

Bombay High Court

G.S. Khairkar vs M/S. Camlin Limited on 30 July, 1997

Equivalent citations: 1998 (2) BomCR 487, 1998 (3) MhLj 615

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Bench: S F Rebello

ORDER F.I. Rebello, J.

1. The petitioner workman had filed 3 complaint bearing No. 419 of 1994 before the 4th Labour Court at Thane. The respondent Company raised a preliminary issue that the petitioner was not a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947 and as such the complaint ought to be dismissed on that count alone. On a preliminary issue being framed, the respondent Company examined two witnesses, petitioner did not examine any witness nor stepped into the witness box. By order dated 31st March, 1995, the Labour Court on a consideration of material before it and various judgments which are referred to in the order came to the conclusion that the petitioner was not doing work which is of a supervisory nature and consequently answered the issue in the negative. It held the petitioner to be workman.

2. Aggrieved by the said Order, the respondent Company preferred a revision application bearing No. 76 of 1995 before the Industrial Court at Thane. The Industrial Court reappreciated the evidence. The Industrial Court further held that while holding that the petitioner was a workman the Labour Court had given emphasis on the point that the complainant was reporting to the Manager and that the petitioner had no power to grant leave but only to recommend leave as also no power to appoint, take disciplinary action or dismiss anybody. The Industrial Court held that if these powers were absent, it would mean that the petitioner was not in the managerial cadre but certainly on the duties performed would fall under the cadre of supervisory cadre and as such the finding that the petitioner was a workman was not supported by evidence and material on record. It held that the Labour Court erred in not holding that the petitioner was performing work of a supervisory nature. The Learned Judge distinguished the judgment in the case of S.K. Verma v. Mahesh Chandra, on the fact of that case and similarly distinguished the case of Ved Prakash Gupta v. M/s. Delton Cable India (P) Ltd., on the fact of that case. The Industrial Court as a consequence reversed the order of the Labour Court on the preliminary issue and held the petitioner not to be a workman and consequently dismissed the complaint.

It is this order, which is the subject matter of the present petition.

3. Shri Naidu appearing on behalf of the petitioner contends that the Industrial Court in the exercise of its power under section 44 could not have interfered with the finding of fact recorded by the Labour Court. He submits that the said findings could not be said to be perverse on the fact on record and merely because another view may have been possible the Industrial Court ought not to have reversed the finding of the Labour Court; secondly he contends that if the law laid down by the Apex Court in the case of Ved Prakash Gupta (supra) are considered which was also a case of a security supervisor then the case of the petitioner would squarely fail within the law laid down by the Apex Court and as such the Industrial Court was also wrong in reversing the order of the Labour Court.

4. Shri Singh appearing for the respondent Company contends that there is no perversity in the finding recorded by the Industrial Court that the petitioner was not a workman. He contends that the material on record shows that the petitioner was doing the work of a supervisory nature and the Labour Court proceeded on the test viz. applying the consideration of managerial and/or administrative work and consequently the said order was rightly reversed by the Industrial Court. He further contends that the judgement of the Apex Court in the case of Ved Prakash Gupta (supra) is clearly distinguishable. It is his contention that Ved Prakash Gupta's case proceeded on the footing as to whether the Security Supervisor fell within the third part of the definition of workman viz. managerial or administrative and the issue as to whether he was doing the work of supervisory nature was not at all in issue as can be seen from the judgment of the Apex Court in paragraph 10 of the said judgment. He further contends that the Division Bench of this Court in the case of Vinayak Baburao Shinde v. S.R. Shinde and others, reported in 1985(1) C.L.R. 318 has held as to what is supervisory work relying on judgments of the Apex Court and applying the said test it is clearly a case where the petitioner was doing the work of supervisory nature and consequently there is no infirmity whatsoever in the finding of the Industrial Court. He also contends that this is a fit and proper case where the Industrial Court had to interfere as the findings were based on the application of a wrong test and consequently the Industrial Court could have under section 44 of the M.R.T.U. & P.U.L.P. Act interfered with the decision of the Labour Court.

5. Considering the aforesaid contention, the question that emerges for consideration would be :---

(1) Whether the Industrial Court was right in interfering with the order of the Labour Court in the exercise of its revisionary power?

(2) Whether the material on record shows that the petitioner is not a workman as contended by the respondent Company ?

6. Dealing with the contentions, heavy reliance was sought to be placed on the judgment of the Apex Court in the case of Ved Prakash Gupta (supra). On a consideration of the said judgment, it is true that the petitioner in the said judgment was employed as a security supervisor. His wages at the relevant time was Rs. 581/- The Labour Court on a consideration of the material held that the petitioner was not a workman. The petitioner in the said judgment preferred a writ petition which was dismissed by the Division Bench in limine. A special leave petition was filed by the petitioner workman. After examining the evidence on record, the Apex Court in para 10 of the said judgment held that the respondent Management could at the best contend that the appellant would fall under third part of section 2(s) and held that on a consideration of the material the petitioner was neither doing work of a managerial or administrative capacity. The Issue as to whether the petitioner was doing the work of a supervisory nature and because of the salary he was drawing was excluded from the definition of workman was neither considered nor was in issue in the said case. It is true that in paragraph 12 the Apex Court has observed that on a consideration of the material the petitioner was doing work neither of managerial nor of supervisory nature in the sense in which those terms are understood in industrial law. That however would make no difference if one considers what was in issue before the Court as set out in para 10 of the said judgment. In the light of that the judgment of Ved Prakash Gupta (supra) would not be of much assistance.

7. On reading the definition Clause of workman even a supervisor who draws less salary as set out in the definition is included in the definition of workman. As such it is not as if all supervisors are excluded from the definition of workman. It is only those supervisors who draws a salary of more than Rs. 1,600/- who are excluded from the definition of workman. Whether a workman is doing work which is of a supervisory character will depend on the facts of each case and a mere label of supervisor is not sufficient to hold that the workman is doing a work which is essentially supervisory in nature.

8. The evidence on record shows that the petitioner was appointed as Assistant Security Officer. The evidence on record also shows that one of the persons amongst the other Asstt. Security supervisors was designated as Security Supervisor. However, the Manager sought to explain this by saying it was a mistake and that was subsequently corrected. The petitioner chose not to step into the witness box. Therefore all the evidence on record is the evidence of the witness of the respondent Company which includes the Administration Manager Shri S.P. Patil and another Assistant Security Supervisor Shri Subbarao Pandurang Patil. The nature of the work done by the petitioner seems to be posting of the security guards, doing a round of the premises to find whether they are doing the job, filing in the attendance register of himself and others, being present at the place where loading of the goods is being done. It has also come on record that in respect of wage settlement, the Assistant Security Supervisors are not included in the said settlement and the wage hike or increase is given to them by the Management which is different from the settlement arrived at in so far as the workers are concerned. Whether the petitioner is doing any other work which is clerical in nature is not possible to be said from the material on record. In the absence of any evidence on the part of the petitioner to displace the evidence led by the employer it cannot be said that the Industrial Court was wrong in reversing the findings of the Labour Court and arriving at a conclusion it has arrived at. Normally, the Revisional Court cannot reappraise the evidence. In the instant case, the Industrial Court has given reasons as to why it been reappraised the evidence as a wrong test had been applied by the Labour Court. The approach of the Industrial Court cannot be said to be contrary to law. In view of the above, there is no merit in this writ petition which is accordingly rejected.

9. Rule discharged. In the circumstances of the case there shall be no order as to costs.

10. Petition dismissed.