

Punjab National Bank

Vs

Ghulam Dastagir

Civil Appeal No. 2110(L) of 1977

(V. R. Krishna Iyer, Jaswant Singh JJ)

11.01.1978

JUDGMENT

KRISHNA IYER J. -

1. Social justice is the signature tune of the Constitution of India and this note is nowhere more vibrant than in industrial jurisprudence. From this point of view we are in full sympathy with Shri Khera who has argued the workman's case with insistence, urging us not to exercise our appellate powers to upset the award of the Central Government Industrial Tribunal, Calcutta. The Industrial dispute was between an individual driver (the respondent) and the Management (the Punjab National Bank, Calcutta Branch) and the reference was as to the justifiability of the termination of the services of Shri Ghulam Dastagir, driver of the said bank with effect from May 27, 1975. The reference assumes what really is the most contested point in the case as to whether Shri Ghulam Dastagir was the driver of the said Bank. By definition, a workman means "any person employed in any industry" and so the basic jurisdictional issue is as to whether the respondent-workman was a person employed by the Bank. If he was, his termination was illegal. If he was not, the reference to the industrial dispute was without jurisdiction. The Industrial Tribunal examined the matter at some length and came to the conclusion that the driver was employed by the Bank. Consequentially, a direction for reinstatement together with back wages was made.

2. The Management has come up in appeal by special leave under Article 136 and Dr. Anand Prakash has argued that on the peculiar facts and circumstances present in the case, it was impossible to reach the conclusion that the driver concerned was employed by the Bank. On the contrary, it was obvious that the employer was the Area Manager who had been given a personal allowance of Rs. 200 by the Bank to enable him to employ a personal driver of his own. Of course, the Bank took care to insist that Rs. 200 was the maximum allowance payable and if the expense incurred by the Area Manager (Shri K. P. Sharma) was less than Rs. 200 the allowance would be reduced to the actual.

3. Shri Khera has taken us through the leading case on the point in Shivanandan Sharma v. The Punjab National Bank Ltd. ((1956 1 SCR 1427 : AIR 1955 SC 404 : (1955) 1 LLJ 688 : 8 FJR 150) and the subsequent decisions, which we may broadly describe as the beedi cases, such as in D. C. Dewan Mohideen Sahib & Sons v. United Bidi Workers' Union ((1964) 7 SCR 646 : AIR 1966 SC 370 : (1964) 2 LLJ 633 : 26 FJR 238) . There is no doubt that the proposition laid down in Shivanandan Sharma is unexceptionable law and the crucial test in most cases is as to who exercises control and supervision over the workman. Lord Porter in the course of his speech in the judgment in Mersey Docks & Harbour Board v. Goggins & Griffith Liverpool Ltd. (1947 AC 1), expressed himself in words which were relied upon by Shri justice Sinha in Shivanandan Sharma :

Many factors have a bearing on the result. Who is paymaster, who can dismiss, how long the alternative service lasts, what machinery is employed, have all to be kept in mind. The expressions used in any individual case must always be considered in regard to the subject-matter under discussion but amongst the many tests suggested in think that the most satisfactory, by which to ascertain who is the employer at any particular time, is to ask who is entitled to tell the employee the way in which he is to do the work upon which he is engaged.

It is clear that the direction and control are the telling factors to decide as to whether the driver in the present case is the employee of the bank. This test does not exclude other factors also, and indeed as Lord Macmillan, in the aforesaid case, rightly stressed the question in each case turns on its own circumstances and decisions in other cases are rather illustrative than determinative. To crystallise criteria conclusively is baffling but broad indications may be available from decisions. The 'beedi cases' turn on the reality of ' independent contractors' standing in between the Management and the beedi workers. This court, in many such cases discovered that there was a common practice of using deceptive devices and the so-called independent contractors were really agents or workers of the Management posing as independent contractors for the purpose of circumventing the Factories Act and like statute which compel managements to meet certain economic and social obligations towards the workers. We have no doubt that if in this case there was evidence to show any colourable device resorted to by the Bank, our conclusion would have been adverse to the Management. On the other hand, the evidence adduced before the Tribunal, oral and documentary, leads only to one conclusion that the Bank made available a certain allowance to facilitate the Area Manager, Shri Sharma privately to engage a driver. Of course, the jeep which he was to drive, its petrol and oil requirements and maintenance, all fell within the financial responsibility of the Bank. So far as the driver was concerned, his salary was paid by Shri Sharma as his employer who drew the same granted to him by way of allowance from the Bank. There is nothing on record to make out a nexus between the Bank and the driver. There is nothing on record to indicate that the control and direction of the driver vested in the Bank. After all, the evidence is clearly to the contrary. In the absence of material to make out that the driver was employed by the Bank, was under its direction and control, was paid his salary by the Bank and otherwise was included in the army of employees in the establishment of the Bank, we cannot assume the crucial point which remains to be proved. We must remember that there is no case of camouflage or circumvention of any statute. It is not unusual for public sector industry or a nationalised banking institution to give allowances to its high-level officers leaving it to them to engage the services of drivers or others for fulfilling the needs for which the allowances are meant. In this view, we are clear that the award fails as it is unsupportable. We, therefore, reverse the award.

4. We wish to make two comments. It is quite conceivable that the facts in the case of employment of other drivers may be different. If other materials are available regarding the terms and conditions of service regarding the direction and control of the drivers and regarding other indicia of employment, the conclusion may be different. We cannot, therefore, dogmatize generally as to the nature of employment of other drivers under this Bank or other industry even where features of allowance may be present. We mention this, because, as Lord Macmillan pointed out in the case we have already referred to, facts vary from case to case. Evidence is shaped in each case and conclusions are reached on the basis of the facts and evidence of each case. There is no invariable proposition where fluid facts are involved.

5. We are impressed with Shri Khera's appeal to us that the system of allowances in a country where there is unemployment may lead to individual injustice with an exploitative edge. It is likely that if

the Bank had to employ drivers for their vehicles, the terms and conditions would have been much higher but in the private sector individual drivers may be hired on lower pay. This is not a desirable tendency for a public sector undertaking like a nationalised Bank. We hope that the possibility of abuse of the system of drivers' allowances and the obligation of the public sector undertakings to be model employers will lead to a change in the approach of our nationalised banks and other public sector undertakings towards this issue of employing persons on a private basis by senior officers and the management itself giving some small sum by way of allowances in lieu of procuring such services. A fair and straightforward method would be for the Bank or like institution to engage its own driving staff. It is also important to remember that the vehicles belong to the industry and if drivers hired on a private basis by officers are allowed to use such vehicles, there may be potential damage and reckless use. In the long run, both from the point of view of employment morality and preservation of institutional property, it may be wise to revise the approach to the issue like the one we are confronted with. Of course, on the facts in this case we have decided what we consider is the only conclusion possible. Even so, this does not preclude the banking institutions and like undertakings adopting a different policy which we consider will be commendable.

6. In the course of the arguments we had indicated to Dr. Anand Prakash, as he presented the case of the Management, that our whole approach may not turn purely on technicalities of evidence but on considerations of social justice. He readily responded to the spirit in which we put this aspect to him. On behalf of the Management, Dr. Anand Prakash gave us an assurance that this driver, though not an employee of the Bank, would be paid ex gratia a sum of Rs. 7500 (less a sum of Rs. 897.24 which has already been paid on an earlier occasion). The appellant-Bank will further see that, within three months from today, the respondent-driver is absorbed in the personal service of one of other of the higher officers of the Bank in or around Calcutta on a salary of not less than Rs. 250. The driver respondent will be given intimation by registered notice about this offer of absorption. And, if he does not report within one month of the receipt of such notice, this part of the assurance will lapse.

7. We record these observations and assurances while we allow the appeal. Dr. Anand Prakash draws our attention to the fact that Rs. 1000 has been already paid under an order of this Court on an earlier occasion by way of costs to the workman. We fix the total costs payable to the workman at Rs. 2000 and although the decision has gone adverse to him, since the earlier order of this Court is that costs will be paid to the workman irrespective of the result, the balance of Rs. 1000 will also be made good by the Management. This amount will be payable within six weeks when the workman calls on the Bank's regional office at Calcutta.

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