

LAHORE HIGH COURT

S.L. Kapoor

Vs

Emperor

(Blacker, J.)

16.06.1937

ORDER

Blacker, J.

1. The petitioner, Mr. S.L. Kapoor, is in occupation of certain premises which form a part of the Delhi Junction Railway Station and are used as a Hindu refreshment room. These premises belong to the N.W. Railway Administration and the petitioner was up till 15th February 1937 occupying them in pursuance of an agreement between himself and the N.W. Railway by which he used them to provide meals for Hindu passengers by that railway.

2. This agreement was terminated by the railway on 15th February and notice was given to him to vacate the premises. He did not do so and an order was obtained by the railway from the Additional District Magistrate, Delhi, under Section 138, Railways Act, the relevant portions of which run as follows:

If a railway servant is discharged and he refuses or neglects, after notice in writing for that purpose, to deliver up the Railway Administration...any building...belonging to the Railway Administration and in the possession of such railway servant...any Magistrate of the First Class may, on application made by or on behalf of the Railway Administration, order any police officer, with proper assistance, to enter upon the building and remove any person found therein and take possession thereof...and to deliver the same to the Railway Administration....

3. On a petition being filed in his Court by the petitioner the learned Sessions Judge of Delhi has recommended the setting aside of the order on the broad ground that "by no stretch of meaning could the petitioner in this case be held to be a railway servant".

4. The learned Sessions Judge has apparently held that the petitioner is, or was, an independent contractor, and that therefore in law the relations of servant and master cannot exist between him

and the Railway Administration. But even if for the sake of argument the petitioner be "considered to be an independent contractor and not a servant in the sense in which that term is understood in common law", he can still be a "railway servant" if he comes within the statutory definition of those words contained in the special Act known as the Railways Act.

5. Section 3(7), Railways Act, runs as follows:

Railway servant' means any person employed by a Railway Administration in connexion with the service of the railway.

5. It was held in *Joseph v. J.L. Lammond*¹, that the service of a railway was not limited to the running of trains but had a much wider meaning. I think that there can be no doubt whatever that the provision of meals for travellers is part of the service of a railway. It remains to be decided whether a person in the position of the petitioner is "employed" by the railway or not.

6. I can see no justification for the view that a contractor cannot be said to be 'employed'. In fact the word appears to me to be the most natural one to use. A reference to Halsbury's Laws of England (Edition of 1911), Vol. 20, at p. 264, paras. 618 and 619, shows that the word is freely used to denote the relationship between a person who wants a work done and an independent contractor whom he gets to do it for him. It seems to me therefore that in a very large proportion of the cases in which a person contracts with the railway to perform a certain service on its behalf he can be said to be employed by the railway to do that service and so comes within the definition of Section 3(7) of the Act. The present, in my opinion, is clearly one of those cases.

7. It seems to me moreover quite clear that in this case even independently of the statutory definition the petitioner stands towards the railway in the position of a servant and not of an independent contractor. I have been referred to no Indian cases which are directly in point, and it is necessary again to refer to Halsbury's Laws of England for the principles governing the case.

8. The question of the relationship between master and servant is discussed in paras. 131 (foll) at pp. 64-70 of the volume of that work to which I have referred above. It is there stated that in all cases the relation imports the existence of power in the employer not only to direct what work the servant is to do but also the manner in which the work is to be done. The distinction between a contractor and a servant is more clearly stated in para. 133 which follows the decision of the Court of appeal in *Sadler v. Henlook*², In this case it was made clear that the test is whether or not the employer retains the power not only of directing what work is to be done but also of controlling the manner of doing the work. If a person can be overlooked and directed in regard to the manner of doing his work such person is not a contractor. Moreover the method of remuneration makes no difference.

9. To apply those principles to the present case it is necessary to examine the agreement between the petitioner and the respondent railway. It makes no difference that in that instrument the Agent

of the railway is described as lessor and the petitioner as lessee. What has to be seen is the terms of the instrument itself. By that instrument the railway, which has taken upon itself the duty of providing meals for Hindu passengers, permitted the petitioner to perform that service on their behalf, paying him no remuneration in money and receiving from him no consideration. His

¹ AIR 1921 Bang 373

²(1835) 4 E1 & BI 570

remuneration was the profit which accrued from the service of meals, and instead of the railway taking that profit and paying him a wage or commission they allowed him to take it all directly. But it is clear from the agreement that the petitioner had not got a free hand in the performance of this service. In Clause 5 he was directed as to the times when he should open and close the refreshment room. In Clause 6 he was directed to keep a complaint book which was open to the inspection of the railway officers and in Clause 20 he was bound to pay a penalty if any complaint was held by the Divisional Superintendent to be justified. In Clause 7 he had to dress his servants in accordance with the special instructions to be issued by an officer of the railway and by Clause 8 he was liable to be directed as to the pattern of crockery which he should use. In Clause 14 he was even liable to direction as to the pictures, notices and advertisements which he displayed in the refreshment room.

10. It is, therefore, clear that he was both "overlooked" and directed in the performance of his work and that he must be deemed to have been a servant and not an independent contractor.

11. I am accordingly in no doubt that he was a railway servant within the meaning of Section 3(7), Railways Act. The termination of his service by the railway under Clause 21 of the agreement amounts to his discharge within the meaning of Section 138 of the Act, and he is therefore liable to dispossession of the premises which he was occupying as a servant of the railway.

12. I, therefore, find myself unable to accept the recommendation of the learned Sessions Judge and I dismiss the petition. I also discharge the stay order passed by the learned Sessions Judge.

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