Union of India (UOI) Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: May 8, 2007

Acts Referred: Factories Act, 1948 â€" Section 2
Industrial Disputes Act, 1947 â€" Section 10, 2
Payment of Wages Act, 1936 â€" Section 15, 25F

Citation: (2007) 115 FLR 536

Hon'ble Judges: Tarun Agarwala, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Tarun Agarwala, J.
By means of this petition, the petitioner has challenged the validity and legality of the award directing reinstatement of

the female workers with retrospective effect and with full back wages.

2. The facts leading to the filing of the writ petition is, that the petitioner, North Eastern Railway, affairs and administration is regulated under, the

Indian Railways Act as well as under the provisions contained in the Indian Railways Establishment Manual and other statutory Rules and

Regulations. As per Para 2839 of the Indian Railways Establishment Manual the petitioner provide benefits to the families of railway employees by

way of setting up welfare schemes, Para 2839 of the Manual reads as under:

2839 HANDICRAFT CENTRES:

(1) Handicraft centers should be set up for the benefit of the families of the Railway men for imparting training to women, members of Railway men

families in handicrafts such as weaving, knitting, spinning tailoring of garments etc. during their spare time with the object of helping them in learning

trade to augment the family income.

(2) Expenditure of this scheme should be met from the Staff Benefit fund.

(3) Accommodation for Handicraft centres should be provided in spare railway buildings free of rent. No new building for this purpose should be

constructed without prior approval of the Railway Board.

(4) Charges for electricity and water consumed by the Handicrafts centers located in railway building should be borne from the Railway Revenues.

Where the Handicraft Centre are housed in Railway Institutes those charges should be borne by the institute.

(5) Railway Administrations should patronise and encourage the Handicraft centres by placing orders for the supply and fabrication of articles

required by railway.

3. In accordance with the aforesaid provision, the Ministry of Railways, in the year 1959, sanctioned a welfare scheme by setting up a handicraft

centre for the benefit of the families of the railway employees for imparting practical training to the women members of the railwaymen in

handicrafts such as weaving, knitting, spinning tailoring of garments, etc. during their spare time with the object of helping them to learn some trade

and to augment the family income. In this manner, three handicraft centres were opened in the Gorakhpur Division.

4. In order to run and manage the affairs of the handicraft centre, the entire expenditure such as electricity, water, etc., is borne by the railways.

The handicraft centre has its own Bye-laws. The Bye-laws provides for a membership which has to be filled up by a railway employee for its

female family member. A subscription of Re. 1/ per month is charged from the member. The present dispute relates to the handicraft centre No. 1

at Gorakhpur Division which had about 70 female members. In this handicraft centre, training was imparted to the female members to learn a

particular trade like weaving, knitting, spinning, tailoring of garments, making envelopes, files, folders, etc. The raw material is provided by the

railways and the members were paid on piece rated basis. It transpires that the notices were issued by the labour department intimating the

railways that the handicraft centre was an industry and, therefore the petitioners were required to comply with the provisions of the Factories Act

1948. The female workers also started raising a demand for increasing the remuneration which they were getting for the piece rated work and also

alleged that they should be paid a regular salary instead of being paid on a piece rated basis. This led to some agitation and staging of dharma and

demonstrations, as a result of which, the railway authorities took a decision for the closure of the handicraft centre. The female members, being

aggrieved, raised an industrial dispute and upon the failure of the conciliation proceedings, the matter was referred for adjudication before the

Industrial Tribunal. The terms of the reference order was, ""Whether the employees were justified in terminating the services of 118 female

workers w.e.f. 28.5.1984 ? If not, to what relief were the workers entitled to ?

5. Before the Tribunal, the respondents contended that under the garb or a training centre and under the garb of imparting training, the petitioners

were in fact taking regular work from them and that there was a master and servant relationship and instead of paying regular wages, the employers

had adopted an unfair labour practice by giving them a paltry amount on piece rated basis. The respondents contended that the. handicraft centre

was nothing else but an industry where an industrial activity was being carried out and therefore, the provisions of the Industrial Disputes Act was

clearly applicable. The respondents were working from two years to twenty seven years without any break in service, and were being paid on

piece rated basis. The action of the respondents in closing the establishment without complying with the provision of Section 25F of the Industrial

Disputes Act, was patently erroneous and volatile of the provisions of the. Act. The respondents alleged that since, they had worked for more than

240 days in a calendar, year and since retrenchment compensation was not paid, the removal of their services was wholly illegal and therefore,

they were liable to be reinstated in service with full back wages.

6. The petitioners on the other hand, contended that the handicraft centre was opened in terms of para 2839 of the Railway Manual. the handicraft

centre was part of the Railways and a welfare scheme was opened by the railways for the benefit of the family members of the railway employees

to whom training of a particular trade was given in their spare time to augment the family income. The petitioners contended that the handicraft

centre was not an industry and, in any case, the provision of the U.P. Industrial Disputes Act, was not applicable, inasmuch as the respondents

were not employees of the railways or of the handicraft centre and that there was no master and servant relationship between the railways or with

the handicraft centre with that of the respondents. Consequently, the provisions of the U.P. Industrial Disputes Act, could not be invoked. The

petitioners further contended that assuming without admitting that the provisions of the said Act was applicable, the reference, if any, could only be

made by the appropriate government, which in the present case, was the Central Government u/s 10 of the Industrial Disputes Act and that, the

State government was not the appropriate government to make a reference u/s 4-K of the U.P. Industrial Disputes Act.

7. The Tribunal, after considering the evidence brought on the record gave an award holding that the handicraft centre run by the railways was a

factory and therefore, the said handicraft centre was an industry and its members were workmen and therefore, the provisions of U.P. Industrial

Disputes Act was applicable. The tribunal further held that the appropriate government was the State government and that a reference could be

issued u/s 4-K of the Act. The Tribunal also found that the respondents were working continuously from two years to twenty seven years and that

their services were illegally terminated without complying with the provisions of Section 6-H of the U.P. Industrial Disputes Act. Consequently, the

termination of the services of the workers was wholly illegal and, therefore they were liable to be reinstated in service with full back wages. Being

aggrieved by the said award, the petitioners have filed the present writ petition.

8. Heard Sri Lalji Sinha, the learned Counsel for the petitioners and Sri Shyam Narain, the learned Counsel for the respondents.

9. The learned Counsel for the petitioners submitted that under the welfare scheme, the handicraft centre was set up to impart training to the female

members of the railway employees to enable them to learn some trade in their spare time and to augment the family income. The respondents were

members of the handicraft centre and that there was no master and servant relationship between the petitioners and the respondents and that, the,

respondents could not be treated as workmen under the Industrial Disputes Act, since the petitioners had no control over the respondents. The

respondents could come and go at any moment of time. The petitioners had no power to take any disciplinary action if a member did not turn up.

The members were not being paid any wages. Further, the handicraft centre could not be called an industry nor the said handicraft centre could be

regarded as an independent establishment. The handicraft centre was part and parcel of the railways and therefore, the dispute, if any, under the

Industrial Disputes Act, could be referred, only by the appropriate government which, in the present case was Central Government.

10. On the other hand, the learned Counsel for the respondents submitted that the handicraft centre was an independent establishment having its

own Bye-laws and the activity which the establishment was doing clearly amounted to an industry as defined u/s 2[j] of the Industrial Disputes.

Act. Not only that, the handicraft centre was also a factory as defined; u/s 2[m] of the Factories Act.

11. The learned Counsel for the respondents further submitted, that the respondents were workmen as defined u/s 2[z] of the U.P. Industrial

Disputes Act and that the respondents paid the wages on place rated basis by adopting an unfair labour practice. The learned Counsel further

submitted that the petitioners had full control over the handicraft centre and "its workers and by shutting down the centre and illegally retrenching

the workers, clearly established, that the petitioners had total control over its workers. Since, the establishment was running independently and was

not part of the railways, consequently, the State Government had the power to refer the dispute to the Industrial Tribunal for adjudication u/s 4-K

of the U.P. Industrial Disputes Act.

12. In support of their submissions, the learned Counsel for the parties cited various case laws, which will be dealt with at the appropriate stage.

13. Upon considering the rival contentions of the learned Counsel for the parties and having given my thoughtful consideration in the matter, this

Court is of the opinion, that the impugned award of the Industrial Tribunal cannot be sustained. The moot question, which arise for consideration is,

whether the respondents could be defined as a workman under the U.P. Industrial Disputes Act, and whether the reference so made was an

industrial dispute or not.

14. Before proceeding further, it would be appropriate to peruse the definition of workman as defined u/s 2(z) of the U.P. Industrial Disputes Act

which reads as under:

Section 2[z] ""Workman" means any person (including 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 express or implied, and for the purposes or 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 10 the Army Act, 1950 or the Air Force Act, 1950 or the Navy (Discipline) Act, 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 a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, ether by the nature of

the duties attached to the officer or by reason of the powers vested in him, functions mainly of a managerial nature.

15. The petitioners contended that there was no master and servant relationship and that the respondents were not their employees. On the other

hand the respondents contended that they were being paid wages on piece rated basis and having worked continuously from two years to twenty

seven years, they were entitled to be treated as regular workers.

16. From a perusal of the record, I find that the handicraft centre was being run by the Railways under a Welfare Scheme to impart training in

various trades to the female members of a railway employee to enable them to learn some trade and to augment the family income. It has come on

record that there is a membership in the handicraft centre and the a female member of a railway employee could become a member upon payment

of Re. 1/- per month. Therefore, in the first flush, it is clear, that the respondents are members of the handicraft centre. It has also come on record

that it was open to the member to come at any moment of time and leave at any moment of time and that, it was open to a member to come or not

to come on a particular day. There was no hard or fast rule for a member to come at a particular hour or to sign the attendance register nor was

there any embargo for a member not to leave the premises prior to a particular time. No provision has been cited by the respondents to show that

a disciplinary action had been taken by the employers against a member for arriving late or for leaving early nor anything has been shown that the

employers could take disciplinary action against a member for not coming to the handicraft centre on a particular day. Consequently, it is clear that

the petitioners had no control over the members of the handicraft centre.

17. It is true, that a person engaged on job work could be termed a workmen but such person could only be termed a workman, provided he had

worked regularly in the establishment and was paid for the work turned out during the regular employment on the basis of the work done. A piece

rated worker can be called a workman within the definition of the word "workman" as defined under the Act, but he must be a regular worker and

not a worker who comes and goes according to his sweet will. Further, the worker must be working under a contract of service and that there is

an obligation to work either for a fixed period or between fixed hours. The respondents, in the present case, have been given liberty to come and

go at their pleasure and are not working in accordance with any order of the management, and therefore, they do not come in the category of a

regular employment.

18. In Chintaman Rao and Another Vs. The State of Madhya Pradesh, the Supreme Court held that the concept of employment involves three

ingredients namely.

(i) employer (ii) employee and (iii) the contract of employment. The employer is one who employs, i.e. one who engages the Services of other

persons. The employee is one who works for another for hire. The employment is the contract of service between the employer and the employee

where under the employee agrees to serve the employer subject to his control and supervision.

19. Based on the aforesaid concept, the Supreme Court in, Shankar Balaji Waje Vs. State of Maharashtra, held that the employment brings in a

contract of service between the employer and the employee and that there was no agreement or contract of service between the employers and the

bidi workers and that the employers exercised no control and supervision over the workmen nor controlled the working hours or the number of

days and that the bidi workers were free to leave the factory whenever they liked and, consequently found that in the absence of any control over

the bidi workers, the necessary element of master and servant relationship was missing.

20. In my opinion, the said judgment is squarely applicable to the present facts and circumstances of the case. The respondents are members of the

handicraft centre and were free to come and go at any moment of time. There was no fixed hours of work nor did the management exercised any

control or supervision over its members. There is no master and servant relationship between the petitioners and the respondents nor any direction

to the respondents is given to produce the nature of the article in a particular manner.

21. In the absence of any control and supervision by the petitioners over the members and in the absence of any fixed hours of work, this Court is

of the opinion, that the respondents are not workmen as defined u/s 2[z] of the U.P. Industrial Disputes Act, 1947.

22. In Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and Others, the Supreme Court held that

Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other

is, infact, the employer. He has economic control over the workers'' subsistence, skill, and continued employment.

23. The said judgment is distinguishable for the reason that the defective articles produced by the workers was to be rectified by the workers. The

Supreme Court further found that the employers had infact economic control over the workers subsistence, which in the present case, is missing.

Consequently, the said judgment is not applicable.

24. In Shining Tailors v. Industrial Tribunal II, U.P., Lucknow and Ors. AIR 1981 SC 23 the Supreme Court defined ''piece rated Workman'' and

held

If every piece rated workman is an independent contractor, lakhs and lakhs of workmen in various industries where payment is corelated to

production would be carved out of the expression ''Workman'' as defined in the Industrial Disputes Act. In the past the test to determine me

relationship of employer and the workman was the test of control and not the method of payment. Piece-rate payment meaning thereby paying

correlated to production is a well-recognised modes of payment to industrial workmen. In fact, wherever possible that method of payment has to

be encouraged so that there is utmost sincerity, efficiency and since minded devotion to increase production which would be beneficial both to the

employer, the workmen and the nation at large. But the test employed in the past was one of determining the degree of control that the employer

wielded over the workmen.

and further held:

Approaching the matter from this angle, the Court observed that the employer''s right to reject the end product if it does not conform to the

instructions of the employer speaks for the element of control and supervision.

25. The aforesaid judgment is clearly distinguishable inasmuch as, in the present case, there is no such averment or finding that the employers had

the right to reject the end product if it did not conform to the instructions of the employer.

26. In Phool Badan Tiwari and Ors. v. Union of India and Ors. 2003 SCC 1086, the supervisors were working in the handicraft centre of the

railways under a beneficial scheme, wherein they claimed that they were the employees of the Northern Railway. The contention was rejected by

the Tribunal as well as by the High Court. The Supreme Court held:

The scheme under which the appellants were appointed was a beneficial scheme intended to help the wives and daughters of the railway servants.

The appellants were only given an opportunity to work as supervisors. In this situation, it is not possible to hold by virtue of such appointments that

the appellants were regular railway employees. Once, it is concluded that they are not railway employees, irresistible conclusion that follows is that

the Tribunal had no jurisdiction to entertain their applications.

27. There is another aspect of the matter. Section 2[l] of the U.P. Industrial Disputes Act, defines an industrial dispute as under:

2[l] "Industrial Dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between

workmen and workmen, which is connected with the employment or non-employment or the term of employment or with the conditions of labour,

of any person ; but does not include an industrial dispute concerning-

(i) any industry carried on by or under the authority of the Central Government or by a Railway Company, or

(ii) such controlled industry as may be specified in this behalf by Central Government, or

(iii) banking and insurance companies as defined in the Industrial Disputes Act, 1947, or

(iv) a mine or an oil-field

28. From the aforesaid, it is clear that any difference between an employer and a workman in an industry carried on by or under the authority of

the central government or by a railway company is not an industrial dispute. In the present case, I find that the handicraft centre was being housed

in a premises which was under the control of the railways. The management of the handicraft centre was being managed completely by the officers

of the railways. The handicraft centre is part and parcel of the railways, Therefore, in my opinion, assuming that the handicraft centre was an

industry, nonetheless, the establishment was being carried on under the authority of railway and any dispute or difference between the railways and

its employees could not be termed as an industrial dispute, as contemplated u/s 2[l] of the U.P. Industrial Disputes Act. Consequently, since, it is

not an industrial dispute as contemplated u/s 2[l] of the Act, no reference could be made by the State Government for adjudication of a dispute u/s

4-K of the U.P. Industrial Disputes Act.

29. In view of the aforesaid, this Court is of the opinion, that the respondents are not workmen under the U.P. Industrial Disputes Act.

Consequently, no industrial dispute could be referred under the said Act. Consequently, the award cannot be sustained. In view of the aforesaid, it

is not necessary for the Court to dwell on the question as to whether the handicraft centre is an industry as defined u/s 2[j] of the Industrial

Disputes Act nor it is worth while for the Court to decide the question as to whether the State Government was the appropriate government to

refer the dispute.

30. For the reasons stated aforesaid, the impugned award of the Tribunal cannot be sustained and is quashed. The writ petition is allowed. It is,

however made clear that if any amount has been paid to the respondents pursuant to the award the same shall nut be recovered by the petitioners.

Since the handicraft centre is for the benefit of the family members of the railwaymen and it is a beneficial scheme to help the wives and daughters

of the railway servants, the petitioners are directed to reconsider their decision and reopen the handicraft, if possible.

31. The connected writ petitions arises out of an order passed u/s 15 of the Payment of Wages Act, whereby, the Prescribed Authority has

directed payment of wages illegally deducted by the petitioners. Since, I have already held that the respondents are not workmen and that there

was no master and servant relationship, consequently, the order of the. Prescribed Authority u/s 15 of the Payment of Wages Act, cannot be

sustained and is also quashed. It however made clear that if any amount has already been received by the respondents pursuant to the order

passed by the prescribed authority or pursuant to the award of the Industrial Tribunal, the said amount shall not be recovered from the

respondents.