

Arkal Govind Raj Rao

Vs

Ciba Geigy of India Ltd. Bombay

Civil Appeal No. 2638 of 1980

(D. A. Desai, V. B. Eradi, V. Khalid JJ)

06.05.1985

JUDGMENT

D. A. DESAI J. -

1. The appellant Mr. Arkal Govind Raj Rao joined service with M/S. Ciba Geigy India Ltd. (employer for short) as Stenographer-cum-Accountant with effect from January 18, 1956. On January 1, 1966. He was appointed as Assistant and continued to render service in that post till his services came to be terminated on October 10, 1972. The termination of service led to an Industrial dispute being raised and ultimately the Deputy Commissioner Labour (Administration). Bombay made a reference to the Labour Court at Bombay for adjudicating upon the Industrial dispute involving the question of the validity and legality of the order of termination of service. The reference also required the Labour Court to enquire whether the appellant is to be reinstated with full back wages and continued in service with effect from October 10, 1972.
2. Numerous preliminary objections were raised by the employer, amongst them being one that the appellant is not a workman within the meaning of the expression in the Industrial Disputes Act, 1947 (Act for Short).
3. Evidence was led by both the parties and numerous documents were placed on record. On appreciation of evidence the Labour Court held that even though the appellant was doing some clerical work, he was also doing supervisory and administrative work and other work of checking bank reconciliation etc. which was not clerical work and therefore he was not a workman within the meaning of the expression in the Act but in fact he was an officer of the Covenanted Contractual Staff Cadre. Accordingly, an award was made rejecting the reference.
4. The writ petition filed by the appellant in the Bombay High Court was dismissed in limine. Hence this appeal by special leave.
5. Broadly accepting the appreciation of evidence and the findings of facts recorded by the trial court, could it be said that the conclusion reached by drawing impermissible inference from the evidence would justify a finding that the appellant was not a workman within the meaning of the expression in the Act. The expression "Workman" as defined in Section 2(s) of the Act reads as under :

"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 express or implied, and for the purpose

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 Army Act, 1950 (46 of 1950), or the Air Force Act, 1950 (45 of 1950), or the Navy (Discipline Act, 1934 (34 of 1934) : or

#(ii)(iii)##

(iv) who being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercise, 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.

6. Where an employee has multifarious duties and a question is raised whether he is a workman or someone other than a workman the Court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to do some other work, may not necessarily be in tune with the basic duties these additional duties cannot changes the character and status of the person concerned. In other words, the dominant purpose of employment must be first taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of the person. Appreciation of evidence by Labour Court cannot be faulted but it landed itself into an erroneous conclusion by drawing impermissible inference from the evidence and overlooking the primary requirement of the principal and subsidiary duties of the appellant.

7. The Labour Court recapitulated the documentary evidence as also the oral evidence of Sitaram, the Sub-Manager in the Finance Department of the Company examined on behalf of the employer. In para 14 of the award the Court made made a very important observation that, "there is not much dispute that Shri Raj Rao (appellant) was doing all the work narrated by Shri Sitaram. Most of this work, in my opinion, was just clerical work". The Court also refereed to some of the admissions made by Shri Sitaram in his cross-examination which led the Court to observe that all the duties performed by the appellant were clerical duties and that the appellant was performing these duties as a clerk. The Court then concluded that in general, the duties of the appellant mentioned by Shri Sitaram were more or less clerical and at best it can be said that they were performed by an efficient and experienced clerk.

8. The Labour Court then look note of the fact that in 1966 appellant was promoted as Assistant and that he was designated as Group Leader. Ex. 16/6 was referred to as specifying the duties of the Group Leader of Group II. The Court concluded that the aforementioned document would show that the appellant was a Group Leader and that he accepted that position by putting his initials on the document. The inference drawn by the Court from this document is that the work of Group Leader is undoubtedly mainly supervisory though he is also required to work himself. However in the view of the Labour Court at this stage the duty of the appellant became primarily supervisory. While it is true that the appellant was working as Group Leader and, therefore, over and above his work he also supervised the work of persons working in his group, it is erroneous to draw the inference that his duties became mainly supervisory. The definition of the expression workman hereinbefore extracted clearly shows that the person concerned would not cease to be a workman if he performs some supervisory duties but he must be a person who must be engaged in a supervisory capacity. Even as a Group Leader of Group II the evidence produced would show that primarily he continued to work

and perform the same duties which have been found to be clerical but along with others in the group he also incidentally looked after the work of other members of the group who were only two in number. It is, therefore, not possible to concur with the inference drawn by the Labour Court contrary to the record that while functioning as Group Leader of Group II even though appellant was performing his clerical duties the incidental supervisory duties performed by him would make the appellant a person employed in supervisory capacity. Let it be recalled that in Group II over and above the appellant, there were only two other persons, namely, Shri Swami and Shri Sawant. The distinction drawn between the duties performed by Swami and Sawant and that of the appellant was that as Group Leader the appellant was to ensure that the work allotted to the Group is completed within the scheduled time. In other words, work distribution among three persons of a clerical nature would not cease to be clerical because one of the three is asked to see that all the three of them performed the duties to complete the task. The Labour Court completely misled itself and observed that since then the duties of the appellant became supervisory.

9. The Labour Court then proceeded to examine another circumstance to determine the status of the appellant. It was submitted on behalf of the employer that the appellant had also to do work of preparing bank reconciliation statements. It was observed that the reconciliation of statements cannot be regarded as skilled or unskilled, manual or clerical but one requiring creativeness, imagination and application of mind and therefore, any one doing such work would not be a workman. This approach betrays lack of understanding of what constitutes bank reconciliation statements. When a party opens an account, it goes on making credits and withdrawals. The bank maintain a recurring account. The party opening the account for its continuous watch may open a corresponding account on its own books. In order to see that there are no errors in credits and withdrawals and the balance is drawn at regular intervals, reconciliation of figures in the accounts of both the parties is undertaken. This is one of the most mechanical types of clerical work. However, the Labour Court fell into an error when after taking note of the fact that the appellant was asked to prepare bank's reconciliation statements, looked into the decision in *Kirloskar Brothers Ltd. v. Labour court* (1976 Lab IC 918 : 49 FJR 41 : ILR (1976) 1 Del 565), wherein preparation of budgetary statement applied into the case of a man who had nothing to do with preparation of budgetary statements but merely to do the wholly mechanical work of bank's reconciliation statements and recorded a wholly perverse conclusions. This is a serious error apparent on the face of the record committed by the Labour Court which has influenced our thinking.

10. The Labour Court is para 25 of its decision observed that there are numerous documents which positively show that the appellant was performing supervisory and administrative duties. A number of letters were produced by the employer to show that the appellant was doing some administrative work such as putting up indent for printed stationery which bears the endorsement that the appellant requested his three colleagues Shri Sawant, Shri Khedhar and Shri Pradhan to give their requirements to him. If the department collects the details from every employee working in the department and one of them undertakes the same, it hardly Makes any difference in the status and character of the employee. There are other letters especially Exs. 16/33 to 16/38 by which the appellant had directed other clerks to take note of certain documents and report them to him. This cannot be said to be either managerial or supervisory function but in fact clerical in as much as he as part of his duty asked other clerks to take note of certain circulars and return the documents to him because that was part of his duty. Firm reliance appears to have been placed on letter Ex 16/31 which purports to be an extract and of the minutes of the meeting of Board of Directors dated June 2, 1970. The appellant made an endorsement on this extract and requested other colleagues to take note of the same. This is the work of the clerk attached to the department connected with meeting of the Board. There are similar other documents but in our opinion they would hardly support the case

of the employer at all.

11. It was next urged before the Labour Court that the benefits received by the officers and clerks materially differ. The Labour Court has drawn up a chart in para 30 of its award. The chart has left us guessing and we fail to appreciate how the comparison between an assistant and a clerk would make the assistant an officer. Difference in salary is hardly decisive, nor the designation of a clerk by itself is decisive. Focus has to be on the nature of the duties performed and in this behalf the Labour Court itself was of the opinion that primarily for all practical purposes the duties performed by the appellant were of a clerical nature.

12. Lastly it was submitted that the appellant belonged to what is called Covenanted Contractual Staff Cadre. The expression 'covenanted' has an imperial flavour such as covenanted civil service. This small company seems to have adopted a nomenclature which was prestigious under the British Rule. Clerks and Assistants could hardly be elevated to the rank of officer by being mis-called covenanted contractual staff cadre. These high-sounding nomenclatures are adopted not only to inflate the ego of the employer but primarily for avoiding the application of the Act. They apart from being misleading are not in tune with free India's Constitution culture. We remain unimpressed by these high-sounding labels.

13. Having examined in meticulous details the award of the Labour Court we are satisfied that the Tribunal after rightly holding that primarily the duties of the appellant are of a clerical nature misled itself into an erroneous conclusion by drawing an impermissible inference and recorded a finding which we regret to style as perverse. In fact, the Labour Court ignored the correct perspective in evaluating the evidence viz., that when primary or basic duties of a person are shown to be clerical but some stray assignments are made to create confusion, the gloss has to be removed to pursue the reality and that is all what we have done. The appellant was undoubtedly a workman within the meaning of the expression of the Act.

14. Before we conclude we must refer of two decisions on which reliance was placed on behalf of the appellant. In *S. K. Verma v. Mahesh Chandra* ((1983) 3 SCR 799 : (1983) 4 SCC 214 : 1983 SCC (L&S) 510), this Court examined whether a Development Officer employed by the Life Insurance Corporation is a workman within the meaning of the expression in the Act. After referring to the multifarious duties assigned to a Development Officer, this court concluded that the principal duty of the appellant in that case appeared to be to organise and develop the business of the Corporation in an area allotted to him and for that purpose to recruit active and reliable agents and to train them to canvass new business and to render best service to policy-holders. Even though the Development Officer had power to recruit agents and supervise their work yet his duties were held to be primarily clerical. The contention that it was administrative or managerial was rejected. The case before us is much stronger than that of a Development Officer.

15. In *Ved Prakash Gupta v. Delton Cable India (P) Ltd.* ((1984) 2 SCC 569 : 1984 SCC (L&S) 281) it was contended that the appellant was not a workman. This Court after taking note of the fact that the work of the appellant consisted of looking after the security of the factory and its property by deputing watchmen working under him to work at the factory gate or sending them to watch-towers or around the factory or to accompany visitors to the factory and making entries in the visitors' register as regards the visitors and in the concerned registers as regards materials entering or going out of the premises of the factory held that it would not make the nature of duties either managerial or supervisory. What to say of the appellant in the present appeal who is an Assistant.

16. The test that one must employ in such a case is what was the primary, basic or dominant nature of duties for which the person whose status is under enquiry was employed. A few extra duties would hardly be relevant to determine his status. The words like managerial or supervisory have to be understood in their proper connotation and their mere use should not detract from the truth.

17. Accordingly, the appeal succeeds and is allowed and the award of the Labour Court declaring the appellant not to be a workman is quashed and set aside. The judgment of the High Court is also quashed and set aside. The matter is remanded to the Labour Court for disposal according to law. The Labour Court must dispose of the matter within a period of three months from today and it shall not entertain any more preliminary objections even if raised, on behalf of the employer.

18. The employer shall pay salary for a period of six months at the rate of last pay drawn by the appellant and the acceptance of it would be without prejudice to any contention on either side. The respondent-employer shall also pay the cost of the appellant which is quantified at Rs. 3000.

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