National Engineering Industries Ltd.

Vs

Shri Kishan Bhageria and Others

Civil Appeals Nos. 3521-23 of 1987

(Sabyasachi Mukharji, G. L. Oza JJ)

11.11.1987

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. After hearing parties and after considering the relevant documents, additional as well as original, we grant leave to appeal in these matters. The appeals are disposed of by the judgment herein.

2. Since prior to 1st January, 1978 the respondent 1 Shri Kishan Bhageria was working under the appellant-company as an Internal Auditor on a monthly salary of Rs. 1186.60 per month. The appellant alleged that the respondent started absenting himself from January 28, 1978 and as such was not entitled to any salary for any period beyond January 28, 1978. The said respondent was thereafter placed under suspension on March 30, 1978. The respondent on May 4, 1978 filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter called 'the Act') claiming the total sum of Rs. 4,746.40 on account of salary from January 1, 1978 to April 30, 1978 at the rate of Rs. 1,186.60 per month. The appellant-company objected. The main ground of objections was that the respondent was not a workman. On or about November 9, 1978 there was an order dismissing the respondent from service. The respondent thereafter on 2nd January, 1979 filed an application under Section 28-A of the Rajasthan Shops & Establishments Act, 1958 (hereinafter called 'the Rajasthan Act'). The said application was dismissed on 31st of July, 1979 on the ground of limitation. The Labour Court on 2nd August, 1979 held that the respondent was doing clerical duties and as such was workman under the Act and he was entitled to Rs. 2,060/- as salary from 1st January 1978 to March 9, 1978. The appellant filed Writ Petition No. 765 of 1979 in the Rajasthan High Court against the order of the respondent also filed another writ petition being Writ Petition No. 1091 of 1979 for declaration that he was entitled to receive Rs. 2,066.98 as salary from March 9, 1978 to April 30, 1978. There was thereafter a reference under Section 10 of the Act on August 8, 1980 arising out of the dismissal of the respondent. The appellant filed another writ petition being Writ Petition No. 1623 of 1980 challenging the order of reference. All these aforesaid writ petition were disposed of by the aforesaid writ petitions were disposed of by the learned Single Judge of the Rajasthan High Court on March 16, 1982 holding that the respondent was not a workman. The other contentions urged before the learned Single Judge were not considered by the Divisional Bench in the view it took later on. On October 17, 1986 the Division Bench reversed the judgment of the learned Single Judge and held that the respondent was a workman. Two writ petitions of the appellant were dismissed and the writ petition of the respondent was allowed. Aggrieved by the aforesaid orders the appellant has come up in these appeals before this Court.

2. The main question which requires consideration in these appeals is whether the respondent was workman or not. For the determination of the question it is necessary to refer to Section 2(s) of the

Act which defines "workman" and states that it means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of any dispute. But sub-clause (iii) does not include any person who is employed mainly in a managerial or administrative capacity and sub-clause (iv) does not include any person who being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per month or duties attached to the office or by reason of the powers vested in him, discharges functions mainly of a managerial nature. In view of the said definition, we are concerned here with the question whether the respondent was a workman as not being employed in any supervisory capacity. There is no controversy that the said respondent is not employed in any managerial or administrative capacity.

4. In this case before we deal with the facts and the relevant authorities of this Court it may be appropriate to refer to a decision of P. B. Mukharji, J. of the Calcutta High Court as the learned Chief Justice then was in McLeod and Co. v. Sixth Industrial Tribunal, West Bengal (AIR 1958 Cal 273). There the learned Judge observed that whether a person was a workman within the definition of the Industrial Disputes Act was the very foundation of the jurisdiction of the Industrial Tribunal. The Court further observed that in order to determine the categories of service indicated by the use of different words like "supervisory", "managerial", "administrative", it was necessary not to import the notions of one into the interpretation of the other. The words such as supervisory, managerial and administrative are advisedly loose expressions with no rigid frontiers and too much subtlety should not be used in trying to precisely define where supervision ends and management begins or administration starts. For that would be theoretical and not practical. It has to be broadly interpreted from a common sense point of view where tests will be simple both in theory and in their application. The learned Judge further observed that a supervisor need not be a manager or an administrator and supervisor can be a workman so long as he did not exceed the monetary limitation indicated in the section and a supervisor irrespective of his salary is not a workman who has to discharge functions mainly of managerial nature by reasons of the duties attached to his office or of the powers vested in him. In that case the learned Judge further held that a person in charge of a Department could not be ordinarily be a clerk even though he may not have power to take disciplinary action or even though he may have another superior officer above him. It was further observed that distribution of work may easily be the work of a manager or an administrator but "checking" the work so distributed or "keeping an eye" over it is certainly supervision. It is reiterated that a manger or administrator's work may easily include supervision but that does not mean that supervision is the only function of a manager or an administrator.

5. Bearing in mind the aforesaid indication, it would be necessary to discuss some decisions of this Court. In All India Reserve Bank Employees' Association v. Reserve Bank of India ((1966) 1 SCR 25 : AIR 1966 SC 305 : 36 Com Cas 165), this Court dealing with certain types of employees observed : "These employees distribute work, detect faults, report for penalty, make arrangements for filling vacancies, to mention only a few of the duties which are supervisory and not merely clerical". At page 46 of the report Hidayatullah, J. as the learned Chief Justice then was observed that the work in a bank involved layer upon layer of checkers and checking is hardly supervision but where there is a power of assigning duties and distribution of work there is supervision. There the court referred to a previous decision in Llyods Bank Ltd. v. Pannalal Gupta ((1961) 1 Lab LJ 18 : AIR 1967 SC 428), where the finding of the Labour Appellate Tribunal was reversed because the legal inference from proved facts was wrongly drawn and it was reiterated that before a clerk could claim a special allowance payable to a supervisor, he must prove that he supervises the work of some others who are in a sense below him. It was pointed out by Hidayatullah, J. that mere checking

of the work of others is not enough because this checking was a part of accounting and not of supervision and the work done in the audit department of a bank was not supervision.

6. In Burmah Shell Storage & Distribution Co. of India v. Burmah Shell Management Staff Association (AIR 1958 Cal 273), this Court observed that a workman must be held to be employed to do that work which is the main work he is required to do, even though he may be incidentally doing other types of work. Therefore, in determining which of the employees in the various categories are covered by the definition of 'workman' one has to see what is the main or substantial work which he is employed to do. In Punjab Co-operative Bank Ltd. v. R. S. Bhatia ((1975) 4 SCC 696 : 1975 SCC (L&S) 394 : AIR 1975 SC 1898), it was held that the accountant was supposed to sign the salary bills of the staff even while performing the duties of a clerk. That did not make the respondent employed in a managerial or administrative capacity. The workman was, therefore, in that context rightly held as a clerk.

7. In D. P. Maheshwari v. Delhi Administration ((1983) 3 SCR 949 : (1983) 4 SCC 293 : 1983 SCC (L&S) 527 : AIR 1984 SC 153), the question whether a person was performing supervisory or managerial work was the question of fact to be decided bearing in mind the correct principle. The principle therefore is, one must look into the main work and that must be found out from the main duties. A supervisor was one who could bind the company to take some kind of decision on behalf of the company. One who was reporting merely as to the affairs of the company and making assessment for the purpose of reporting was not a supervisor. See in this connection Black's Law Dictionary, Special Deluxe, Fifth Edition. At page 1290, "Supervisor" has been described, inter alia, as follows :

> In a broad sense, one having authority over others, to superintend and direct.
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> The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgment.

8. Reference may be made to the observations of this Court in Ved Prakash Gupta v. M/s. Delton Cable India (P) Ltd. ((1984) 2 SCC 569 : 1984 SCC (L&S) 281) There on facts a Security Inspector was held to be a workman. At page 575 of the report this Court referred to the decision in Llyods Bank Ltd. v. Panna Lal Gupta ((1961) 1 Lab LJ 18 : AIR 1967 SC 428) and also the observations of this Court in Hindi Construction and Engineering Co. Ltd. v. Workmen ((1965) 1 Lab LJ 462 : AIR 1965 SC 917). In that case the nature of the duties performed by the appellant showed that the substantial part of the work of the appellant consisted of looking after the security of the factory and its property by deputing the 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 as visitors and in the concerned registers as regards materials entering into or going out of the premises of the factory. There it was found that he had no power to appoint.

9. In the instant case the evidence has been summarised by the Division Bench. Reference may be made to pages 65, 73, 80, 84 to 94, 95, 96 and 97 of the paper book which indicate the nature of duties performed by the respondent 1 herein. His duties were mainly, reporting and checking up on

behalf of the management. A reporter or a checking clerk is not a supervisor. The respondent therein does not appear to us doing any kind of supervisory work. He was undoubtedly checking up on behalf of the employer but he had no independent right or authority to take decision and his decision did not bind the company. In that view of the matter keeping the correct principle of law in mind the Division Bench has come to the conclusion taking into consideration the evidence recorded before the Labour Court that the respondent is a workman and not a supervisor. That conclusion arrived at in the manner indicated above cannot, in our opinion, be interfered with under Article 136 of the constitution. It is not necessary for our present purpose to set out in extenso the evidence on record as discussed by the Division Bench. Our attention was, however, drawn by the counsel for the respondent to certain correspondence, for instance the letter at page 65 of the paper book bearing the date May 14, 1976 where the respondent reported that certain materials were lying is stores department in absence of any decision. It was further reiterated that on inspection of the pieces those pieces were found cracked. Similarly, our attention was drawn to several other letters and we have perused these letters. We are of the opinion that the Division Bench was right that these letters only indicated that the report was being made of the checking done by the respondent. A checker on behalf of the management or employer is not a supervisor.

10. In the aforesaid view of the matter the conclusion of the Division Bench that respondent 1 is a workman has to be sustained. We do so accordingly.

1. The next question that arises in this case is whether the Act would apply or the Rajasthan Act would apply. In this connection Section 28-A of the Rajasthan Act is material. It enjoins that no employer shall dismiss or discharge from his employment any employee who has been in such employment continuously for a period of not less than 6 months except for a reasonable cause and after giving such employee at least one month's prior notice or on paying him one month's wages in lieu of such notice. Sub-section (2) of Section 28-A gives every employee, so dismissed or discharged, right to make a complaint in writing in the prescribed manner to a prescribed authority within 30 days of the receipt of the order of dismissal or discharge. Sub-section (3) of Section 28A provides that the prescribed authority shall cause a notice to be served on the employer relating to the said complaint, record briefly the evidence produced by the parties, hear them and make such enquiry as it might consider necessary and thereafter pass orders in writing giving reasons therefor. Section 37 of the Rajasthan Act reads as follows :

37. Saving of certain rights and privileges. - Nothing in this Act shall affect any rights or privileges which an employee in any establishment is entitled to on the date this Act comes into force under any other law, contract, custom or usage applicable to such establishment or any award, settlement or agreement binding on the employer and the employee in such establishment, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.

12. It has to be borne in mind that Section 2-A of the Act was amended to permit individual workmen to ask for a reference in the case of individual dispute. This amendment was assented to by the President on 1st December, 1965. The Rajasthan Act received the assent of the President on July 14, 1958. On March 8, 1972 Chapter 6-A including Section 28-A was inserted in the Rajasthan Act. Therefore the material provision of the Rajasthan Act is the subsequent law. Under Article 254(2) of the Constitution if there was any law by the State which had been reserved for the assent of the President and has received the assent of the President, the State law would prevail in that State even if there is an earlier law by the Parliament on a subject in the Concurrent List. It appears that both of these Acts tread the same field and if there was any conflict with each other, then Section 28-A of Rajasthan Act would apply being a later law. We find, however, that there is no

conflict. The learned Single Judge of the Rajasthan High Court in Poonam Talkies, Dausa v. Presiding Officer, Labour Court, Jaipur (S.B. Civil Writ Petition No. 1206 of 1985 decided on June 9, 1986 reported at 1986 Raj LR 1042), so (sic). That decision has been upheld by the Division Bench of the Rajasthan High Court in Writ Appeal No. 231/86. The Division Bench of the High Court in the instant appeal relying on the said decision held that there was no scope for any repugnancy. It appears to us that is cannot be said that these two Acts do not tread the same field. Both these acts deal with the rights of the workman or employee to get redressal and damages in case of dismissal or discharge, but there is no repugnancy because there is no conflict between these two Acts, in pith and substance. There is no inconsistency between these two Acts. These two Acts, in our opinion, are supplemental to each other.

13. In Deep Chand v. State of U.P. (1959 Supp 2 SCR 8 at 43 : AIR 1959 SC 648) Subba Rao, J., as the learned Chief Justice then was, observed that the result of the authorities indicated was as follows :

Nicholas in his Australian Constitution, 2nd Edition, page 303, refers to three tests of inconsistency or repugnancy :

> (1) There may be inconsistency in the actual terms of the competing statutes;
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> (2) Though there may be no direct conflict, a State law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive code; and
>
> (3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject matter.

14. Quoting the aforesaid observations, this Court in M/s. Hoechst Pharmaceuticals Ltd. v. State of Bihar ((1983) 4 SCC 45, 87 : 1983 SCC (Tax) 248) speaking through A. P. Sen, J. exhaustively dealt with the principles of repugnancy and observed that one of the occasions where inconsistency or repugnancy arose was when on the same subject matter, one law would be repugnant to the other. Therefore, in order to raise a question of repugnancy two conditions must be fulfilled. The State law and the Union law must operate on the same field and one must be repugnant or inconsistent with the other. These are two conditions which are required to be fulfilled. These are cumulative conditions. Therefore, these laws must tread on the same field and they must be repugnant or inconsistent with each other. In our opinion, in this case there is a good deal of justification to hold that these laws, the Industrial Disputes Act and the Rajasthan Act, tread on the same field and both laws deal with the rights of dismissed workman or employee. But these two laws are not inconsistent or repugnant to each other. The basic test of repugnancy is that if one prevails the other cannot prevail. That is not the position in this case. Learned counsel on behalf of the appellant, however, contended that in this case, there had been an application as indicated above under Section 28-A of the Rajasthan Act and which was dismissed on ground of limitation. Shree Shankar Ghosh tried to submit that there would be inconsistency or repugnancy between the two decisions, one given on limitation and the other is any relief is given under the Act. We are unable to accept this position, because the application under Section 28-A of the Rajasthan Act was dismissed not on merit but on limitation. There is a period of limitation provided under the Rajasthan Act of six months and it may be extended for reasonable cause. But there is no period of limitation as such provided under the Industrial Disputes Act. Therefore, that will be curtailment of the rights of the workmen or employees under the Industrial Disputes Act. In the situation Section 37 declares that

law should not be construed to curtail any of the rights of the workmen. As Poet Tennyson observed - "freedom broadens from precedent to precedent" so also it is correct to state that social welfare and labour welfare broadens from legislation to legislation in India. It will be a well settled principle of interpretation to proceed on that assumption and Section 37 of the Rajasthan Act must be so construed. Therefore in no way the Rajasthan Act could be construed to curtail the rights of the workman to seek any relief of to go in for an adjudication in case of the termination of the employment. If that is the position in view of the provisions 6 months' time in Section 28-A of the Rajasthan Act has to be ignored and that cannot have any binding effect in as much as it curtails the rights of the workman under the Industrial Disputes Act and that Act must prevail. In the premises, there is no conflict between the two Acts and there is no question of repugnancy.

15. The High Court was, therefore, right in holding that the respondent was a workman and in granting relief on that basis. Before we conclude we note that our attention was drawn to certain observations of this Court that interference by the High Court in these matters at the initial stage protracts adjudication and defeats justice. Reference was made to certain observations in D. P. Maheshwari v. Delhi Admn. ((1983) 3 SCR 949 : (1983) 4 SCC 293 : 1983 SCC (L&S) 527 : AIR 1984 SC 153) But as mentioned hereinbefore in this case, the interference was made by the High Court not at the initial stage.

16. In the premises, we are of the opinion that the High Court was right in the view it took. These appeals, therefore, fail and are accordingly dismissed. There will, however, be no order as to costs. The reference before the Tribunal should proceed as expeditiously as possible.

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