Scooter India Ltd. Vs Presiding Officer, Labour Court and Another

Court: Allahabad High Court

Date of Decision: April 5, 2010

Acts Referred: Contract Labour (Regulation and Abolition) Act, 1970 â€" Section 7, 9
Factories Act, 1948 â€" Section 46
Factories Rules â€" Rule 65, 68, 71
Industrial Disputes Act, 1947 â€" Section 2

Citation: (2011) 1 LLJ 427

Hon'ble Judges: Satyendra Singh Chauhan, J

Bench: Single Bench

Advocate: S.C. Misra and R.C. Tiwari, for the Appellant; C.S.C. Amit Bose, D.P. Dubey, Manju Nagaur, V.P. Nagaur and V.P. Nigam, for the Respondent

Final Decision: Dismissed

Judgement

Satyendra Singh Chauhan, J.
Through this writ petition, the Petitioner has challenged the award dated February 20, 1995 passed by the

Labour Court, Lucknow--opposite party No. 1.

2. The facts in brief are that the Petitioner is a registered body within the meaning of the Factories Act and as such there is statutory obligation to

provide Canteen for the welfare of the Petitioner s employees and with that view a Canteen was set up for providing meals, tea and snacks at

subsidized rates to its employees and at subsequent point of time it gave contract to the Contractor Messrs Sabbarwal and others.

3. Due to the fact that the quality of preparations in the Canteen were not up to the mark by the Contractor, various memorandums were given by

the Employees Union and ultimately it was decided that they will run the Canteen themselves by forming Co-operative Society and for that

purpose, a Society was formed. The employees of the Petitioner formed an ad hoc body of SIL Canteen Cooperative Society Limited and entered

into an agreement with the Petitioner for running the canteen on contract basis as the Contractor left the Canteen abruptly. These employees

working, in the Canteen were subjected to a fresh contract of service and issued a fresh appointment letters. The opposite party No. 2 continued

to work continuously without interruption, in due course of time as the elections could not be held, an Administrator was appointed by the

Registrar Cooperative Society.

4. The services of the opposite party No. 2 was terminated for unauthorized absence from November 19, 1986, therefore, he raised an Industrial

dispute before opposite party No. 1. The charge against the opposite party No. 2 was that he absented himself unauthonzedly. The parties led

their evidence before the Industrial Tribunal and the Industrial Tribunal ultimately proceeded to allow the claim of opposite party No. 2 by means

of award dated February 20, 1995, hence this petition.

5. The submission of learned Counsel for the Petitioner is that the Petitioner was an employee of the Scooters India Ltd. Canteen Co-operative

Society and therefore, he can not be treated to be an employee of the company. The opposite party No. 1 has committed gross illegality in treating

the opposite party No. 2 as an employee of the Petitioner. He has also submitted that the contract was binding between the parties and the

opposite party No. 2 with full knowledge has accepted the terms of the appointment.

6. Learned Counsel for the opposite party No. 2, on the other hand, has submitted that the opposite party No. 1 has committed no illegality while

allowing the claim of the opposite party No. 2 and treating him to be an employee of the Scooters India Ltd. He has also placed reliance upon the

judgment of this Court passed in Writ Petition No. 9026(S/S)/1992 Scooters India Limited, Sarojini Nagar, Lucknow v. Presiding Officer, IT VI,

U.P., Lucknow and Ors., in respect of a co-workman namely Dhan Bahadur Thapa decided on September 18, 2006 and the said judgment has

received assent of the Apex Court and the SLP against the aforesaid order has been dismissed. He, therefore, submits that no other way is

possible in the present case and the Labour Court has taken a correct view as contemplated under law while deciding the issue in favour of the

opposite party No. 2.

7. I have heard learned Counsel for the parties and gone through the record.

8. The issue in the present case is more or less the same as was in the case of Dhan Bahadur Thapa, This Court considered the issue in regard to

an employee being, an employee of the Canteen of the Scooters India Ltd. Company run by the Cooperative Society and proceeded to record a

finding to the effect that under the provisions of the relevant Factories Act the management of the Factory has to establish and run a canteen for its

workers. The building, furniture, crockery, equipments and other material necessary for running the canteen were being provided by the Scooters

India Ltd. It was also noted by this Court that Scooters India Ltd. Canteen Cooperative Society was not a registered under the Contact Labour

Act nor has a license to engage such workers. Such establishment was required to be registered under Sections 7 and 9 of the Contract Labour

(Regulation and Abolition) Act 1970. The Court found that the Society was not registered under the Contract Labour Act and the Canteen was

under direct and effective control of the Company, Scooters India Ltd.:-

9. The relevant portion of the judgment is quoted below:

The Industrial Tribunal has also taken note of the material that Scooters India Ltd, Canteen Cooperative Society was not registered under the

Contract Labour Act nor it has a licence to engage such workers. Such establishment must be registered under Sections 7 and 9 of the Contract

Labour (Regulation and Abolition) Act, 1970. The Scooters India Ltd. has also failed to prove before the Industrial Tribunal and this Court as to

how and when the said society was registered under the said Act of 1970. Thus, it is clear that the society was not registered under the Contract

Labour (Regulation and Abolition), Act 1970 and the Canteen was under the direct and effective control of the Company, Scooters India Ltd. The

Industrial Tribunal has also placed reliance on several case laws including Current Labour Reports Volume 2 August, 89, Page 150, a judgment

rendered by Hon''ble the Supreme Court of India, to demonstrate that without obtaining the consent of the worker his services could not have

been transferred to the employer. It has already been held that the cooperative society was not registered under the relevant Act of 1970.

The Industrial Tribunal has also appreciated the fact that u/s 46 of the Factories Act and the relevant Rule 68, establishment and running a canteen

in the factory premises is a statutory requirement. The canteen was set up in the premises of the factory, building, furniture, crockery and other

equipments etc., were provided by the Scooters India Ltd, and the officers of the Scooters India Ltd. were deputed to work as Administrator and

Accounts Managers etc.. Thus, the persons managing the society were in the employment of Scooters India Ltd. and they were being paid salary

by the Scooters India Ltd. The edibles purchased for the canteen were being managed by the Scooters India Ltd. The Industrial Tribunal has also

placed reliance on a judgment of Bombay High Court, in 1992 I LLN 489 to demonstrate that the canteens'' workers were employees of. the

Scooters India Ltd. The agreement entered into between Scooters India Ltd, and its Workers Union, was also taken into account for forming the

opinion that the workman was in the employment of Scooters India Ltd. and its services were governed by the Standing Order applicable on the

employees of Scooters India Ltd. The Scooters India Ltd. has, thus, violated Para 10J of Model Standing Order. The workman had submitted his

joining report along with the medical certificate to prove that he was ailing in Nepal but the employer, set out the case of abandonment of

employment. It was not a case of abandonment of employment. Absence without leave constitutes misconduct and it was not open for the

employer to terminate the services of the workman without giving notice and holding inquiry. The Industrial Tribunal has relied on a decision of

Supreme Court of India as in L. Robert D"souza Vs. Executive Engineer, Southern Railway and Another, in support of its findings that it was a

case of retrenchment. The Tribunal has rightly held that it was a case of illegal retrenchment as defined in the provisions of Section 2(oo) of

Industrial Disputes Act, 1947. The workman was retrenched from the services without following due procedure which action was held to be illegal

and invalid. The Industrial Tribunal has ordered for reinstatement of the Workman with 50% back-wages and has declared the order of

termination dated November 18, 1987 as illegal, unjust and improper.

In view of above, I find no illegality or infirmity in the findings recorded by the Indubtnal Tribunal, in awarding a well considered, reasoned and

speaking award. The Industrial Tribunal has dealt all the points raised before it and appreciated the oral and documentary evidence and material on

record brought before if by the contesting parties. This Court finds strength from the decisions of Hon"ble the Supreme Court of India as in

Supreme Court, National Thermal Power Corporation Ltd. Vs. Karri Pothuraju and Others, G.B. Pant University of Agriculture and Technology,

Pantnagar, Nainital Vs. State of Uttar Pradesh and Others, Indian Petrochemicals Corpn. Ltd. and Another Vs. Shramik Sena and Others,

10. The opposite party No. 2 in the present case has also faced the same situation as his services were also terminated by the Company on

account of absence although he was ailing from November 10, 1986 to November 16, 1986 for which he submitted medical certificate. He also

submitted another certificate from November 17, 1986 to November 24, 1986, November 25, 1986 was Sunday so he summited his joining on

November 26, 1986 and for such small absence the services of opposite party No. 2 were terminated. The absence of opposite party No. 2

constitutes misconduct; Since the matter stands concluded by a judgment of this Court dated September 18, 2006 which has received approval of

Hon"ble the Supreme Court then there is no occasion for this Court to take a different view.

11. Learned Counsel for the opposite party No. 2 has placed reliance upon a decision of the Apex Court in Mishra Dhatu Nigam Ltd., Vs. M.

Venkataiah and Others, etc. etc., to emphasize that the Principal employer has statutory duty to provide canteen for its workmen as contemplated

u/s 46 of the Factories Act and Rules 65 and 71 of the Factories Rules and even if the services of the Contractor have been abolished such

employees would be employee of the Company. Similar view has been taken in the judgment in Indian Overseas Bank Vs. I.O.B. Staff Canteen

Workers" Union and Another,

12. In the aforesaid case a Cooperative Canteen was promoted and administered with the consent of the management of the Bank, by serving

members of the Bank staff. It was being run within the Bank"s premises with the funds, subsidy and infrastructural facilities provided exclusively by

the Bank. It observed the working hours and holidays of the Bank and provided service to Bank employees only. It was after 17 years working

when it was closed and was succeeded by a Canteen run by a Contractor engaged by the management of the Bank. In those circumstances it was

held that the employees were the employees of the Bank as the Canteen workers were enlisted under a Welfare Fund Scheme of the Bank and

hence the argument to the contrary was rejected. More or less similar situation is existing in the present case. The Canteen was existing in the

premises of the Scooters India Ltd. and the opposite party No. 2 was engaged by the Company. The opposite party No. 2 was working since

June 1, 1975 and in this way he has worked for a considerable time.

13. The canteen was given to the Contractor and thereafter again to the Cooperative Society which was formed by the members of the Scooters

India Ltd. The initial appointment of the opposite party No. 2 was in the Canteen and later on if it has been changed then it was a unilateral

exercise of power with leaving the opposite party No. 2 with no bargaining power so the said change effected by means of a letter would not

change the status of appointment of opposite party No. 2.

14. So far the question of payment of back-wages is concerned, learned Counsel for the Petitioner has placed reliance upon the case in Reetu

Marbles Vs. Prabhakant Shukla, and stated that 50% back-wages should be awarded to the Respondent No. 2. The normal rule of award of

50% back-wages as adhered and adopted is that when it was found that the workman was not gainfully employed somewhere. The opposite party

No. 2 had specifically stated in his statement, before the Labour Tribunal that he was out of employment after the date of termination of his

services and he was not employed any where. In response to the said statement of opposite party No. 2, no evidence has been led by the

Petitioner to indicate that opposite party No. 2 was gainfully employed during the period of litigation or after the date of termination of his services.

The opposite party No. 2 has not served during this period and he was sitting idle throughout cannot be presumed.

15. Considering the aforesaid facts, I find that no illegality has been committed by the Labour Tribunal while passing the impugned award.

However, the opposite party No. 2 shall be entitled to only 50% back-wages.

16. The petition is devoid of merit and it is accordingly dismissed.