

S. K. Verma

Vs

Mahesh Chandra and Another

Civil Appeal No. 2659 (NI) Of 1980

(D. A. Desai, A. Varadarajan, O. Chinnappa Reddy JJ)

02.09.1983

JUDGMENT

CHINNAPPA REDDY, J. –

1. The Central Government, the appropriate Government within the meaning of Section 2(a) of the Industrial Disputes Act, referred the following dispute for adjudication to the Industrial Tribunal-cum-Labour Court, New Delhi : "Whether the action of the management of the Life Insurance Corporation of India, New Delhi in dismissing Shri S. K. Verma, Development Officer in Jullunder Branch of the Corporation, with effect from February 8, 1969 is justified ? If not, to what relief is the workman entitled ?" The Life Insurance Corporation promptly raised a preliminary objection regarding the maintainability of the reference on the ground that Shri S. K. Verma was not a workman.

2. There appear to be three preliminary objections which have become quite the fashion to be raised by all employers, particularly public sector corporations, whenever an industrial dispute is referred to a tribunal for adjudication. One objection is that there is no industry, a second that there is no industrial dispute and the third that the workman is no workman. It is a pity that when the Central Government, in all solemnity, refers an industrial dispute for adjudication, a public sector corporation which is an instrumentality of the State instead of welcoming a decision by the Tribunal on merits so as to absolve itself of any charge of being a bad employer or of victimisation etc. should attempt to evade decision on merits by raising such objections and never thereby satisfied, carry the matter often times to the High Court and to the Supreme Court, wasting public time and money. We expect public sector corporations to be model employers and model litigants. We do not expect them to attempt to avoid adjudication or to indulge in luxurious litigation and drag workman from court to court merely to vindicate, not justice, but some rigid technical stand taken up by them. We hope that public sector corporations will henceforth refrain from raising needless objections, fighting needless litigations and adopting needless postures.

3. The Industrial Tribunal upheld the preliminary objection and ruled that Development Officers in the Life Insurance Corporation of India are not workmen within the meaning of Section 2(s) of the Industrial Disputes Act. The reference was therefore held to be incompetent. A writ petition filed by S. K. Verma was dismissed in limine by the Delhi High Court. S. K. Verma has come before us under Article 136 of the Constitution.

4. 'Workman' was originally defined by Section 2(s) of the Industrial Disputes Act, 1947 as meaning

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"any person employed (including an apprentice) in any industry to do any skilled manual or clerical work for hire or reward and includes, for the purpose of any proceedings 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 service of the Crown".

The definition underwent a substantial amendment in 1956 and this is how it stands now :

"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, whether the terms of employment be expressed 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 Army Act, 1950, or the Air Force Act, 1950 or the Navy (Discipline) Act, 1934; 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 five 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 words 'any skilled or unskilled manual, supervisory, technical or clerical work' are not intended to limit or narrow the amplitude of the definition of 'workman'; on the other hand they indicate and emphasise the broad sweep of the definition which is designed to cover all manner of persons employed in a industry, irrespective of whether they are engaged in skilled work or unskilled work, manual work, supervisory work, technical work or clerical work. Quite obviously the broad intention is to take in the entire 'labour force' and exclude the 'managerial force'. That, of course, is as it should be.

5. It is trite to say that the Industrial Disputes Act is a legislation intended to bring about peace and harmony between labour and management in an industry and for that purpose, it makes provision for the investigation and settlement of industrial disputes. It is, therefore, necessary to interpret the definitions of 'industry', 'workman', 'industrial dispute', etc. so as not to whittle down, but to advance the object of the Act. Disputes between the forces of labour and management are not to be excluded from the operation of the Act by giving narrow and restricted meanings to expressions in the Act. The Parliament could never be credited with the intention of keeping out of the purview of the legislation small bands of employees who, though not on the managerial side of the establishment, are yet to be denied the ordinary rights of the forces of labour for no apparent reason at all. In *Workmen v. Indian Standards Institution* [AIR 1976 SC 145 : (1976) 2 SCR 138 : (1975) 2 SCC 847 : 1976 SCC (L&S) 16 : 1976 Lab IC 137 : (1975) 48 FJR 225], this Court had occasion to point out : [SCC para 1, p. 851 : SCC (L&S) p. 20]

..... it is necessary to remember that the Industrial Disputes Act, 1947 is a legislation intended to bring about peace and harmony between management and labour in an 'industry' so that production does not suffer and at the same time, labour is not exploited and discontented and, therefore, the tests must be so applied as to give the widest possible connotation to the term 'industry'. Whenever a question arises whether a particular concern is an 'industry', the approach must be broad and liberal and not rigid or doctrinaire. We cannot forget that it is a social welfare legislation we are interpreting and we must place such an interpretation as would advance the object and purpose of the legislation and give full meaning and effect to it in the achievement of its avowed social objective.

So we adopt a pragmatic and not a pedantic approach and we proceed, in considering the question whether development officers in the Life Insurance Corporation are workmen, to first consider the broad question on which side of the line they fall, labour or management and then to consider whether there are any good reasons for moving them over from one side to the other.

6. One does not have to be carried away by the appellation 'development officer' as the Industrial Tribunal appears to have been. After all, what is in a name ? Notwithstanding the glorified designation, we must look to the nature of his duties to discover what precisely a development officer is ? The Life Insurance Corporation of India (Staff) Regulations classifies the staff into four categories as follows :

Class I - Officers

Class II - Development Officers

Class III - Supervisory and Clerical Staff

Class IV - Subordinate Staff.

It is seen that Development Officers while classified separately from 'Supervisory and Clerical Staff' are also classified separately from 'Officers'. Schedule I of the Staff Regulations shows the appointing and disciplinary authorities against the various posts. In the case of even the lowest posts of class I, it is the Zonal Manager that is the appointing and disciplinary authority, while in the case of Development Officers, it is the Divisional Manager (that is, the officer next below in rank to Zonal Manager) that is the appointing and disciplinary authority. Even in the case of Superintendents of Class III, it is the Zonal Manager that is the appointing and disciplinary authority. Development Officers and employees of class III and class IV other than Superintendents are placed on par and in their case, it is the Divisional Manager that is the appointing and disciplinary authority. Schedule II gives the pay scales of the employees of the Corporation. The scale of pay of the lowest paid class I officer is Rs. 530-40-1050. The scale of pay of a Superintendent in class III is Rs. 330-25-680-30-740. The scale of pay of Development Officer Grade I is Rs. 230-15-320-20-360-EB-20-400-25-550-EB-30-760. The scale of pay of a Development Officer Grade II is Rs. 170-10-220. The scale of pay as well as the authorities competent to appoint and take disciplinary action indicate that the appellation 'development officer' is no more than a glorified designation. Development Officers are separated from 'officers' strictly so called and are generally placed on a par with subordinate and clerical staff.

7. Shri G. L. Sanghi, learned counsel for the Life Insurance Corporation, told us that development officers are also entitled to be paid a certain commission in addition to the salary and that in the case of some development officers, quite fantastic sums have been paid to them by way of commission. It may be so. A few of the development officers may have been very fortunate in that the agents working within their jurisdiction had done excellent business and that entitled them to earn a good commission. But we are told there are more than six thousand development officers and nothing has been said about the average commission earned by them or the commission earned by the present petitioner himself.

8. The nature of the duties of 'development officers' are to be gathered from the letter of appointment issued to the petitioner. We have set out below some of the more important terms of employment :

3. Whole-time employment. - You shall devote your full time and energy to organise the Life Insurance business of the Corporation.

You shall not be a member of any political organisation and stand for election as a candidate to any of the Elective. Bodies such as Panchayats, Municipalities, District Local Boards, University Senate or other similar bodies, Legislative Assemblies or Parliament or as a Director of any of the Joint Stock Companies or Banking Institutions (including Corporative Banks except Corporation's Staff Co-operative Credit Societies).

4. Headquarters and area. - Your Headquarters will be at Jullunder City and the area in which you will confine your operations is stated hereinbelow :

Jullunder City, Cantt. and Thana Sadar on non-exclusive basis.

The Corporation may in its sole discretion curtail or enlarge the area of your operations or may appoint one or more other Field Officers in the area allotted to you.

5. Transfer. - You will be liable to be transferred to any place in India. From the date of your transfer you will not receive credit of the business canvassed by agents introduced by you or allotted to you as mentioned hereinafter. Subject to such conditions as may be stipulated you will receive credit of business canvassed by the aforesaid agents before the date of your transfer.

6. Duties and obligations. - Your duties are mainly to organise and develop the business of the Corporation in the area allotted to you, and for that purpose to recruit active and reliable agents drawn from different communities and walks of life on such terms as may be stipulated by the Corporation from time to time and to train them up both canvassing new business and for rendering such post-sale services as the policy-holders may be in need of. In addition to this, the existing agents who may be allotted to you hereafter should be well enthused and assisted by you. You will, whenever called upon to do so, assist the Branch Manager or the Assistant Branch Manager in the investigation of claims.

We are enclosing herewith for your information and study a draft letter which will be issued by the Corporation to new agents who may be selected by you. You should also study the leaflet entitled "Hint to Agents" referred to therein, a copy of which is also enclosed herewith. The Corporation has issued a Manual for Agents and you should make it a point to study the Manual carefully.

After an agent has continuously worked for the Corporation for a period of five years and over and

the Branch Manager feels he is no more in need of the services of a Field Officer he may be treated as a Direct Agent even if he has been recruited and trained by you.

7. Tours. - If you are required by your Branch to undertake tours, you should chalk out a programme of the same and get it approved by your Branch Manager two months in advance. When you proceed on tour, you should adhere to the tour programme as far as possible, and if any change becomes necessary you should advise about it to the Branch Manager, stating the reasons for the change in the tour programme.

The main object of the tours shall be to procure new business to activate the existing agents, to appoint new agents where such appointments are necessary and to tap the potentiality of the area. You will also contact the policy-holders who have allowed their policies to lapse and help them to revive their policies.

You should see that the average cost of the tour does not work out to more than Rs. 2 per thousand sum assured of completed business.

The travelling expenses will be paid to you in accordance with the Rules of the Corporation framed from time to time governing the payment of such allowances. You will be intimated the current rules in this behalf separately.

Immediately on completion of a tour and within a period not exceeding three days you will submit your report, in the prescribed manner, with the relevant statements and the bill of expenses to the Branch Office.

8. Advances deposits. - In respect of business procured by you during the tour you should see that advance deposits, at least equal to full installment of first premiums, are collected from the proponents and that all such amounts are remitted to the Branch Office immediately by M.O., or if there is a Corporation's collection account in the town with any bank, you should deposit the amounts immediately to the credit of the Corporation, giving full details to the bank regarding the manner in which these amounts are to be credited. If you collect any amount as deposit towards the first premium you should always issue receipts therefor in prescribed form to the parties concerned. If you permit any of your agents either recruited by you or allotted to you to conduct the medical examination of a proponent without first realising an advance deposit and if such a proposal does not result in a policy the medical fees unnecessarily incurred will be debited to your account.

9. Record of daily work. - You are required to make daily entries in the prescribed form which shall give a complete record as well as the results of your daily business calls. This record must be presented to the Assistant Branch Manager (Administration) or the Branch Manager or to the Assistant Branch Manager (Development) for inspection at least once a week or at more frequent intervals, if called upon to do so.

When you are on tour you will make the entries in the Daily Record and on your return to the headquarters you will submit such record for inspection as stated above.

If your headquarters are not the same as the Branch Office headquarters, you will submit the Daily Records in such manner as you may be asked to by the Branch Manager.

You are also requested to fill in your Plan Book in consultation with your Branch Manager or Assistant Branch Manager (Development) and see that the targets of work you set for yourself

therein are reached.

10. Collection of premiums. - Unless you are expressly authorised by the Corporation, you have no authority to collect premiums save the deposits towards the first premium as stated hereinabove.

11. Targets. - You are required as outlined in your Plan Book :

(a) to secure through agents recruited by you and allotted to you a minimum life business of Rs. 5 lacs yielding first year's schedule premium income of not less than Rs. 30,000 through at least 100 policies;

(b) to recruit and train 25 new agents;

(c) to supervise and motivate the agents allotted to you if any and see that the average output of these agents allotted to you is increased progressively from year to year and,

(d) to open 6 new centres for development.

We hope you will be able to exceed these targets as your actual categorisation to be made after the expiry of the probationary period will depend upon the fulfilment of these targets and your record of post-sales service rendered to the Corporation's policy-holders in the area allotted to you.

On the basis of the targets outlined in your Plan Book and your achievements in terms of new business, the recruitment and training of agents and motivating old agents to increased activity, the Corporation reserves the right to review the results of your efforts any time and to take such action as may be called for in the circumstances.

12. General. - You have no authority to accept risks or to bind the Corporation in any way. You are not permitted to advance premiums on behalf of the policy-holders or to have policies assigned to you or to any member of your family (i.e. wife, parents and children) by policy-holders who are not related to you. You are strictly forbidden to have any financial dealings with the agents of the Corporation.

It is understood that your wife, your son, brother or any close relation of yours or any other member of your family living with you is not eligible for appointment as an agent of the Corporation. If you operate any benami agency in the name of any person or if you are found to pass on any business to any of your agents and derive any financial benefit for yourself from this, your services will be liable to be terminated.

You are not permitted to work directly or indirectly for any insurer carrying on general insurance business; you are also not permitted to work as an agent for the National Savings Organisation.

9. A perusal of the above extracted terms and conditions of appointment shows that a development officer is to be a whole time employee of the Life Insurance Corporation of India, that his operations are to be restricted to a defined area and that he is liable to be transferred. He has no authority whatsoever to bind the Corporation in any way. His principal duty appears to be to organise and develop the business of the Corporation in the area allotted to him and for that purpose to recruit active and reliable agents, to train them to canvass new business and to render post-sale services to policy-holders. He is expected to assist and inspire the agents. Even so he has not the

authority to appoint agents or to take disciplinary action against them. He does not even supervise the work of the agents though he is required to train them and assist them. He is to be the 'friend, philosopher and guide' of the agents working within his jurisdiction and no more. He is expected to stimulate and excite the agents to work, while exercising no administrative control over them. The agents are not his subordinates. In fact, it is admitted that he has no subordinate staff working under him. It is thus clear that the development officer cannot be any stretch of imagination be said to be engaged in any administrative or managerial work. He is a workman within the meaning of Section 2(s) of the Industrial Disputes Act.

10. The order of the Industrial Tribunal and the judgment of the High Court are set aside and the matter is remitted to the Industrial Tribunal for disposal according to law. The Industrial Tribunal may dispose of the reference within three months from the date of receipt of this order. The respondent workmen is entitled to his costs.

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