1981 G. L. H. 274

S. H. SHETH AND G.T.NANAVATl JJ

Patel Hiralal Ramlal & Co. .....Petitioner

Versus

Smt. Chandbibi Pirubhai and others .....Respondents

Special Civil Application No. 3098 of 1979 (with Special Civil Application No. 965 of 1980, M/s. Patel Hiralal Ramlal & Co. Vs. Fatmabibi Allauddin and others)

D/- 18-9-1980*

* Applications under Article 227 of the Constitution of India praying to issue suitable writ, directions or orders to quash and set aside the orders passed by the appellate authority under the payment of Gratuity Act, etc.

Payment of Gratuity Act, 1972 -Section 2(e) - Workmen rolling out Beedis at their residential places are "employees" - For the purposes of the Act no distinction can be drawn between a workman who works at the premises of the beedi manufacturer and who works at his own home - "any establishment includes any premises where a workman employed works for the manufacturer.

We see no reason why we should make a distinction between a workman who rolls out beedis for the manufacturer at the premises of the manufacturer and one who rolls beedis for him at his own home. Both are engaged directly by the manufacturer. Both work for his benefit and satisfaction. The manufacturer has the right to reject the finished product manufactured by a workman at his home. Both depend upon him for their livelihood. It is necessary to bear in mind the recent trend in labour legislation in this behalf. "Any establishment" means not only the business premises of the beedi manufacturer, but any premises where a workman employed by a beedi manufacturer works for him. We have no hesitation in observing that the residential premises of a workman where be rolls out beedis for the manufacturer is, for the purposes of Payment of Gratuity Act, 1972, an. extension of the beedi manufacturer's establishment. Instead of working at the premises of the manufacturer himself, a workman works for him at his own place; it is more a matter of mutual convenience than a matter of legal rights. For the purposes of Payment of Gratuity Act, to draw a distinction between a workman who works at the premises of the beedi manufacturer and who works for the beedi manufacturer at his own home is invidious and admits of no rational norm. (Para 15)

Cases Referred :

1. Mangalore Ganesh Beedi Works etc. Vs. Union of India etc., A.I.R. 1974 S.C. 1832. (Para 9)

2. Silver Jubilee Tailoring House Vs. Chief Inspector of Shops and Establishments, A.I.R. 1974 S.C. 37. (Para 11)

3. Hussainbhai Vs. The Alath Factory Tezhilali Union and others, A.I.R. 1978 S.C. 1410. (Para 12)

4. The State of Punjab Vs. The Labour Court, Jullundur and others, A.I.R. 1979 S.C. 1981. (Para 13)

Special Civil Application No. 3098 of 1979 :

Mr. K. S. Nanavati for the petitioner. Mr. Y. V. Shah for respondent No. 1 Mr. C K. Takwani, Assistant Government Pleader, instructed by M/s. Bhaishanker Kanga and Girdharlal, for respondents Nos. 2 and 3.

Special Civil Application No. 965 of 1980 :

Mr. K. S. Nanavaty for the petitioner. Mr. C. K. Takwani, Assistant Government Pleader, for respondents Nos. 3 and 4.

The rest served.

Per S. H. Sheth, J.

1. These two petitions have been filed by the same petitioner (who is the employer) against the orders made under the Payment of Gratuity Act, 1972. In Special Civil Application No. 3098 of 1979, respondent No. 1 is the workman. In Special Civil Application No. 965 of 1980, the respondents Nos. 2 and 3 are the workmen. The petitioner is engaged in manufacturing Beedies and in selling Beedis and loose tea. The workmen were manufacturing or rolling out Beedis for the petitioner. They left his service. Thereafter they applied for payment of gratuity. The Controlling Authority under the Payment of Gratuity Act, 1972. ordered the Payment of gratuity to these workmen in terms of the orders, which he made.

2. The petitioner appealed against those orders to the Appellate Authority. Before the Appellate Authority, it was contended on behalf of the petitioner that the workmen were not "employees" within the meaning of the definition of that expression given in the Payment of Gratuity Act, 1972. That contention was negatived by the Appellate Authority. However, the Appellate Authority, on facts, found that the cases deserved to be remanded to the Controlling Authority. He, there fore, made an order remanding the cases to the Controlling Authority for fresh consideration on merits. Those orders are challenged in these two petitions.

3. The only contention which Mr. K. S. Nanavati has raised before us is that there was no relationship of an employer and an employee between the petitioner and his workmen. He has also argued that the petitioner-employer had no control over the employees and that the right to reject the end pro duct was not a factor determinative of whether the petitioner exercised control over these workmen. He has also argued that the definition of the expression "employee" given in the Payment of Gratuity Act, 1972, cannot be construed in light of the definitions of similar expressions given in other Acts.

4. The last argument,, which Mr. Nanavati has raised appears to be well-founded. Definition of an expression given in an Act must be construed with reference to the terms of that definition and it cannot ordinarily be construed in light of similar expressions used in other legislations even though other legislations may belong to the same area or field.

5. There is no doubt about the fact that the petitioner has the premises where his workmen roll out or manufacture Beedis for him. It appears that the workmen in these cases worked in those premises for a few years and that thereafter they started taking raw material home for rolling out or manufacturing Beedies for the petitioner.

6. Under the aforesaid circumstances, the question which has been raised by Mr. Nanavati is whether a workman who does not work on the business premises of his employer but who works for him at his home, indeed for the benefit of his employer, can be said to be. an "employee" within the meaning of that expression given in Sec. 2 (a) of the Payment of Gratuity Act, 1972. It reads as follows :

"Employee" means any person other than an apprentice employed on wages, not exceeding one thousand rupees for mense in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled semi-skilled or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, but does not include any such person who is employed in a managerial or administrative capacity, or who holds a civil post under the Central Government or a State Government, or who is subject to the Air Force Act, 1950, the Army Act, 1950 or the Navy Act, 1957."

Explanation appended to the definition of the expression "employee" reads as follows :

"In the case of an employee, who, having been employed for a period of not less than five years on wages not exceeding one thousand rupees per mense, is employed at any time thereafter on wages exceeding one thousand rupees per menses, gratuity, in respect of the period during which such employee was employed on wages not exceeding the one thousand rupees per mensem, shall be determined on the basis of the wages received by him during that period.."

There is no doubt about the fact that the workmen before us had been doing unskilled job of rolling out Beedis for the petitioner. It is also not in dispute that they were doing manual work because they were rolling out Beedies by hand. The only question which, therefore, arises for our consideration is whether a workman who rolls out Beedis for his employer not at the tatter's business premises but at his own house can be said to be an employee "in any establishment".

7. It is necessary in this context to note the relevant part of the definition of the expression "employer" given in Sec. 2 (f). It reads as follows :

"employer"' means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop -

(i) ....

(ii) ....

(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called *a* manager, managing director or by any other name, such person." There is no doubt about the fact that the petitioner had the ultimate control over the rolling out of the Beedis which these workmen used to do at their residential places for the petitioner. Therefore, the petitioner satisfies the definition of an "employer". So far as the expression "wages" is concerned, it has been defined by Sec. 2 (s) in the following terms :

" "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash end includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance."

The definition of the expression "wages" reproduced above does not state that they should either be monthly wages or daily wages or periodical wages. 'Wages' include all emoluments and, therefore, they also include piece-rated earnings or earnings made on the basis of the jobs executed.

8. Our attention has been invited to three decisions of the Supreme Court which do not have a direct bearing on the issue before us. While deciding the contention , which Mr. Nanavaty has raised before us, we are treading on a virgin soil.

9. The first decision is in Mangalore Ganesh Beedi Work's etc. v. Union Of India etc., AIR 1974 S.C. 1832. it was a case in which the constitutional validity of Beedi and Cigar Works (Conditions of Employment) Act, 1966, was challenged. We are not concerned with that aspect in this case. However, reliance has been placed on certain observations made in paragraphs 34 and 35 of the report. Those observations are as follows. Where a manufacturer himself employs labour, there is a direct relationship of master and servant. Therefore, liability is attracted by reason of that relationship. The second kind of relationship which can be brought into existence is in a case where the manufacturer engages contract labour through a contractor and he becomes the principal employer. In such *a* case, though the labour may be engaged by a contractor with or without the knowledge of the manufacturer, this contract labour is engaged for the principal employer who happens to be the manufacturer. In such a case, liability arises by reason of contract labour engaged for and on behalf of the principal employer. The third type of relationship arises where the contractor engages the labour for and on behalf of his own self and becomes the principal employer. Where a contractor engages labour for the

manufacturer, it is not unreasonable restriction to impose liability on the manufacturer for the labour engaged by the manufacturer through the contractor. In order to determine what sort of relationship exists between an employer and a workman who works for him, the test which has been evolved by the Supreme Court is the test of ultimate control. In the opinion of the Supreme Court, the Act impugned in that decision fastened liability on the manufacturer in respect of workers who were directly employed by him or who were employed by him through *a* contractor. If a contractor engaged labour for or on his own behalf and supplied the finished product to the manufacturer, he would be the principal employer and the manufacturer would not be responsible for implementing the provisions of that Act with regard to such labour employed by the contractor. In this behalf, it has been very significantly observed by the Supreme Court that if the right of rejection rests with the manufacturer, the contractor who prepares Beedis through the contract labour will find it difficult to establish that he is an independent contractor.

10. Therefore, even in a case where labour is engaged by a contractor and the manufacturer has the right to reject the end or finished product, the contractor is not an independent employer. It is the manufacturer who is the employer.

11 . The next decision to which our attention has been invited is in Silver Jubilee Tailoring House v. Chief Inspector of Shops and Establishments, AIR1974 S.C. 37. It was a case under the Andhra Pradesh (Telangana Area) Shops and Establishments Act, 1951. The question of relationship between a tailor and a person employed by him arose in that case. It has been observed in paragraph 28 of the report that the control test as traditionally formulated has not been treated as the exclusive test. What was canvassed in that case was that in order to establish the relationship of an employer and an employee, the control test must be satisfied. In that context, the Supreme Court has observed that it is not the exclusive test.

12. The next decision to which our attention has been invited is in Hussainbhai v. The Alath Factory, Tezhilali Union and others. AIR 1978 S.C. 1410. A similar question arose in that case under Industrial Disputes Act, 1947. It has been observed by the Supreme Court in that behalf to the following effect. Where a worker or a group of workers labours to produce goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill and continued employment. If he for any reason chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, if; is found, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor. This decision makes it clear beyond any doubt that "if the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from Management cannot snap the real-life bond". This test has been evolved for the purposes of Industrial Disputes Act; 1947.

13. The last decision to which our attention has been invited is in State of Punjab v. The Labour Court, Jullundur and others, AIR 1979 S.C. 1981. This decision has no application to the facts of the instant case,

14. Bearing in mind the observations made by the Supreme Court in the decisions above referred to, we are required to find out whether there was a relationship of an employer and an employee between the petitioner and the three workmen before us.

15. Mr. Nanavaty has in that behalf argued that the definition of the expression "employee" given in Sec. 2 (e) uses the words "in any establishment" and not "in or in connection with any establishment". This argument is prime facie attractive. However, we see no reason why we should make a distinction between a workman who rolls out beedies for the manufacturer at the premises of the manufacturer and one who rolls out beedis for him at his own home. Both are engaged directly by the manufacturer. Both work for his benefit and satisfaction. The manufacturer has the right to reject the finished product manufactured by a workman at his home. Both depend upon him for their livelihood. It is necessary to bear in mind the recent trend in labour legislation in this behalf. The Beedi and cigar Workers (Conditions of Employment) Act, 1966 contains protective provisions for outworkers or workers who do not work at the premises of the beedi manufacturers but who work at their

residential premises for the beedi manufacturer. In our opinion, therefore, "any establishment" means not only the business premises of the beedi manufacturer but any premises where a workman employed by a beedi manufacturer works for him. We have no hesitation in observing that the residential premises of a workman where he rolls out beedis for the manufacturer is, for the purpose of Payment of Gratuity Act, 1972, an extension of the beedi manufacturer's establishment. Instead of working at the premises of the manufacturer himself, a workman works for him at his own place; it is more a matter of mutual convenience than a matter of a legal rights. For the purposes of Payment of Gratuity Act, to draw a distinction between a workman who works at the premises of the beedi manufacturer and who works for the beedi manufacturer at his own home is invidious and admits of no rational norm. We are, therefore, of the opinion that within the meaning of the definition of the expression "employee" given in Sec. 2 (e), three workmen with whom we are concerned. were the employees of the petitioner. They are, therefore, entitled to the payment of gratuity.

16. In the view which we have taken, these petitions fail.

17. For the reasons stated by us in this judgment, we confirm the order made by the Appellate Authority Rule in each of the petitions is discharged with no order as to costs.

(I S S) **Petition dismissed**