Pepsico India Holding Pvt. Ltd. Vs Krishna Kant Pandey

Court: Supreme Court of India

Date of Decision: Jan. 6, 2015

Acts Referred: Constitution of India, 1950 - Article 226, 227
Industrial Disputes (Central) Rules, 1957 - Rule 12
Industrial Disputes Act, 1947 - Section 2
Uttar Pradesh Industrial Disputes Act, 1947 - Section 2, 6, 60N

Citation: (2015) 1 AD (SC) 603 : (2015) 2 ALJ 280 : (2015) 5 ALLMR 434 : (2015) 2 AWC 2061 : (2015) 2 ESC 226 : (2015) 144 FLR 607 : (2015) LabIC 2245 : (2015) 1 LLN 1 : (2015) 1 SCALE 77 : (2015) 4 SCC 270 : (2015) 1 SCC(L&S) 701 : (2015) 1 SCJ 207 : (2015) 2 SCT

Hon'ble Judges: Shiva Kirti Singh, J.; M. Yusuf Eqbal, J.

Bench: Division Bench

Advocate: C.U. Singh, Senior Advocate, Ashlesha Srivastava and Dheeraj Nair, for the Appellant; Kavin Gulati, Sr. Adv., Avi Tandon and Rohit Sthalekar, Advs. for T. Mahipal, Advocates for the Respondent

Final Decision: Dismissed

Judgement

M. Yusuf Eqbal, J.
Leave granted.

2. This appeal by special leave is directed against judgment and order dated 23.5.2013 of the High Court of Allahabad at Lucknow Bench

whereby learned Single Judge classifying the Respondent as "workman" allowed the writ petition preferred by him, quashed the order dated

August 24, 2007 passed by the Industrial Tribunal II, State of Uttar Pradesh, Lucknow (in short, "the Tribunal") and directed the Tribunal to

decide Respondent"s Case No. 84/2004 on merit.

3. The factual matrix of the case is that the Respondent was appointed on the post of Operator/Technician Grade III for six months on probation

basis w.e.f. 13th of March, 1995 against the salary of Rs. 2600/- per month. Having been found his services satisfactory, he was confirmed w.e.f.

13th September, 1995 and was also awarded one increment w.e.f. 1st of February, 1996. Earlier, he was appointed in the Plant of Jainpur

(Kanpur Dehat) from where he was transferred to Sathariya Plant, District Jaunpur, U.P. on 30th of August, 1996 on the revised pay scale i.e. Rs.

5450/-. Pursuant to the subsequent transfer order, he was posted at Lucknow in the month of June, 1997 and till 2000 he was awarded annual

increments at the rate of Rs. 490/-. Subsequently, he was promoted to the post of Line Supervisor in the pay scale of Rs. 7716/- and thereafter to

the post of Fleet Executive.

4. It is the case of the Respondent that being posted as a Fleet Executive, he was to discharge the mechanical work and that being so, he was

called as skilled workman. It is stated that no other staff was posted in his subordination. The Respondent also pointed out the conduct of the

employer transferring him from one place to another and also compelling him to resign from the post or to be on long leave. On being asked to

proceed on leave, Respondent remained on leave w.e.f. 9th October, 2003 to 17th October, 2003. When he turned up, he was not permitted to

join for want of instructions of the superior authorities. Thereafter, Respondent wrote a letter on 8th November, 2003 to the Vice President

seeking guidance for further action, upon which the employer became unhappy and terminated his services on 14th of November, 2003 by giving

one month''s salary in lieu of notice prior to termination.

5. Aggrieved by the said termination, Respondent preferred a reference before the Conciliation Officer, Lucknow alleging that he is a ''workman''

within the meaning of the Uttar Pradesh Industrial Disputes Act, 1947 (hereinafter referred to as the ''Act'') and termination of his services by the

Company is contrary to Section 6 of the Act. The Appellant Company pleaded that the Respondent did not satisfy the criteria of a workman as

defined Under Section 2(z) of the Act. The Industrial Tribunal dismissed the reference stating that the Respondent is not a workman Under Section

2(z) of the Act and, therefore, no challenge to the termination is maintainable before the Tribunal.

6. Respondent, being aggrieved, moved the High Court by way of a writ petition challenging the order of the Tribunal and also for his reinstatement

to the post of Fleet Executive with continuity of service and for payment of full back wages. In reply, the Appellant pleaded that the order of

termination is in accordance with the provisions of the Act. After hearing learned Counsel on either side, learned Single Judge of the High Court

allowed writ petition of the Respondent, quashed order of the Tribunal and directed it to proceed with the adjudication of the Respondent''s case

on merit. Hence, the present appeal by special leave by the Appellant-Company.

7. Mr. C.U. Singh, learned Counsel appearing for the Appellant, assailed the order passed by the High Court on various grounds inter alia, the

High Court has exceeded its jurisdiction conferred upon it Under Article 226 of the Constitution of India by reversing the finding recorded by the

Tribunal. Learned Counsel submitted that the High Court has committed grave error in issuing suo motu directions to the executive to amend a

relevant provision of Section 2(z) of the U.P. Industrial Disputes Act (in short, "State Act"). According to the learned Counsel, issuing such

direction by the High Court amounts to issue a direction to the legislature to enact a law in a particular manner. Learned Counsel submitted that the

High Court cannot mandate the executive to introduce or enact a legislation, howsoever necessary or desirable. Learned Counsel drew our

attention to the provisions of Section 2(z) of the said Act which defines "workman" and submitted that the High Court has failed to appreciate that

the nature of duties and responsibilities entrusted upon the Respondent are not manual, skilled or unskilled or technical services, but manual,

managerial and supervisory. In the capacity of Fleet Executive, Respondent was required to monitor each and every vehicle of the Fleet and ensure

that the necessary repair proceedings were carried out. Learned Counsel further submitted that the High Court has misdirected itself in considering

the relevant facts and pleadings which were not even placed before the Industrial Tribunal. Lastly, it was contended that the High Court in exercise

of its jurisdiction Under Article 226 of the Constitution ought not re-appreciate or re-weigh evidence and disturb the finding of facts recorded by

the Tribunal based on appreciation of evidence. Learned Counsel relied upon the judgment of this Court in the case of Chandavarkar Sita Ratna

Rao Vs. Ashalata S. Guram, , Birla Corpn. Ltd. Vs. Rajeshwar Mahato and Others, and S.K. Maini Vs. M/s. Carona Sahu Company Limited

and others,

8. Mr. Kavin Gulati, learned senior Counsel appearing for the Respondent firstly contended that before conciliation, the Appellant raised an

objection with regard to the jurisdiction of the Tribunal and the matter was finally referred to the Labour Court for adjudication on a limited

question as to whether the termination of services of the Respondent was justified. According to the learned Counsel, the Appellant-management

cannot raise the question of jurisdiction of the Labour Court. Learned Counsel referred to Rule 12 of the Industrial Disputes Rules in support of his

contention and relied upon the decision of this Court in the case of U.P. Electric Supply Co., Ltd. Vs. The Workmen of S.N. Choudhary,

Contractors and Another, . Mr. Gulati, learned senior Counsel also relied upon the decision of this Court in the case of Tata Iron and Steel

Company Ltd. Vs. State of Jharkhand and Others, , and Bhogpur Co-op Sugar Mills Ltd. Vs. Harmesh Kumar, , for the proposition that the

Labour Court has limited jurisdiction to adjudicate the disputes referred to it and not to enter into any other question that may be raised in the

reference.

9. We have heard learned Counsel for both the parties and considered the relevant facts and the law applicable thereto. The admitted facts are that

at the relevant time, the Respondent was working as a Fleet Supervisor and drawing a salary of Rs. 7716/-. Initially, he was appointed as a

technician Grade-III in 1995 on the salary of Rs. 2600/- per month and after getting increment his salary was increased. By giving one month''s

salary, in lieu of the notice, his services were terminated.

10. It appears that the Appellant raised a preliminary objection before the Labour Court that the Respondent was not a Labour as defined Under

Section 2(z) of the said Act and the Deputy Labour Commissioner, Lucknow, who had referred the present case, was not competent for this

purpose. The Labour Court recorded the evidence adduced by both the Appellant and the Respondent and discussed the evidence, and

elaborately considered the case of the parties. The Labour Court finally recorded finding that the Respondent is not a workman within the meaning

of Section 2(z) of the Act. Paras 13 to 15 of the order are reproduced hereinbelow:

13. The statement of the Applicant is that although he was given the post in the name of Fleet Executive and he was posted at the warehouse at

Lucknow, however practically he was doing the work of skilled manual and as such he fall within the definition as given in Section 2(z) of the

Industrial Disputes Act, 1947. According to him his main work was to remove the technical defects at 100% from the fleet. His other works which

have been mentioned by the management in their written statement, were secondary. It has also been stated that the written statement of the

management is not on affidavit, therefore the same cannot be relied upon. He was executing all his work in accordance with the directions of the

higher officials. He was not having any right of doing the work as per his own wishes. He has stated in his statement that no staff was working

under him. He used to do the work himself for keeping the vehicles 100% free/available from technical deformities and removed the difficulties of

the vehicles. It has also been stated that there is a difference in the statement of witnesses of the management EW-1 and EW-2 regarding the repair

of the work of the company and the same cannot be relied upon. It has been stated while relying upon the legal arrangement given by the Hon''ble

Supreme Court in S.K. Verma v. Mahesh Chander AIR-SC-1462 and Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The

Burma Shell Management Staff Association and Others, that any personnel fall within the definition of labour or not, it depends upon the fact that

what is the nature of the main works being done by him. The same cannot be assessed with the name of the post. If the concerned person is doing

the work of manual skilled unskilled work, then he is in the definition of labour, as the main work of the Applicant was to repair the vehicles, which

he used to do from his own hands. No other person was working under him and he was not having the right to take decision by himself. Therefore,

he falls within the definition of Labour. It has been stated while referring the S.K. Verma v. Mahesh Chander and Vermashel Air Storage and

Distribution Co. of India Ltd., v. Vermashel Management Staff Association (supra) that the work of the Applicant was similar to fuelling

superintendent, which has been considered by the Hon''ble Apex Court as labour, because his work was manual and not supervisory. Therefore

he falls within the definition of labour and the termination of service made by the management is retrenchment, which has been done in violation of

the provisions of Section 60N of the U.P. Industrial Disputes Act, 1947. Therefore his termination of service is improper and illegal. On this basis

he may be reinstated in service alongwith salary for leave period.

14. It has been argued on behalf of Management that out of the works executed by the Applicant on the post of Fleet Executive, the details of the

paid work are mentioned in their written statement. The same has been admitted by the Applicant in his arguments. In this manner, the details

regarding the main work out of the works on the post of Fleet Executive being done by him is proved. All these works are supervisory in nature.

The major work of repair of the vehicle used to be done from outside. The work of washing and cleaning of the vehicles was done by driver. The

Applicant has never done any type of repairing work and neither anybody has seen the Applicant while doing such work. In this manner mainly the

Applicant was doing the work of supervisory nature. Therefore does not fall within the definition of labour. His services have been terminated

under the terms. In this manner the order of termination of his service is proper and legal. He is not entitled to get any relief.

15. The main question in this industrial dispute is whether the Applicant K.K. Pandey is a labour, as claimed by him, as this claim has been made

by him and as such onus to prove the same lies on him. According to para 11 and 12 of his written statement he was having only one responsibility

on the post of fleet executive that he was to ensure the availability of the vehicles free from technical deformities. According to the written statement

for this work nobody was working under him and he used to do the work of repair with his own hands. He has reiterated this fact in his statement

also. In this regard except his statement has not produced any evidence to confirm the same. On the other hand he has admitted in his arguments as

regards the details of different works mentioned by the management in para No. 1 of their written statement. According to it out of his works, there

is a detail of 15 main works. In this manner the statement made by the Applicant regarding his main work remained rebutted. The statement of the

Applicant regarding the post of Fleet Executive on the basis of which he is claiming himself as labour is not liable to be believed.

11. On the basis of the findings based on elaborate discussions and analyzing the evidence, the Labour Court came to the conclusion that at the

relevant time the Respondent was working as a Fleet Executive which is supervisory in nature and does not fall within the definition of ''labour'' as

defined Under Section 2(z) of the Act. Hence, he is not entitled to any relief. The Respondent challenged the aforesaid award passed by the

Labour Court in a writ petition before the High Court. After considering the definition contained in Section 2(z) of the Act and the nature of work

assigned to the Respondent, the High Court arrived at a conclusion that the nature of work prevalent on the date of termination was as that of a

workman. Curiously enough, though the Respondent did not come under the definition of workman Under Section 2(z) of the Act, the High Court

proceeded on the basis that the U.P. Industrial Disputes Act was enacted in 1947 and although the Respondent cannot be held to be a workman

under the said definition, held that he shall have to be classified as a workman and directed the Government to make amendment in Section 2(z) of

the Act excluding some of the clauses. For better appreciation, relevant portion of the order is quoted hereinbelow:

There is one more exclusion clause in Section 2(z) of the Act i.e. Clause (iv) which excludes the employee who being employed in supervisory

capacity draws wages exceeding Rs. 500/- per mensem or exercise, 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 in nature. It is very much obvious that by nature of duties assigned to the Petitioner, it

cannot be said that he was attached to the office or mainly managerial function was vested with him.

So far as another condition for exclusion from the definition of ""workman"" viz. drawing wages exceeding Rs. 500/- per mensem is concerned, it is

not in dispute that the Petitioner on the date of retrenchment had been getting more Rs. 500/- mensem. This clause is a part of original form of the

definition of ""workman"" as is provided Under Section 2(z) of the Act. The U.P. Industrial Disputes Act was enacted in 1947. The Petitioner was

retrenched from service in 2003. The date of his initial appointment is on 13th of March, 1995. By passage of time the GDP growth had been

increased in number of times from 1947 to 2003. Therefore, the enhancement in income was a natural corollary, in the light of which, I am of the

view that this clause has become unworkable and redundant. Now every workman working in the Industry definitely would have been getting more

than Rs. 500/- per mensem and if this clause is permitted to be prevailed no workman shall be governed under the definition of ""workman"".

Therefore, I am of the view that this clause has lost its significance and if the employee is covered under the definition of ""workman"" as is defined

Under Section 2(z) of the U.P. Industrial Disputes Act and further is not covered under the exclusion clause except Clause (iv), he shall be

classified as ""workman"". The Clause (iv) of Section 2(z) shall not come in the way of his categorization as ""workman"".

It is advisable to the State Government to consider to make an amendment in Section 2(z) of the U.P. Industrial Disputes Act, 1947 in general and

to exclude the class (iv) from the exclusion in particular.

Since the present Petitioner has been classified by this Court, as above, under the definition of ""workman"" the order impugned dated 24th of

August, 2007 passed by the Industrial Tribunal II, State of U.P., Lucknow is hereby quashed with the direction to the Tribunal to proceed with the

adjudication case No. 82/2004 to adjudicate upon it on merit.

12. Considering the entire facts of the case and the findings recorded by the Labour Court, prima facie we are of the view that the High Court has

exceeded in exercise of its jurisdiction Under Articles 226 and 227 of the Constitution of India in interfering with the finding of facts recorded by

the Labour Court. It is well settled that the High Court in the guise of exercising its jurisdiction normally should not interfere Under Article 227 of

the Constitution and convert itself into a court of appeal.

13. While discussing the power of the High Court Under Articles 226 and 227 of the Constitution interfering with the facts recorded by the courts

or the tribunal, this Court in the case of Chandavarkar S.R. Rao v. Ashalata S. Guram (supra) held as under:

17. In case of finding of facts, the court should not interfere in exercise of its jurisdiction Under Article 227 of the Constitution. Reference may be

made to the observations of this Court in Bathutmal Raichand Oswal v. Laxmibai R. Tarta where this Court observed that the High Court could

not in the guise of exercising its jurisdiction Under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of

appeal. The High Court was not competent to correct errors of facts by examining the evidence and reappreciating. Speaking for the Court,

Bhagwati, J. as the learned Chief Justice then was, observed at p. 1301 of the report as follows: (SCC p. 864, para 7)

The special civil application preferred by the Appellant was admittedly an application Under Article 227 and it is, therefore, material only to

consider the scope and ambit of the jurisdiction of the High Court under that article. Did the High Court have jurisdiction in an application Under

Article 227 to disturb the findings of fact reached by the District Court? It is well settled by the decision of this Court in Waryam Singh v.

Amarnath that the...power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways v. Sukumar

Mukherjee to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their

authority and not for correcting mere errors.

This statement of law was quoted with approval in the subsequent decision of this Court in Nagendra Nath Bose v. Commr. of Hills Division and it

was pointed out by Sinha, J., as he then was, speaking on behalf of the court in that case:

It is thus, clear that the powers of judicial interference Under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not

greater than the power Under Article 226 of the Constitution. Under Article 226 the power of interference may extend to quashing an impugned

order on the ground of a mistake apparent on the face of the record. But Under Article 227 of the Constitution, the power of interference is limited

to seeing that the tribunal functions within the limits of its authority.

14. In the case of Birla Corpn. Ltd. Vs. Rajeshwar Mahato and Others, , the question of validity of termination of services of the Respondent by

the Appellant-Corporation was referred to the Industrial Tribunal. On evidence, the Industrial Tribunal found that the duties of the Respondent

were mainly managerial or administrative. The Tribunal held that the Respondent was not a workman and the reference was therefore not

maintainable against the decision of the Tribunal. The Tribunal relying on Section 2(s)(iv) (as amended in West Bengal W.B.) held that as the

Respondent was drawing salary less than Rs. 1600/- per month, he had to be regarded as a workman. The Corporation moved this Court against

the order of the High Court. This Court while setting aside the decision of the High Court held as under:

4. It was not in dispute that at the time of the termination of services of Respondent 1, he was receiving Rs. 1185 per month by way of salary. The

Tribunal recorded the evidence as well as took into consideration documentary evidence which was produced by the parties. On the basis of the

evidence which was adduced before it, the Tribunal observed that:

The main duties of Shri Rajeshwar Mahato were both supervisory and administrative in nature.

In the instant case, Shri Mahato''s functions were mainly of a managerial nature. He had control as well as supervision over the work of the jute mill

workers working under him.

11. As we have also noticed hereinabove, the Tribunal had given a categorical finding to the effect that Respondent 1''s function was mainly of

managerial nature. His duties were both supervisory and administrative and therefore he was regarded as not being a workman. Though the

Tribunal did not specifically state so, it is evident that it is because of Section 2(s)(iii) that Respondent 1 was regarded as not being a workman.

12. Neither the Single Judge nor the Division Bench of the High Court, as we have already noticed, referred to this aspect of the matter. Even

assuming that the West Bengal amendment was applicable, that would still not help to hold Respondent 1 as a workman if the finding of the

Tribunal with regard to the nature of the duties performed by him, as arrived at by the Tribunal, is not set aside as being frivolous or without any

evidence. As long as the finding of the Tribunal stands, namely, that the Respondent was an employee mainly in a managerial or administrative

capacity, the award of the Tribunal could not have been set aside. As we have already observed the Single Judge or even the Division Bench could

have come to the conclusion that the finding so arrived at by the Tribunal was either frivolous or not based on any evidence. But this aspect of the

case was completely overlooked by the High Court. The emphasis of the Single Judge as well as the Division Bench was only with regard to

applicability of the amendment of the State of West Bengal to Section 2(s) of the Industrial Disputes Act. In our opinion, therefore, the High Court

erred in allowing on this ground the writ petition filed by Respondent 1. The decision of the High Court is set aside and the writ petition filed therein

by the Respondent stands dismissed.

15. In the case of Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers" Union and Another, , this Court considered a similar question with

regard to the power of the High Court Under Article 226 against the findings recorded by the Industrial Tribunal. Reversing the decision of the

Single Judge and restoring the fact finding decision of the Tribunal this, Court held:

17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating

the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate

jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly

constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having

been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they

are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and

possibly be taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned Single Judge and in ordering

restoration of the award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned Single

Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample

and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken, the objectivity of approach adopted and

reasonableness of findings recorded seem to be unexceptionable. The only course, therefore, open to the writ Judge was to find out the satisfaction

or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded

by the fact-finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one"s own, altogether giving a

complete go-by even to the facts specifically found by the Tribunal below.

16. The order of the Tribunal would show that the Respondent-workman accepted different works assigned to him which were purely of

supervisory and managerial nature. The details of 15 managerial/supervisory works assigned to the Respondent have been analyzed by the Tribunal

which finally came to the conclusion that the Respondent is not a workman within the meaning of Section 2(z) of the Act.

17. In exercise of its writ jurisdiction, the High Court proceeded initially on the basis that the Appellant had entered into service on the post of

Operator/Technician Grade-III, which is a technical post and from there he was promoted to different posts including Fleet Executive. The High

Court committed grave error in holding that although he is not covered under the definition of workman as defined Under Section 2(z) of the Act

he shall be classified as a workman. The High Court further exceeded its jurisdiction in advising the Government to make an amendment in Section

2(z) of the Act and to exclude some clauses. The order passed by the High Court cannot be sustained in law.

18. We, therefore, allow this appeal and set aside the order of the High Court and restore the order passed by the Tribunal. However, we give

liberty to the Respondent to move the appropriate forum to challenge, in accordance with law, the order of termination passed by the Appellant.