SHRI BIRDHICHAND SHARMA

v.

FIRST CIVIL JUDGE NAGPUR AND OTHERS.

1960

December 9.

(P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

Industrial Dispute—Workers in bidi factory—Liberty to come and go when they liked—Payment on piece-rate—Control by rejection of work not upto the standard—If workmen—Test—Factories Act, 1948 (LXIII of 1948), ss. 2(l) and 79.

The appellant employed workmen in his bidi factory who had to work at the factory and were not at liberty to work at their houses; their attendance were noted in the factory and they had to work within the factory hours, though they were not bound to work for the entire period and could come and go away when they liked; but if they came after midday they were not supplied with tobacco and thus not allowed to work even though the factory closed at 7 p.m.; further they could be removed from service if absent for 8 days. Payment was made on piece rates according to the amount of work done, and the bidis which did not come upto the proper standard could be rejected.

The respondent workmen applied for leave for 15 days and did not go to work, for which period the appellants did not pay their wages; in consequence the concerned workmen applied to the Payment of Wages Authority for payment of wages to them. The appellant's contention that the respondent workmen were not his workmen within the meaning of the Factories Act, was rejected and the claim for payment of wages was allowed. The question therefore was whether the appellants were workmen within the meaning of the Factories Act.

Held, that the nature of extent of control varies in different industries and cannot by its very nature be precisely defined. When the operation was of a simple nature and could not be supervised all the time and the control was at the end of day by the method of rejecting the work done which did not come up to proper standard, then, it was the right to supervise and not so much the mode in which it was exercised which would determine whether a person was a workman or an independent contractor.

The mere fact that a worker was a piece-rate worker would not necessarily take him out of the category of a worker within the meaning of s. 2(l) of the Factories Act. In the instant case the respondent workmen could not be said to be independent contractors and were workmen within the meaning of s. 2(l) of the Factories Act.

Held, further, that the leave provided for under s. 79 of the Factories Act arose as a matter of right when a worker had put

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in a minimum number of working days and he was entitled to it. The fact that the workman remained absent for a longer period had no bearing on his right to leave.

State v. *Shankar Balaji Waje*, A.I.R. 1960 Bom. 296, approved.

Dharangadhara Chemical Works Ltd. v. *State of Saurashtra*, [1957] S.C.R. 152 and *Shri Chintaman Rao* v. *The State of Madhya Pradesh*, [1958] S.C.R. 1340, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 370 of 1959.

Appeal by special leave from the judgment and order dated August 6, 1957, of the Bombay High Court, Nagpur, in Misc. Petition No. 512 of 1956.

M. N. Phadke and *Naunit Lal*, for the appellant.

Shankar Anand and *A. G. Ratnaparkhi*, for the respondents Nos. 2-4.

N. P. Nathvahi, K. L. Hathi and *R. H. Dhebar*, for the Intervener (State of Bombay).

1960. December 9. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO, J.—This is an appeal by special leave in an industrial matter. The appellant is the manager of a biri factory in Nagpur. Respondents 2 to 4 are working in that factory. They applied for leave for fifteen days from December 18, 1955, to January 1, 1956, and did not go to work during that period. The appellant did not pay their wages for these days and in consequence they applied to the Payment of Wages Authority (hereinafter called the Authority) for payment to them of wages which had been withheld. Their claim was that they were entitled to fifteen days' leave in the year under ss. 79 and 80 of the Factories Act, 1948. The Authority allowed the claim and granted them a sum of Rs. 90/6/- in all as wages which had been withheld for the period of leave. Thereupon, the appellant filed an application under Art. 226 of the Constitution before the High Court at Nagpur. His main contention was that respondents 2 to 4 were not workers within the meaning of the Factories Act and could not therefore claim the benefit

of s. 79 thereof. The respondents contended that they were workers within the meaning of the Factories Act and were entitled to the sum awarded to them by the Authority. The High Court on a consideration of the circumstances came to the conclusion that respondents 2 to 4 were workers under s. 2(l) of the Factories Act and therefore the order of the Authority was correct and dismissed the petition. The appellant then applied for a certificate to appeal to this Court which was refused. He then obtained special leave from this Court and that is how the matter has come up before us.

Sec. 2(l) defines a worker to mean a person employed, directly or through any agency, whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process. The main contention of the appellant is that respondents 2 to 4 are not employed in the factory within the meaning of that word in s. 2(l). Reliance in this connection is placed on two decisions of this Court, namely, *Dharangadhara Chemical Works Ltd.* v. *State of Saurashtra* (1) and *Shri Chintaman Rao* v. *The State of Madhya Pradesh* (2).

In *Dharangadhara Chemical Works* (1), this Court held with reference to s. 2 (s) of the Industrial Disputes Act, which defined "workman" that the word "employed" used therein implied a relationship of master and servant or employer and employee and it was not enough that a person was merely working in the premises belonging to another person. A distinction was also drawn between a workman and an independent contractor. The *prima facie* test whether the relationship of master and servant or employer and employee existed was laid down as the existence of the right in the employer not merely to direct what work was to be done but also to control the manner in which it was to be done, the nature or extent of such control varying in different industries and being

(1) [1957] S.C.R. 152. (2) [1958] S.C.R. 1340.

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by its nature incapable of being precisely defined. The correct approach therefore to the question was held to be whether having regard to the nature of the work, there was due control and supervision of the employer. The matter came up again for consideration in *Chintaman Rao's case* (1) which also happened to relate to biri workers, and s. 2(l) of the Factories Act had to be considered in it. It was held that the test laid down in *Dharangadhara Chemical Works* (2) with respect to s. 2(s) of the Industrial Disputes Act would also apply to s. 2(l) of the Factories Act. Finally, it was pointed out that the question whether a particular person working in a factory was an independent contractor or a worker would depend upon the terms of the contract entered into between him and the employer and no general proposition could be laid down, which would apply to all cases. Thus in order to arrive at the conclusion whether a person working in a factory (like respondents 2 to 4 in this case) is an independent contractor or a worker the matter would depend upon the facts of each case.

Let us then turn to the facts which have been found in this case. It has been found that the respondents work at the factory and are not at liberty to work at their homes. Further they work within certain hours which are the factory hours, though it appears that they are not bound to work for the entire period and can go away whenever they like; their attendance is noted in the factory; and they can come and go away at any time they like, but if any worker comes after midday he is not supplied with tobacco and is thus not allowed to work, even though the factory closes at 7 p.m. in accordance with the provisions of the Factories Act and when it is said that they can return at any time, it is subject to the condition that they cannot remain later than 7 p.m. There are standing orders in the factory and according to those standing orders a worker who remains absent for eight days (presumably without leave) can be removed. The payment is made on piece-rates according to the amount of work done but the management has the

(1) [1958] S.C.R. 1340. (2) [1957] S.C.R. 152.

right to reject such biris as do not come up to the proper standard. It is on these facts that we have to decide the question whether respondents 2 to 4 were employed by the appellant.

It will be immediately noticed that the facts in this case are substantially different from the facts in *Shri Chintaman Rao's case* (1). In that case the factory entered into contracts with independent contractors, namely, the Sattedars, for the supply of biris. The Sattedars were supplied tobacco by the factories and in some cases biri leaves also. The Sattedars were not bound to work in the factory nor were they bound to prepare the biris themselves but could get them prepared by others. The Sattedars also employed some coolies to work for them and payment to the coolies was made by the Sattedars and not by the factory. The Sattedars in their turn collected the biris prepared by the coolies and took them to the factory where they were sorted and checked by the workers of the factory and such of them as were rejected were taken back by the Sattedars to be re-made. The payment by the factory was to the Sattedars and not to the coolies. In these circumstances it was held that the Sattedars were independent contractors and the coolies who worked for them were not the workers of the factory.

The facts of the present case, however, are different. Respondents 2 to 4 have to work at the factory and that in itself implies a certain amount of supervision by the management. Their attendance is noted and they cannot get the work done by others but must do it themselves. Even though they are not bound to work for the entire period during which the factory is open it is not in dispute that if they come after midday, they are not given any work and thus lose wages for that day, the payment being at piece-rates. Further though they can stay away without asking for leave, the management has the right to remove them if they so stay away for a continuous period of eight days. Lastly, there is some amount of supervision inasmuch as the management has the right of rejection of the biris prepared if they do not come up to the proper standard.

(1) [1958] S.C.R. 1340.

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The question therefore that arises is whether in these circumstances it can be said whether the appellant merely directs what work is to be done but cannot control the manner in which it has to be done; of course, the nature or extent of control varies in different industries and cannot by its very nature be precisely defined. Taking the nature of the work in the present case it can hardly be said that there must be supervision all the time when biris are being prepared and unless there is such supervision there can be no direction as to the manner of work. In the present case the operation being a simple one, the control of the manner in which the work is done is exercised at the end of the day, when biris are ready, by the method of rejecting those which do not come up to the proper standard. In such a case it is the right to supervise and not so much the mode in which it is exercised which is important. In these circumstances, we are of opinion that respondents 2 to 4 who work in this factory cannot be said to be independent contractors. The limited freedom which respondents 2 to 4 have of coming and going away whenever they like or of absenting themselves (presumably without leave) is due to the fact that they are piece-rate workers; but the mere fact that a worker is a piece-rate worker would not necessarily take him out of the category of a worker within the meaning of s. 2(l) of the Factories Act. Considering the entire circumstances and particularly the facts that if the worker does not reach the factory before midday he is given no work, he is to work at the factory and cannot work elsewhere, he can be removed if he is absent for eight days continuously and finally his attendance is noted and biris prepared by him are liable to rejection if they do not come up to the standard, there can be no doubt that respondents 2 to 4 are workers within the meaning of s. 2(l) of the Factories Act. This is also the view taken by the Bombay High Court in *State* v. *Shankar Balaji Waje* (1) in similar circumstances and that we think is the right view.

Then it was urged that even if the respondents are

(1) A.I.R. 1960 Bom. 296.

workers under s. 2(l), s. 79 should not be applied to them as they can absent themselves whenever they like. In this very case it is said that the respondents remained absent for a longer period than that provided in the Act and therefore they do not need any leave. This argument has in our opinion no force. The leave provided under s. 79 arises as a matter of right when a worker has put in a minimum number of working days and he is entitled to it. The fact that the respondents remained absent for a longer period than that provided in s. 79 has no bearing on their right to leave, for if they so remained absent for such period they lost the wages for that period which they would have otherwise earned. That however does not mean that they should also lose the leave earned by them under s. 79. In the circumstances they were entitled under s. 79 of the Factories Act to proportionate leave during the subsequent calendar year if they had worked during the previous calendar year for 240 days or more in the factory. There is nothing on the record to show that this was not so. In the circumstances the appeal fails and is hereby dismissed with costs. One set of hearing costs.

Appeal dismissed.

VOLTAS LIMITED

v.

ITS WORKMEN

(P. B. GAJENDRAGADKAR, K. N. WANCHOO and K. C. DAS GUPTA, JJ.)

Industrial Dispute—Bonus—Contribution to political fund, if can be deducted from gross profit—Extraneous income—Nature of—Salesmen and apprentices, if entitled to bonus.

The question in this appeal was whether the Tribunal was wrong in not allowing the amount paid to a political fund which was permissible as an item of expense and for disallowing the claim for deduction of certain amounts as extraneous income and whether the salesmen and apprentices were entitled to bonus.