

Management of M/s. Puri Urban Co-operative Bank

Vs

Madhusudan Sahu and another

Civil Appeal No. 1813 of 1992

(L. M. Sharma, M. M. Punchhi JJ)

29.04.1992

JUDGEMENT

PUNCHHI, J.

1. In this matter challenge has been made to the judgment and order dated 14-3-1991 of the Orissa High Court passed in OJC No. 1483 of 1985. Notice was issued to Madhusudan Sahu, respondent, the person concerned, indicating that the matter shall be disposed of at the notice stage. Despite presumptive service, no one appeared on his behalf. We heard only learned counsel for the appellant.

2. Special leave is granted.

3. The respondent, Madhusudan Sahu (hereafter referred as "Sahu") was engaged as an appraiser by Puri Urban Co-operative Bank, the appellant herein, pursuant to an advertisement dated January 10, 1978. As an appraiser his job was to be available in the Bank, when called, for performing the services of weighing and testing the gold ornaments offered to be pledged to the Bank to secure loans. It was stipulated in the advertisement that the appraiser's commission (termed wages by the High Court) shall be 25 paise per hundred rupees of loan but in no case shall remuneration be less than Rs. 2/-per appraisal. Besides the said commission/ wages the appraiser could claim no other sum for his services. As stipulated Sahu's services were terminable at any time. His services were terminated by the Bank on 27-8-1979. He successfully sought a reference from the Government to the Labour Court. The Labour Court went into the matter and vide Award dated March 27, 1985, set aside the order of termination terming it as illegal and unjustified, ordering Sahu's reinstatement in service. He was held disentitled to back wages since those were not capable of a precise computation and involved an element of speculation. The appellant-Bank as well as Sahu approached the High Court of Orissa challenging correspondingly the Award of the Labour Court in so far as it had gone against their respective interest. The High Court affirmed the view of the Labour Court, which has given cause to the appellant-Bank to move this Court.

4. The High Court has taken the view, as did the Labour Court that Sahu is a worker as defined in S. 2(s) of the Industrial Disputes Act, 1947 and on that basis alone entitled to reinstatement. The word 'workman' has been defined therein to mean any person, including an apprentice, 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. That does not include inter alia persons employed in supervisory capacity drawing wages exceeding Rs. 1,600 / - per mensem etc. Due to the wide amplitude of the definition of the word 'workman' the High Court endorsed the view of the Labour Court that Sahu was a workman and thus came within the definition, and was

thus entitled to the protection of the Industrial Disputes Act, 1947.

5. It was contended on behalf of the appellant that the appellant may be a workman as commonly understood, but work of appraising in the context is partly manual, as goes the weighing part, and partly mental, as goes the appraising part, wholly or partially skilled and/ or technical and wages/ commission for that work may fall within the expression 'hire or reward'. Still, it is maintained, that unless there was a jural relationship of master and servant between Sahu and the Bank, he could not be termed as a workman, for the purposes of the Industrial Disputes Act, 1947. It stands established that Industrial Law revolves on the axis of master and servant relationship and by a catena of precedents it stands established that the prima facie test of relationship of master and servant is the existence of the right in the master to supervise and control the work done by the servant (the measure of supervision and control apart) 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. See in this regard D. C. Works Ltd. v. State of Saurashtra, AIR 1957 SC 264 at p. 268 and Chintaman Rao v. State of M.P., AIR 1958 SC 388 at p. 392. And this principle holds the field.

6. Now engaging Sahu was to require him to weigh the ornaments brought in the Bank for pledging and to appraise their quality, purity and value. He could be directed to do this but not the manner in which he shall do it. That was left to him exclusively, as it depended on his skill, technique and experience. Besides under the terms of engagement he was required to, and he did, execute a bond indemnifying and holding himself responsible to the Bank for all his acts and commissions as an appraiser, and be accountable for the loss sustained by the Bank on account of undervaluation of the gold pledged with it. These terms inhered in the Bank the power to warn him and to remind him that he was not expected to be negligent in his duty. Still there was a fair element of freedom though coupled with responsibility, for Sahu in the manner in which he could do his work.

7. Therefore, we are of the view that though Sahu claims to be workman as commonly understood, he was not 'employed' as such, so as to establish a master and servant relationship, which could warrant a re-union in the event of disruption, by the intervention of the Labour Court. The allegation of the Bank before the Labour Court, as well as here, that Sahu is a reputed goldsmith who had remained gainfully employed so as to disentitle him any back wages, which appealed to the Labour Court, has remained uncontroverted before us. It also remains uncontroverted before us that the Bank has, on its approved list, other such like appraisers and it is not obligatory for the Bank to allot work to Sahu or any other, at all. Additionally, in no event can he ask for work, or periodic remuneration or idling wages. These particulars, not by themselves, but in the totality of circumstances indicate lack of master and servant relationship.

8. In view of these jurisdictional facts, as gathered by us, it is difficult to uphold the view of the High Court and that of the Labour Court that any master and servant relationship stood established in engaging Sahu as an appraiser of ornaments.

9. For these reasons this appeal is allowed, setting aside the orders of the High Court of Orissa and that of the Labour Court, but without costs. Appeal allowed.

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