P.R. Kokil Vs The General Manager, South Central Railway

Court: Bombay High Court

Date of Decision: June 15, 1970

Acts Referred: Industrial Disputes Act, 1947 â€" Section 2

Citation: (1972) 74 BOMLR 124

Hon'ble Judges: Nathwani, J; Chitale, J

Bench: Division Bench

Judgement

Chitale, J.
The facts giving rise to this petition, briefly stated, are as follows: The petitioner, P.R. Kokil, is the Headmaster of Railway

Boys" Primary School at Puma, District Parbhani. He joined Railway service under N.S. Railway as a teacher from April 1, 1936. We need not

state here the details of his career. At the material time he was an employee of South Central Railway. It is not disputed on behalf of respondent

No. 1, the General Manager, South Central Railway, that the petitioner is an employee of South Central Railway, his salary is paid by that Railway

and he is under the administrative control of that Railway. In November 1966 election of the office-bearers of the South Central Railway Mazdoor

Union (hereinafter referred to as the Union) took place and the petitioner was elected as the Divisional President of the said Union. By the letter

dated November 22, 1966 the names of the newly elected office-bearers were communicated to the General Manager, South Central Railway. In

reply to that letter, the General Manager by his letter dated November 30, 1966 informed the General Secretary of the Union that the petitioner

being the Headmaster of a Railway Primary School could not, according to the directions of the Railway Board, be elected as an office-bearer of

the said Union, hence he should be replaced by electing another person. Accordingly, the Union replaced the petitioner by electing one H.R.

Hanumantrao as Ad-hoc President. Although the petitioner was thus temporarily replaced by H. Rule Hanumantrao, the Union did not accept the

General Manager"s view that the petitioner was not eligible to be an office-bearer of the Union. The Union submitted its representation dated

December 7, 1966, to the Secretary, Railway Board, New Delhi, contending that it was not correct to prevent school teachers from becoming

office-bearers of the Union. The representation pointed out that for the past several years teachers were holding the posts of office-bearers. We

may refer here to the communication dated July 21, 1965 from the Assistant Director, Establishment, Railway Board, to the General Managers of

Railways. This communication states that the question whether the Railway Schools and the Railway Training Schools constitute industry was

raised, the Railway Board was advised by the Ministries of Labour and Employment and Laws that Railway Schools and Railway Training

Schools do not constitute industry, hence they are not covered by the provisions of the Industrial Disputes Act, 1947. The Union did not succeed

in persuading the Railway Board to accept its view that teachers of the said schools could be office-bearers of the Union. The petitioner, therefore,

filed the present petition challenging the correctness and legality of the Railway Board''s decision refusing to recognise railway schools and railway

training schools as ''industry'' covered by the provisions of the Industrial Disputes Act, 1947, and also praying for a writ of mandamus directing

respondent No. 1, the General Manager, South Central Railway, to recognise the petitioner as the Divisional President of the said Union. The

petition further prays for a direction to the above mentioned H.R. Hanumantrao not to act as the Divisional President of the Union in. place of the

petitioner.

2. The Deputy Chief Personnel Officer, South Central Railway, has filed his affidavit supporting the stand taken by the General Manager, South

Central Railway. The South Central Railway contends that in view of the decision of the Supreme Court in University of Delhi and Another Vs.

Ram Nath, , it is clear that educational activity cannot constitute industry, hence the petitioner, who is the Headmaster of a Primary School, cannot

be considered to be an industrial worker; he cannot, therefore, be a member of the Union in question.

3. Mr. Kulkarni, who appears for the petitioner, contends that the stand taken by the General Manager, South Central Railway, mentioned above

is clearly wrong. In support of this contention, reliance is placed, on the definitions of the expressions ""railway school"" and ""railway servant"". These

two definitions read thus:

(12) ''Railway School'' means a school established by a Railway or Office/Project/Factory directly under the Railway Board primarily for the

benefit of the children of its employees and maintained and entirely controlled by it with or without assistance from revenues of a State or income

from other non-railway source. It does not include a school to which a railway merely makes a grant-in-aid.

(13) ''Railway servant'' means a person who is a member of a service or who holds a post under the administrative control of the Railway Board

and includes a person who holds a post in the Railway Board, Persons lent from a service or post which is not under the administrative control of

the Railway Board to a service or post which is under such administrative control do not come within the scope of this definition.

''The term excludes, casual labour for whom special orders have been framed''.

It is not disputed by Mr. Lokur, who appears for respondent No. 1, the General Manager, South Central Railway, that the school in question is, a

Railway School falling under the above definition So also Mr. Lokur concedes that the petitioner is a Railway servant as per the definition quoted

above. Reliance is further placed on Rule 3610 in Indian Railway Establishment Manual, Part B, headed ""Rules for the recognition of association of

non-gazetted railway servants"" (Chapter XXXVI). The rule reads thus:

3610. Government is prepared to accord official recognition to associations of its industrial employees. The grant and continuance of recognition

rests in the discretion of Government, but recognition when granted will not be withdrawn without due cause and without giving opportunity, to the

association to show cause against such withdrawal.

NOTE. -The term ''industrial employee'' includes railway servants.

This rule has statutory force. Mr. Kulkarni particularly relies on the note in the small type below Rule 3610. Paragraph 3610 provides for

recognition of associations of industrial employees. If the note mentioned above was not there, it would have been arguable whether a teacher of a

primary school run by a railway can be said to be an ""industrial employee"". The note, however, makes it clear that the expression ""industrial

employee"" includes ""Railway servant"". It is important to note that the said note below para. 3610 includes any Railway servant in the expression

Railway employee"". The said note does not indicate that only particular class or classes of Railway servants are included in the expression

Industrial employee"". As already stated, it is not disputed that the petitioner is a ''Railway servant'' as per the definition quoted above. If so, it is

obvious that the petitioner would be an industrial employee in view of para. 3610 and the note below it. Mr. Kulkarni for the petitioner points out

that the observations of the Supreme Court in para. 17 of the judgment in Delhi University case make it clear that the test of the character of the

predominant activity is the main test to be adopted in such cases. He points out, in our opinion rightly, that because the predominant activity of

Delhi University cannot be said to be industrial activity, the employee in that case was not held, to be an industrial, worker.

4. Mr. Kulkarni relics on the decision in J.K. Cotton Spinning and Weaving Mills Co., Ltd. Vs. Badri Mali and Others, . The question that arose in

that case was whether a Mali (gardener) working in the garden of a bungalow occupied by an officer of the Mills, can be held to be a workman as

defined by Section 2(s) of the Industrial Disputes Act. Relevant observations in para. 12 of the judgment are as follows (p. 740):

...Wherever it is shown that the industry has employed an employee to assist one or the oilier operation incidental to the main industrial operation, it

would be unreasonable to deny such an employee the status of a workman on the ground that his work is not directly concerned with the main

work or operation of the industry. Reverting to the illustration of the buses owned by the factory for the purposes of transporting its workmen if the

bus drivers can legitimately be held to assist an operation incidental to the main work of the industry, we do not see why a Mali should not claim

that he is also engaged in an operation which is incidental to the main industry.

The following observations in para. 13 of the judgment are also material (p. 741):

...It is true that in matters of this kind it is not easy to draw a line, and it may also be conceded that in dealing with the question of incidental

relationship with the main industrial operation, a limit has to be prescribed so as to exclude operations or activities whose relation with the main

industrial activity may be remote, indirect or far-fetched.

Relying on the above observations Mr. Kulkarni for the petitioner submits that if a Mali (gardener) who works in the garden provided for the

pleasure of the officer of the Mills, who was provided residential quarters, can be said to fall under the definition of ''workman'' u/s 2(s) of the

Industrial Disputes Act, there is no reason why the petitioner, a teacher, who provides for the amenity of education to the children of Railway

employees should not fall under that definition. In our opinion, there is considerable force in this contention. It is true that the work done by the

petitioner has no direct connection with the industry in question viz. Railway, but there can be no doubt that the petitioner''s activity i.e. work is

incidental to the main industrial operation, as indicated by the above-quoted observations of the Supreme Court. Mr. Lokur for respondent No. 1,

the General Manager, South Central Railway, points out that in the above case the amenities enjoyed by the officers of the Mills were provided by

the terms of employment. He contends that under the terms of employment the Mills were bound to provide these amenities, while the Railway is

not bound to provide educational facilities to the children of the Railway employees. In our opinion, it would not be correct to determine the

question before us by taking into account whether it was obligatory for the employer to provide the particular amenity. The material question for

consideration would be whether the work carried on by a particular employee can be said to be an activity incidental to the main industrial

operation. We asked Mr. Lokur for respondent No. 1 under what provision or rules the Railway provided schools for the children of Railway

employees. Mr. Lokur produced before us the letter dated July 28, 1955 written by the Director, Establishment, Railway Board, to the General

Managers of the Railways. That letter makes it clear that where educational facilities were not available for children of Railway employees, the

Railway Board did direct that schools should be provided for. The letter stated ""the criterion should be whether the provision of such a school is

really inescapable."" This letter read as a whole indicates that the Railway Board appreciated the difficulty of Railway employees at certain places in

getting even basic i.e. primary education for their children and in view of the genuine difficulty in this respect schools were provided for. In view of

this letter, there can be no doubt that the Railway Board provided schools for children of Railway employees as an amenity absolutely necessary

for some Railway employees. The petitioner has been working as a teacher in one of such schools provided as an essential amenity to particular

Railway employees. The question for our consideration is whether the work done by the petitioner as a teacher can be said to be an activity or

operation incidental to the main industrial operation. It is not disputed that Railway establishment is an industrial establishment. Thus the character

of the predominant activity of Railway is industrial. In view of the Supreme Court''s observations in the ease of J.K. Cotton Spg. & Wvg. Mills Co.

quoted above, we see no adequate reason why the work carried on by the petitioner should not be held to be incidental to the main industrial

operation carried on by the Railway. The facility or amenity of education cannot be said to be less important than the facility of a gardener

provided to the officer of a Mill. The mere fact that in the above-mentioned Supreme Court case the facility or amenity of a gardener for his

residential quarters enjoyed by the Mill Officer was provided by the terms of the contract of employment would, in our opinion, make no

difference in judging the nature of the work done by a particular employee and deciding whether such work or activity is incidental to the main

industrial activity or operation or it is too farfetched. As pointed out above, the Railway Board itself felt that at some places educational facilities

are not available and, in order to induce its employees to work at such odd places where facility for the education of children is not available, the

essential amenity of education to the children of Railway employees had to be provided for. The work in such schools thus forms an activity which

is incidental to the main industrial operation. We, therefore, hold that the Railway Board was not right in its conclusion that teachers working in

Railway Schools and Railway Training Schools are not covered by the provisions of the Industrial Disputes Act, 1947. Mr. Lokur for respondent

No. 1 laid stress on the fact that the nature of the actual work carried on by the petitioner can in no sense be described as industrial work or

industrial activity. This would not, however, be material in view of the Supreme Court decision in J.K. Cotton Spg. & Wvg. Mills Co. v. L.A.

Tribunal of India.

5. Mr. Lokur for respondent No. 1 further urged that the election of the petitioner as the Divisional President was only for the year 1966-67, that

period has expired and the petition does not survive. We are unable to hold that the petition does not survive merely because the period for which

the election in question Was held has expired. The petition does raise the question whether the petitioner as a school teacher was entitled to be a

member and officer-bearer of South Central Railway Mazdoor Union. His eligibility in that respect was questioned by the Railway Board''s letter

dated July 21, 1965 and the direction issued by that letter is challenged by the present petition. We do not think it advisable to dispose of the

present petition merely on the ground that the period of election mentioned in the petition is over.

6. For the reasons indicated above, we hold that the Railway Board''s decision communicated by its letter dated July 21,1965 to the effect that

teachers and other employees working in Railway Schools and Railway Training Schools are not covered by the provisions of the Industrial

Disputes Act, 1347, is not correct. The petitioner would be entitled to be a member of the South Central Railway Mazdoor Union and would also

be entitled to contest election to the posts of its office-bearers.

7. Considering the facts of this case, we direct that there will be no order as to costs.