
exchequer. Larger public interest must outweigh the individual's interest. Thus, we find no ground to accept the petitioner's prayer. It is consequently declined.

(25) No other point has been raised.

(26) In view of the above, we find no merit in this writ petition. It is, consequently, dismissed. However, there will be no order as to costs.

R.N.R.

Before S.S. Sudhalkar and Mehtab S. Gill

SANJEEV KUMAR GUPTA—*Petitioner*

versus

P.O.L. C-II, FARIDABAD AND ANOTHER—*Respondents*

C.W.P. No. 13663 of 1999

1st November, 2000

Industrial Disputes Act, 1947—S. 2(s)—Termination of an Accounts Executive—The duties of an Accounts Executive to prepare vouchers/details of cheques—Not conferred managerial/administrative powers—Whether covered under the definition of 'workman' as provided u/s 2(s) of the Act—Held, yes—A person shall not cease to be 'workman' if he performs some supervisory duties—Nature of work cannot be adjudged from the allowances a man is getting.

Held, that if we see the definition of 'workman' as a whole, supervisory work is one of the duties which the workman has to do. There are other types of work such as clerical, technical, operational etc. For those types of work, there is no limit so far as earning capacity is concerned for exclude them from the definition of workman. It will be dangerous to adjudge the nature of work from the allowances a man is getting. Nature of work is allotted to him by virtue of his post. The petitioner was doing the work of preparing vouchers/details of cheques and that he had no managerial/administrative powers. It is not shown as to what specific the work of the petitioner was. This being so and from the work allegedly allotted to the post of the petitioner, the conclusion that has to be drawn is that the petitioner was a 'workman' as

covered under section 2(s) of the Act. Therefore, the award of the Labour Court is set aside. Petitioner is held to be a workman.

(Paras 5 and 11)

C. M. Chopra, *Advocate for the Petitioner*

A. S. Chadha, *Advocate for Respondent No. 2*

JUDGMENT

S. S. Sudhalkar, J

(1) This petition has been filed by the employee challenging the award of the Labour Court dated 7th April, 1999 (copy Annexure P/6),— *vide* which the Labour Court held that the petitioner is not covered under the definition of “workman” as provided under Section 2(s) of the Industrial Disputes Act (hereinafter referred to as “the Act”) and disposed of the reference on the preliminary finding, however, advising the petitioner to seek remedy in the Civil Court.

(2) The petitioner contends that he was appointed as Senior Accounts Assistant on 29th October, 1988,— *vide* appointment order (Annexure P/1) by M/s Kelvinator of India Ltd. According to the petitioner, he completed his probation period of six months and was thereafter confirmed. It is the contention of the petitioner that in the year 1995 Kelvinator of India Ltd. was taken over by M/s Whirlpool of India Ltd. i.e. respondent No. 2 with all assets, liabilities, men, material, management, administration and functional control. The service conditions of the petitioner remained the same. It is further the contention of the petitioner that his post was re-designated as Accounts Executive,— *vide* order dated 16th October, 1995 w.e.f. 1st August, 1995 by respondent No. 2 with the same status, position, duties and in the same department of accounts. The petitioner was removed from service on 3rd September, 1996. He challenged the termination and gave a demand notice and ultimately the dispute was referred by the Labour Court which gave the findings as mentioned above.

(3) Notice of motion was issued and respondent No. 2 has appeared and contested the claim of petitioner by filing a written statement. According to respondent No. 2, the total emoluments of the petitioner were Rs. 4,586 per month, the basic pay being Rs. 2,990 per month. It is their contention that the petitioner was lastly working as Accounts Executive since 1st August, 1995 and was

drawing the salary of Rs. 5104.60 per month and as an Accounts Executive his job to reconcile and correct the Accounts which are essentially the jobs in the nature of administrative and or supervisory in nature. It has further averred that any Accounts Executive, in the exercise of his duties, would carry out the corrections and reconciliations of Accounts and may also prepare cheques which is a job pertaining high degree of confidentiality and responsibility because the cheques are to be issued to the suppliers and therefore, these functions are not clerical in nature. It is further averred that the petitioner, when he was appointed as Accounts Assistant in the Grade 08 his emoluments were Rs. 1621.25 per month and he was promoted as Accounts Officer in Grade 09 with the salary of Rs. 1852.17. It is further contended that while being posted as Executive in the Executive Cadre, his monthly emoluments were enhanced to Rs. 4,586. In addition to that, he was entitled to medical re-imbusement, Leave Travel Assistance (LTC) and that these emoluments are not admissible to Grade 10 officers of the Company which is the last grade for Officers. It has further contended that if the respondent was to take duties of clerical nature from the petitioner, then the petitioner would not have been promoted to such a high post.

(4) Definition of "Workman" is in Section 2(s) of the Act, which is as under :—

"Workman" means 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, 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 had led to that dispute, but does not include any such person :—

- (i) xx xx xx xx
- (ii) xx xx xx xx
- (iii) who is employed mainly in managerial or administrative capacity ; or
- (iv) Who, being employed in a supervisory capacity,

draws wages exceeding one thousand six hundred ruprees per mensem or exercises, either by the nature of the duties attached to the office or by person of the powers vested in him, functions mainly of a managerial nature." (emphasis supplied).

(5) If the petitioner was employed in a supervisory capacity, he would have stood excluded from the definition of the word "Workman" in view of the emoluments, he was receiving. However, if we see the definition of "workman" as a whole, supervisory work is one of the duties which the workman has to do. There are other types of work such as clerical, technical, operational etc. For those types of work, there is no limit so far as earning capacity is concerned for excluding them from the definition of workman. The arguments advanced before us are on the point whether the duties of the petitioner were clerical or were executive in nature.

(6) Counsel for the petitioner has cited the case of *Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd., Bombay (1)*. It has been held therein that where an employee has multifarious duties and the question is raised whether he is a "workman" or some one other than the workman, the Court must find out what are if the primary and basic duties of the person concerned and he is incidentally asked to do some other work, it may not necessarily be in tune with the basic duties; these additional duties cannot change the character and status of the person concerned. It is further observed therein that 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. It is further observed that a person shall not cease to be a "workman" if he performs some supervisory duties but he must be a person who is engaged in a supervisory capacity.

(7) In the present case, MW-I Shri D. S. Bhatia has stated in his deposition, copy of which has been produced at Annexure P/7, that the petitioner was re-designated as Executive. The hierarchy of the officers, according to the witness is as under :—

Director of Accounts

Sr. Manager (Accounts)

Manager (Accounts)

Dy. Manager (Accounts)

Sr. Executive (Accounts)

Executive (Accounts)

Junior Executive.

(8) It has been stated by MW-I in his cross-examination that the nature of petitioner's duty was to look after suppliers' ledger etc. and had independent supervision. He used to prepare cheques but was not authorised to sign the cheques and prepare vouchers and would sign on the vouchers. He does not know as to whom the cheques were to be submitted for signatures. He has further stated that junior Executive does clerical work in the Company. According to this witness Executives duties were to supervise the ledger and to reconcile. He did not know who did the verification work. He has further stated that in the company only Manager is authorised to take disciplinary action and on appointments, leave etc. He has further stated that the petitioner has no power or authority to appoint/terminate any body or take disciplinary action. MW-2 Shri D.P. Sharma, in his deposition (copy Annexure P/8) has stated that the petitioner was not a clerk but his duty was to prepare voucher, details of payment of cheques. He has no managerial or administrative powers and he did not have any supervisory powers. So far as the work of preparing the bank reconciliation statement is concerned, in the case of Arkal Govind Raj Rao (supra) it is observed in para No. 9 of the Judgment as under :—

"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 the 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, anyone 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 maintains 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 banks reconciliation statements, looked into the decision in Kirloskar Brothers Ltd. Vs. Labour Court, 1976 LIC 918 (Delhi) wherein preparation of budgetary statements was regarded as work requiring creativeness, and the Labour Court after referring to that judgment of budgetary statement applied it to 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 conclusion. This is a serious error apparent on the face of the record committed by the Labour Court which has influenced our thinking."

(9) The appointment/promotion order,—*vide* which the petitioner was given the alleged Executive post is dated 16th October, 1995, copy of which is at Annexure P/3. Nature of work which the petitioner was required to do has not been specified in the order. Only mention is there that he was positioned in the Executive cadre of the Organisation. The condition mentioned therein is regarding the pay and perks and not the nature of work. Nothing is shown from any/Rules/Instruction/Resolution direction that a particular work is to be done by the Executive, the post to which the petitioner was promoted. Counsel for respondent No. 2 has referred to the averments made in the written statement that the petitioner was entitled to medical reimbursement up to Rs. 4,000 per month and L.T.A. and that these emoluments are not even admissable to Grade 10 officer of the company which is the last grade of officers and if respondent No. 2 was only to take the clerical duties from the petitioner, then the petitioner would not have been promoted to such a higher position with higher emoluments. He has also argued that high degree of confidentiality is to be expected from the post of the petitioner which cannot be treated as duty of a clerical nature. It is also argued by him that the petitioner was doing supervisory duties as per the statements of their witnesses.

(10) In the deposition, the petitioner Sanjeev Kumar, WW-2 (Copy Annexure P/10) has stated in his cross-examination that his juniors were preparing the cheques/vouchers. He has admitted that there is some difference in the allowances of staff and other workers. He has stated that he has no knowledge whether the workers were getting DA and other incentives, milk, cycle, special qualities allowances, vegetable and other incentives etc. He has further stated that he did not know if the staff was also getting some incentives or not but he has admitted that he is not getting the said incentives/allowances.

(11) It will be dangerous to adjudge the nature of work from the allowances a man is getting. Nature of work is allotted to him by virtue of his post. What has come in evidence of respondent is that the petitioner was doing the work of preparing vouchers/details of cheques and that he had no managerial/administrative powers. It is not shown by respondent No. 2 as to what specific the work of the petitioner was. This being so and from the work allegedly allotted to the post of the petitioner, coupled with the principle laid down by the Supreme Court in the case of Arkal Govind Raj Rao (supra) the conclusion that has to be drawn is that the petitioner was a "workman" as covered under section 2(s) of the Act. We therefore, do not agree with the finding of the Labour Court. As a result the award of the Labour Court is set-aside. Petitioner is held to be a workman. The case is remanded to the Labour Court to take decision in accordance with law on the other aspects of the case. If any party wants to adduce evidence, if application is made in a reasonable time, the Labour Court should consider the same Parties to remain present before the Labour Court on 13th November, 2000.

(12) This writ petition is allowed in the above terms.

R.N.R.

Before K.S. Kumaran and N.K. Sud, JJ

D.A.V. COLLEGE, MEHAR CHAND, NEW DELHI AND
ANOTHER—*Petitioners*

versus

STATE OF PUNJAB AND ANOTHER—*Respondents*