

Before S. S. Kang and M. S. Liberhan, J.

FOOD SPECIALITIES LTD., MOGA,—*Petitioner.*

versus

PRESIDING OFFICER AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 5527 of 1987

March 11, 1988.

Industrial Disputes Act (XIV of 1947)—S. 2(s)—Field Inspector—Nature of duties—Labour Court finding that such Inspector not performing supervisory functions—No finding that the employee was performing any type of work specified in the first part of the definition—Absence of such a finding—Employee—Whether could be held to be a workman.

Held, that it is clear from the duties and functions assigned and entrusted to the Field Inspector/Milk Inspector by the management that he does not perform any supervisory duties. Supervision of milk collection and quality control of raw material is function of a skilled worker. Quality control of raw material is performed by technical persons. It does not involve any supervisory functions. Development of existing centres in regard to quality and quantity of milk draws on the technical skill of the employee. It does not partake of supervisory function. Supervision and distribution of milk payments is just clerical duty. Distribution of concentrates is a manual or technical function. Establishment of fodder demonstration plots relates to technical function and is not in any manner supervisory. Educating farmers is also a job of a technical or skilled person. It has no element of supervision. Looking into the farmers' complaints and establishments of personal contacts with them cannot be termed to be supervisory functions unless the Inspector concerned had been vested with powers to take decision regarding the complaints and take action thereon. No supervisory function is left with the Field Inspector. All the functions are of skilled or technical nature, sometimes requiring manual effort also. Hence, it has to be held that the Field Inspector is a workman.

(Para 6)

Held, that the nature of the duties assigned to the Field Inspector and performed by him squarely falls within the specified types of work postulated in Section 2(s) of the Industrial Disputes Act, 1947. The work of Field Inspector was of skilled and technical nature which is apparent from the nature of duties assigned to the Field Inspector. It would not be necessary for Labour Court to give a specific finding that a person to be a workman must fall in one of the specified types of work in the first part of the definition of Section 2(s) of the Act.

(Para 8)

Petition under Articles 226/227 of the Constitution of India praying that the writ petition be accepted, records of the case sent for; and

- (a) *a writ in the nature of certiorari issued quashing the impugned order Annexure P/4;*
- (b) *any other suitable writ, order or direction issued which this Hon'ble Court deems fit and proper in the circumstances of the instant case;*
- (c) *filing of original/certified copies of Annexures P/1 to P/9 dispensed with;*
- (d) *service of notice of motion dispensed with;*
- (e) *further proceedings before the Labour Court stayed till the petition is finally disposed of by this Hon'ble Court;*
- (f) *costs awarded to the petitioner.*

N. K. Sodhi, Senior Advocate (M/s. R. N. Raina and Suvir Dewan, Advocates with him).

J. S. Khehar, Advocate, for Respondent No. 2.

Nemo, for Respondent No. 1.

JUDGMENT

S. S. Kang, J.—

(1) This case concerns the expeditious determination and adjudication of an industrial dispute. A broad-brush factual backdrop will help determine pristinely legal controversy. Shri J. S. Sahota (for brevity's sake referred to hereinafter as 'respondent') was employed as a Food Inspector (also called by the designation 'Field Inspector'), in 1962 with M/s Food Specialities Ltd., Moga, the present writ petitioner. The services of the respondent were terminated,—*vide* orders dated May 9, 1978. On failure of the reconciliation the industrial dispute was referred to for adjudication under Section 10(1) of the Industrial Disputes Act, 1947 ('the Act' for short). It was entrusted to Labour Court, Patiala, who framed the following issue :

"Whether the termination of services of Shri J. S. Sabota, workman, is justified and in order. If not, to what relief/exact amount of compensation is he entitled ?

2. On receipt of notice the petitioner appeared and filed a written statement to the statement of the claim put in by the respondent. Therein it was pleaded that respondent No. 2 was not a 'workman' within the meaning of clause (s) of Section 2 of the Act

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since he was performing supervisory duty and was drawing wages far in excess of Rs. 500 per month. It was alternatively pleaded that the respondent was not doing any skilled or unskilled, manual, technical or clerical work and for that matter he did not fall within the definition of workman. The Labour Court, Patiala, framed the following issues :

- (1) Whether the reference is bad as per the preliminary objection ?
- (2) Whether the order of termination of the workman is justified and in order ?

3. Since the petitioner was advised that the issues had not been properly framed, an application was made by it for recasting the issues. This application was declined by the Labour Court. The petitioner filed Civil Writ Petition No. 4599 of 1979 which was allowed by a Division Bench on January 24, 1980 and issue No. 1 was recast to read as under:—

- “1(a) Whether Shri J. S. Sahota is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 ?
- (b) Whether the reference order is invalid in view of the preliminary objection No. 2 taken by the management in the written statement ?”

This Court also directed that the issue be tried and decided as a preliminary issue. The file of the case was entrusted to Labour Court, Bhatinda. The evidence of the parties was recorded. The Labour Court has decided the preliminary issue against the management and in favour of the respondent. It is held that the respondent is not performing any supervisory duties and he is a workman within the meaning of clause (s) of Section 2 of the Act. Aggrieved by the order of the Labour Court dated June 22, 1987 (copy Annexure P. 4), the petitioner has this writ petition. The respondent has appeared and resisted the writ petition and has filed a written statement controverting the pleas raised in the writ petition.

4. It will be appropriate to read the relevant statutory provision i.e., clause (s) of Section 2 of the Act as it stood at the material

time i.e., 9th May, 1978 when the services of the workman were terminated.

“(s) “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 expressed 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 has led to that dispute, but does not include any such person:—

- (i) who is subject to the Army Act, 1950 (46 of 1960), or the Air Force Act, 1950 (45 of 1950), or the Navy (Discipline) Act, 1934 (34 of 1934), or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, 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”.

5. The Labour Court has given a finding on the basis of the evidence adduced by the parties and the material available on the file that the respondent was not employed in any supervisory capacity and he did not perform any supervisory functions.

6. It has been conceded by T. S. Sandhu, witness of the Management, that Milk Inspector was also called Field Inspector. *Vide* orders dated January 16, 1965 the Management prescribed the main duties of the Field Inspector as under :—

- (a) Supervision of Milk collection centres and Milk haulage;
- (b) quality control of raw material;

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- (c) development of existing centres in regard to quality and quantity of milk ;
- (d) supervision and distribution of milk payments;
- (e) distribution of concentrates ;
- (f) establishment of fodder demonstration plots ;
- (g) farmers education ;
- (h) to look into the farmers complaints if any and establishment of personal work with them and
- (i) other miscellaneous duties assigned from time to time.

Another office order was issued on August 7, 1968 defining the role and duties of the Field Inspector in the following terms :—

- (1) Development of existing agencies in regard to quality and quantity of milk ;
- (2) Completion of milk targets for agencies/contractors by fourth of every month, bearing in mind 50 per cent rise in milk in-take to be achieved over the previous year ;
- (3) maintenance of development programme record on the proforma marked 'A' for each agency. This will include investigation and survey of the existing milk district for purposes of development of various activities and scope of opening new agencies/services from time to time;
- (4) achievement of targets for milk, C.F.M. tubewells, silo towers, foliar spraying to be closely watched and the results achieved to be recorded on the proforma Annexure 'A').
- (5) to look into the complaints of the farmers/contractors/agents, if any, regarding milk and its quality, payment, deduction and to forward such complaints to the Departmental Incharge with considered suggestions and remedial measures. In handling complaints the Field Staff will make sure that unnecessary delay is avoided.

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- (6) popularisation of C.F.M., foliar spraying and necessity of silage working among milk suppliers/farmers ;
 - (7) propagation among farmers the necessity of drenching their calves with Vermex and feeding with Aurolac 2-A, for better calfhood and to assist them in eradication of liverfluke and other diseases among cattle and teaching farmers through the distribution of advisory leaflets.
 - (8) no allowance to be given for differing bulk and average fat of an agency. It must be made clear to all concerned that bulk must tally with average fat ;
 - (9) campaign of early sowing of Berseem, its advantages to be brought home to the farmers and necessity of home seed production of Berseem to be stressed ;
 - (10) occasional compounding of cattle feed mixture and distribution thereof by the Field Staff once a month.
 - (11) maintenance of proper and upto date information regarding company properties loaned to various agencies and to follow up vigorously recovery of any shortages/losses ;
 - (12) visit to each and every agency to be arranged at regular intervals and the progress achieved in the developmental work or any difficulties encountered to be recorded on the proforma marked Annexure 'B' and to be submitted to the Departmental Incharge regularly ;
 - (13) Veterinarians to consolidate the veterinary service rendered to the farmers on the proforma marked Annexure 'C' and submit to the Departmental Incharge for having an overall picture of health in our milk district;
 - (14) distribution of milk payments;
 - (15) establishment of fodder demonstration plots;
 - (16) farmers' education;
 - (17) recovery of bad debt; and
 - (18) milk reception differences brought down to the minimum permissible limit at each agency in the milk district.

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It is clear from the above functions entrusted to the Field Inspector that he does not perform any supervisory duties. Supervision of milk collection and quality control of raw material is function of a skilled worker. Quality control of raw material is performed by technical persons. It does not involve any supervisory function. Development of existing centres in regard to quality and quantity of milk draws on the technical skill of the employee. It does not partake of supervisory function. Supervision and distribution of milk payments is just clerical duty. Distribution of concentrates is a manual or technical function. Establishment of fodder demonstration plots relates to technical function and is not in any manner supervisory. Educating farmers is also a job of a technical or skilled person. It has no element of supervision. Looking into the farmers' complaints and establishment of personal contacts with them cannot be termed to be supervisory functions unless the Inspector concerned had been vested with powers to take decision regarding the complaints and take action thereon. The impression of illusory supervisory duty, if any, was clearly dispelled by the order of August 7, 1968. No supervisory function is left with the Field Inspector. All the functions are of skilled or technical nature, sometimes requiring manual effort also. The Labour Court has painstakingly examined each piece and bit of evidence, analysed the same and appreciated it in accordance with well-known principles of appreciation of evidence. There is no error in the approach of the Labour Court. The conclusions arrived at are not in any manner perverse so as to invite interference in the extraordinary jurisdiction of this Court. No material piece of evidence escaped attention and consideration and no inadmissible evidence or extraneous material has been taken into account. We are not impressed with the submission of Mr. N. K. Sodhi, Senior Advocate, learned counsel for the petitioner, that the order dated 9th May, 1978 is not on the file. This point was not canvassed before the Labour Court and does not thus find mention in the impugned order. Even in the writ petition it has not been denied that such an order has been issued by the Management. The Court has given a finding while looking at the document and examining its contents. The Court has not just conjured up the myriad duties of a Field Officer.

(7) Shri Sodhi also contended that it is clear from the replies to the interrogatories that the petitioner seems to disseminate technical knowledge about the cattle only in the presence of the Veterinary doctor and he did not perform technical functions in

this regard. This submission has not impressed us. It has been stated that the petitioner also used to accompany the Veterinary doctor sometimes on his tours. It does not, however, mean that the respondent had not been visiting the owners of the cattle alone and educating them regarding the diseases of the cattle and the preventive measures therefor. The conclusions of the Labour Court that the respondent did not perform any supervisory function is well supported by the evidence on the record.

(8) It was seriously contended by Shri Sodhi that even after coming to the conclusion that the respondent did not perform any supervisory functions the Court had to further give a finding that respondent No. 2 was performing skilled, unskilled or technical functions. No such finding has been given and without such a finding the orders of the Labour Court cannot be sustained. In support of this submission he has placed strong reliance on the decision of the Final Court in *Burmah Shell Oil Storage and Distribution Company of India Ltd. v. The Burmah Shell Management Staff Association and others* (1). Their Lordships have indeed observed that for an employee in an industry to be workman under S. 2(s) of the Industrial Disputes Act, it is manifest that he must be employed to do skilled or unskilled manual work, supervisory work, technical work, or clerical work. If the work done by an employee is not of such a nature, he would not be a workman. Their Lordships also observed that the specification of the four types of work [in S. 2(s)] is intended to lay down that an employee is to become a workman only if he is employed to do work of one of those types, while there may be employees who, not doing any such work, would be out of the scope of the word 'workman' without having to resort to the exceptions. The learned counsel for the respondent has no quarrel with this proposition of law. His submission is that the nature of the duties assigned to the respondent and performed by him squarely fall within the specified types of work postulated in Section 2(s) of the Act. The work of the respondent was of skilled and technical nature and there may be some overlapping. The respondent would have gone out of the definition of workman if he had not performed skilled or technical duties. The Labour Court had relied upon a recent judgment of the Final Court on the subject i.e. *S. K. Verma v. Mahesh Chandra and another* (2), and in the context of the ratio of that decision has

(1) 1970 (II) L.L.J. 590.

(2) 1983(2) L.L.J. 429.

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held that the respondent was not performing supervisory function and he was a workman as envisaged by Section 2(s) of the Act. The Apex Court in *S. K. Verma's case* (supra) has observed as under :—

“The words “any skilled or unskilled manual, supervisory, technical or clerical work” are not intended to limit or narrow the amplitude of the definition of “workman”; on the other hand they indicate and emphasise the broad sweep of the definition which is designed to cover all manner of persons employed in an industry, irrespective of whether they are engaged in skilled work or unskilled work, manual work, supervisory work, technical work or clerical work. Quite obviously the broad intention is to take in the entire “labour force” and exclude the “managerial force”. That, of course, is as it should be.

It is trite to say that the Industrial Disputes Act is a legislation intended to bring about peace and harmony between labour and management in an industry and for that purpose, it makes provision for the investigation and settlement of industrial disputes. It is, therefore, necessary to interpret the definitions of “industry”, “workman”, “industrial dispute”, etc., so as not to whittle down, but to advance the object of the Act. Disputes between the forces of labour and management are not to be excluded from the operation of the Act by giving narrow and restricted meanings to expressions in Act. The Parliament could never be credited with the intention of keeping out of the purview of the legislation small bands of employees who, though not on the managerial side of the establishment, are yet to be denied the ordinary rights of the forces of labour for no apparent reason at all.”

In this case a Development Officer of the Life Insurance Corporation of India has been held to be a workman within the meaning of Section 2(s) of the Act notwithstanding the fact that it was the duty of the Development Officer to organise and develop the business of the Corporation in the area allotted to him and for that purpose to recruit active and reliable agents, to train them to canvass new business and to render post sale services to the policy holders and he was expected to assist and support the agents. A similar view was taken by the same Bench of the Supreme Court in

D. P. Maheshwari v. Delhi Admn. and others (3). D. P. Maheshwari though designated as Accounts Officer (A & O) or Officer on Special Duty or Store Purchase Officer was in fact mainly doing clerical work of maintaining certain registers, preparing drafts and seeking instructions. Services of D. P. Maheshwari had been terminated. He raised an industrial dispute. This was decided in favour of the workman and it was *inter alia* held that he was a workman. The writ petition filed by the management was allowed. Reliance was placed on the decision of the final Court on *Burmah Shell's* case (supra). The Supreme Court allowed the appeal of Mr. Maheshwari and set aside the judgment of the learned Single Judge and Division Bench of the High Court. Their Lordships held that D. P. Maheshwari was a workman. Mr. Khehar, learned counsel for the respondent, has rightly pointed out that while deciding *D. P. Maheshwari's* case their Lordships were fully aware of the *Burmah Shell's* case (supra) and had chosen to take a different view.

(9) For foregoing reasons we find no merit in this writ petition and dismiss the same. No costs.

R.N.R.

Before R. N. Mittal and M. M. Punchhi, JJ.

AMARJIT SINGH AND OTHERS,—Appellants.

versus

STATE OF PUNJAB,—Respondent.

Criminal Appeal No. 415-DB of 1986

April 5, 1988.

Evidence Act (I of 1872)—Ss. 105, 106 and 113-A—Indian Penal Code (XLV of 1860)—S. 302—Murder of newly wedded wife—Husband accused—Motive dowry—Conviction based only on circumstantial evidence—Total absence of direct evidence—No extra judicial

(3) 1983(2) Lab. and I.C. 1629.