to a manufacturing process or to cleaning the machinery or to doing any other work incidental to or connected with the manufacturing process. Regard being had to actualities a worker in a factory is normally liable to constant and close supervision.

22. What is the position in the present case? Even apart from the various statutes, statutory rules and notifications regarding holidays, hours of work and the like, the petitioner here cannot require any of the persons using the facilities on his premises to work between particular hours. He cannot require any one of them even to attend on any particular days. The worker can come any day he likes, work as long as he likes or as short as he likes and go away. He may work fast or he may work slow. The petitioner cannot tell him that he should work on towels and not on bed-sheets or vice versa. If the worker so pleases he can work on towels though the petitioner would prefer him to work on bed-sheets. And, more important, of all, the petitioner cannot prevent anybody from working for a competing manufacturer. Come when you like, go when you like, work when you like, stop when you like, work as fast as you like, work as slow as you like, work on what you like or not at all, that is the position of the workers vis-a-vis the petitioner. Such persons cannot, in my opinion, be said to be 'employed' by the petitioner within the meaning of Clause (l) of Section 2 of the Factories Act.

23. The learned Additional Government Pleader contended that as the petitioner has been prosecuted before a Magistrate it would be open to him to raise before the Magistrate all these contentions and that therefore this Court will not be justified in issuing the writs prayed for. This consideration may have justified the dismissal of the petitions at the stage of admission. This objection may have been good as a preliminary point, but, since the entire matter has been argued I do not think that it would be right to dismiss the petitions on this ground at this stage.

24. So far as Writ Petitions Nos. 1166 and 1167 are concerned, one other comment has to be made. W.P. No. 1166 of 1956 is directed against the prosecution instituted under the Payment of Wages Act. Now, in the Payment of Wages Act, 'factory' is defined as in Clause (j) of Section 2 of the Factories Act, 1934. That definition runs as follows:

'factory' means any premises including the precincts thereof whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, but does not include a mine subject

to the operation of the Indian Mines Act, 1923.

I would draw attention to the fact that in order to fall within this definition it is necessary that the manufacturing process should be carried on with the aid of power. In the instant case it is common ground that the looms installed by the petitioner are handlooms and not driven by power.

25. The prosecution covered by W.P. No. 1167 of 1956 is under the Madras Maternity Benefit Act. In that Act also the word 'factory' is defined in the way in which it is defined in the Factories Act of 1934.

26. Prima facie therefore it would appear that the petitioner stands outside those two Acts. The learned Additional Government Pleader however pointed out that since the Factories Act of 1934 has been replaced by the Factories Act of 1948, by reason of Section 8 of the General Clauses Act of 1897 (Central) we should have regard to the definition in the later Act and if we do that the case of the petitioner would fall within the scope of the Payment of Wages Act and the Madras Maternity Benefit Act. The differences between the Factories Act of 1934 and the Factories Act of 1948 including the definition of the word 'Factory' are so numerous and so important that I doubt whether it would be proper without enquiry into each case when and as it arises to carry over the definition of factory in the later Act into enactments which incorporate by reference the definition in the earlier Act. Since however it is possible to dispose of these petitions on the grounds I have already given it is not necessary for me to express any final opinion on the matter I have just mentioned.

27. In my opinion the persons working on the premises of the petitioner are not persons 'employed' within the meaning of that word in Clause (I) of Section 2 of the Factories Act. It follows that the petitioner is entitled to the reliefs he has prayed for. The rule nisi is in every case made absolute. The petitioner will get his costs. Advocate's fees, one set Rs. 250.