

Rajesh Garg v. The Management of the Punjab State Tube well Corporation Ltd. and another (M. M. Punchhi, J.)

in the instant case on this ground as well. Resolution No. 374, dated July 30, 1973, cannot be held liable to be annulled under section 236 of the Punjab Municipal Act being violative thereof. The second ground for passing the impugned order P.2 is also *non est* and cannot be sustained.

21. In view of discussion above, the impugned order of the learned Single Judge is upheld though on somewhat different grounds.

22. Both the Letters Patent Appeals fail and are dismissed with no order as to costs.

N. K. S.

Before M. M. Punchhi, J.

RAJESH GARG

—Petitioner.

versus

THE MANAGEMENT OF THE PUNJAB STATE TUBE WELL CORPORATION LTD., AND ANOTHER

—Respondents.

Civil Writ Petition No. 1754 of 1977

September 12, 1984.

Industrial Disputes Act (XIV of 1947)—Section 2(s)—Person employed in an industry as a Legal Assistant—No administrative or managerial duties entrusted to said official—Such Assistant—Whether a ‘workman’ as defined in section 2(s).

Held, that the comprehensive definition of the word ‘workman’ as given in Section 2(s) of the Industrial Disputes Act, 1947 means any person employed in any industry to do any skilled or unskilled manual, technical, operational, clerical or supervisory work for hire or reward. 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'. The duties of the Legal Assistant would be to tender legal advice, to draft and approve documents from the legal point of view. The duties of the said official could be termed to be 'techno-clerical'—to be carried on with the aid of the legal knowledge available to the Legal Assistant. Such duties could by no stretch of imagination be regarded as administrative or managerial, especially when no administrative control over any person had been vested in the Legal Assistant. Once it is held that the said Legal Assistant was not working in any administrative or managerial capacity, such Assistant has conversely to be held a 'workman' within the meaning of section 2(s) of the Act.

(Para 3).

Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to:—

- (i) *send for the records of the case and after a perusal of the same;*
- (ii) *issue a writ of Certiorari quashing the impugned Award, dated 5th May, 1977, Annexure P/6;*
- (iii) *after quashing the same direct the Industrial Tribunal, respondent No. 2 to proceed with the case on merits and decide the same expeditiously;*
- (iv) *Costs of this petition may be awarded to the petitioner.*

M. R. Agnihotri, Senior Advocate and Deepak Agnihotri, Advocate with him for the Petitioner.

Bhagirath Dass, Senior Advocate and Ramesh Kumar, Advocate with him for the Respondents.

JUDGMENT

M. M. Punchhi, J. (Oral):

(1) The Chief Commissioner, Union Territory Administration, Chandigarh, the appropriate Government within the meaning of

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section 2(a) of the Industrial Disputes Act, 1947 (for short, the Act) referred the following dispute for adjudication to the Industrial Tribunal, Union Territory, Chandigarh:—

“Whether the termination of services of Shri Rajesh Garg, workman, by the management is contrary to law and invalid? If so, to what relief is he entitled ?”

The Tribunal,—*vide* its award, dated May 5, 1977 (Annexure P-6), the subject-matter of challenge in this petition, came to the conclusion that the employee was not a workman, though the Management was an industry, and as such the employee was not entitled to any relief. It is this view of the matter which is challenged in these proceedings.

(2) The petitioner was employed, as is the admitted case, as a Legal Assistant by the Punjab State Tube-well Corporation Limited, Chandigarh. He remained in service from December 8, 1971 to June 2, 1974. He was relieved of his duty with effect from June 3, 1974, in accordance with his terms of employment. Whereas the petitioner claimed that he was a workman within the meaning of the term known under section 2(s) of the Act, the Management-Corporation pleaded that it was neither an industry nor was the petitioner a workman because he was working mainly in an administrative and supervisory capacity drawing wages exceeding Rs. 500 per mensem. The petitioner, refuting the claim of the Management, had in his replication pleaded that he was performing duties of a clerical nature and that he had no supervisory or administrative powers. On these pleadings, the Tribunal framed the following preliminary issue :—

“Whether the Punjab State Tube well Corporation is not an ‘industry’ and the petitioner is not a workman as defined in the Industrial Disputes Act ?”

As said before, the Tribunal found that the Punjab State Tube-well Corporation was an industry. That aspect of the case does not engage us at all. The dispute centres around as to whether the petitioner is a workman. That question being jurisdictional in nature would have to be determined on the nature of duties performed by the petitioner. In that regard paragraphs 6 and 8 of

the impugned award, extracted as below, provide the basis:—

“Shri K. N. Gupta, R.W. 1 explained the duties of the petitioner. He said that he had primarily been engaged to tender legal advice to the Corporation. Some documents on behalf of the Corporation used to be drafted by him. Some other documents received from outside authorities used to be checked by him. The petitioner himself admitted that he used to check the agreements, bank guarantees, etc., from the legal point of view. The petitioner could hardly urge that his main work was clerical and thus an effort was made to get himself covered by the word ‘technical’ at the time arguments in the case were heard. * * * * *

The word ‘technical’ would mean something pertaining to art or belonging to a particular art or profession.

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8. The petitioner while giving his statement referred to a certain note of the Secretary of the Corporation, dated 29th May, 1972 wherein this remark was passed that he was not holding any independent office and that he should put up a note and seek instructions, rather issue instructions in his note. It was then said that the petitioner did not have any authority to sanction leave to his employees. All this would not make the work of the petitioner a clerical one. So far as the legal aspect of the work was concerned, there was nobody else employed by the Corporation who could check him and thus his work was not of a routine nature but a specialised one in which knowledge of law was required. It is a different matter that the work was not such which could admitted that he used to check the agreements, bank be said to be technical. However, it could not at all said to be a clerical one.”

(3) Now the comprehensive definition of the word ‘workman’ means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, technical, operational, clerical or supervisory work for hire or reward. This definition has given rise to many a dispute and the law reports are full with them. The Supreme Court now has in *S. K. Verma*

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v. Mahesh Chandra and another, (1), clarified the position by summing up the law in these words :—

“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.”

That was case of a Development Officer in the Life Insurance Corporation of India. Taking stock of his duties, the Supreme Court concluded that the Development Officer could not by any stretch of imagination be said to be engaged in any administrative or managerial work. Once those duties were excluded, he was taken to have fallen in the definition of the word ‘workman’ within the meaning of section 2(s) of the Act. On the same line of reasoning Mr. M. R. Agnihotri, learned counsel for the petitioner, says that the duties of the petitioner, as afore-extracted, were neither supervisory nor managerial. The petitioner’s duty at best was that of a skilled clerk having in his clerical duties to put up notes and seek instructions. Besides that as urged he had to tender legal advice when asked by the Corporation and draft and approve documents as asked by the corporation from the legal point of view. The duties of the petitioner have even been termed by the learned counsel to be “techno-clerical” with the aid of legal knowledge which the petitioner possessed. And on these grounds it is contended that these duties could by no stretch of imagination be regarded as administrative or managerial, especially when the petitioner had no administrative control over anybody and was rightly designated to ‘assist’ the Corporation in matters asked by it. Once it is held that the petitioner was not working in the Corporation in any administrative or managerial capacity, he has conversely to be held a ‘workman’ within the meaning of section 2(s) of the Act. Mr. Bhagirath Das, learned

counsel for the respondent, has not been able to meet the point as raised by the learned counsel for the petitioner and the view which logically follows. Thus, the petitioner has to be and obviously must be held a 'workman' within the meaning of the Act and the preliminary issue decided by the Tribunal in that regard to have been decided on a jurisdictional error.

(4) On the petitioner's being held a workman, the final curtain cannot be drawn by this Court and the matter has to be remitted back to determine as to whether the termination of the services of the petitioner was contrary to law and invalid and further whether he is entitled to any relief. For this purpose, the matter need be remitted back to the Tribunal. Accordingly, this petition is allowed, the award of the Tribunal (Annexure P-6) is set aside and the matter is remitted back to it to proceed further in accordance with law. In the circumstances of the case, however, there shall be no order as to costs.

H. S. B.

Before M. M. Punchhi, J.

SURJIT SINGH AND ANOTHER,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1765 of 1977.

October 30, 1984.

Punjab Co-operative Societies Act (XXV of 1961)—Sections 13 and 14(4)—Industrial Disputes Act (XIV of 1947)—Section 25-FF—Registered Co-operative Society having various branch offices—Such society splitting into separate Co-operative Societies—Reference made to Labour Court raising a dispute under Section 25-FF of the Industrial Disputes Act after splitting up of Society but relating to a period before such split—Such reference—Whether maintainable against the transferee Society.

Held, that Sections 13 and 14(4) of the Punjab Cooperative Societies Act, 1961 provide a comprehensive scheme for the division of Cooperative Societies as also the transfer of assets and liabilities thereof. In particular, Section 13(7) provides that where a resolution