



2024:DHC:4019



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 1st May, 2024**

+ **W.P.(C) 1958/2003**

UNION OF INDIA

..... Petitioner

Through: Mr.Harish K.Garg, SPC with
Ms.Anubhuti Tyagi, Advocate

versus

PRESIDENT FILMS DIVISION EMPLOYEES UNION

..... Respondent

Through: Mr.Gulshan K. Bhatia in-person

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:-

"A) Issue a Writ Petition of Certiorari quashing the Award dated 6.7.2001 by which the Hon'ble Central Govt. Industrial Tribunal has passed an award holding that Gulshan Kumar Bhatia, Deep Chand and Zahir Ul Hassan as entitled to enhanced pay and allowances at par with initial pay for the post of Technical Assistant for the period for which they were deployed to look after the duties of Technical Assistant and has further held them entitled to increased amount in view of the revisions in the initial pay and allowances from time to time during the said period.



B) Any other order that this Hon'ble Court may deem fit in the facts and circumstances of the case."

2. The workmen represented through the respondent Union ('workmen' hereinafter) were employed as Lower Division Clerks by the petitioner in the year 1978. During the period of 1981-82 and between 1985-91, the workmen were assigned the duties of Technical Assistants on look after basis.

3. Thereafter, the workmen claimed higher pay and allowances as is applicable to a Technical Assistant for the period for which they discharged these additional responsibilities. The petitioner did not agree with their claim and the dispute was referred to the Industrial Tribunal under Section 10(1) of the Industrial Disputes Act, 1947 ('ID Act' hereinafter) with the following reference:

"Whether the action of the management of Films Division, New Delhi in refusing to pay and allowances for work done in higher capacities to Shri Gulshan Kumar Bhatia, Zahirul Hasanand Deep Chand, LDC's is legal and justified, if not, what relief they are entitled to"

4. *Vide* award dated 6th July, 2001, the learned Industrial Tribunal decided the above said reference in favour of the workmen and held that the respondent workmen were entitled to pay and allowances equivalent to the amount paid at the time of their discharging the functions of Technical Assistant. The learned Tribunal held that they are entitled to the increased amount in light of revisions in the initial pay.



5. Aggrieved by the same, the petitioner has filed the instant writ petition seeking quashing of the impugned award.
6. Learned counsel for the petitioner submitted that the Film Division does not fall under the definition of “Industry” under Section 2(j) of the I.D. Act as it is a Department of Government of India and its employees are governed by CCS (CCA) Rules.
7. It is submitted that *vide* letter dated 9th October, 1963, the Ministry of Information & Broadcasting communicated to the Controller of the Films Division that the Films Division is neither a “workcharged establishment” nor an “industrial establishment”.
8. It is also submitted that the appropriate forum for the given matter is the Central Administrative Tribunal and not the Industrial Tribunal as the employees of the Film Division are governed by CCS (CCA) Rules. The Industrial Tribunal, therefore, exceeded its jurisdiction in adjudicating the matter.
9. It is submitted that the learned Court below failed to appreciate the fact that the workmen were only given a look after charge for administrative reasons and therefore, the same does not make them entitle to get the salaries at the said level.
10. It is submitted that the learned Court below failed to appreciate the settled position of law, where, the rules enunciated by the Government makes it clear that no additional remuneration is payable to a person asked to hold additional charge.
11. It is submitted that the impugned award dated 6th July 2001



being arbitrary, illegal and void is liable to be set aside.

12. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and the reliefs be granted as prayed for.

13. *Per Contra*, learned counsel appearing on behalf of the respondents vehemently opposed the present writ petition and submitted that the petitioner has suppressed the fact that the said additional positions were not given for a short time, rather the same continued for over eight years.

14. It is submitted that the settled position of law provides for higher wages to a person deployed to discharge the duties for a considerable period of time.

15. It is submitted that it is the discretion of the industrial workers to take recourse to the forum of their choice when they have concurrent jurisdiction. However, recourse cannot be taken simultaneously to both forums. Hence, petitioner cannot object to the workers approaching the Industrial Tribunal and not the Central Administrative Tribunal for the adjudication of their disputes.

16. It is further submitted that the Films Division of India cannot be equated with the Children Films Society as the latter neither produce nor sells the same in the market to earn revenue, therefore, there is stark difference in the both institutions and for the said reasons, both the institutions cannot be put on the same pedestal.

17. Hence, in view of the foregoing submissions, it is prayed that



the instant petition, being devoid of any merit may be dismissed.

18. Heard the learned counsel appearing on behalf of the parties and perused the record.

19. The limited question for adjudication before this Court in the instant petition is whether the impugned award passed by the learned Industrial Tribunal merits interference under its writ jurisdiction or not.

20. The relevant extracts of the impugned award dated 6th July, 2001 are reproduced herein below:

“ 1. The Central Government in the Ministry of Labour in exercise of its power under sub clause(d) of sub section (I) of Section 10 of the I.D. Act, 1947 referred the following dispute for adjudication to this Tribunal.

“Whether the action of the management of Films Division, New Delhi in refusing to pay and allowances for work done in higher capacities to Shri Gulshan Kumar Bhatia, Zahirul Hasanand Deep Chand, LDC's is legal and justified, if not, what relief they are entitled to,”

xxx xxx xxx

6. Admittedly at the given time the scale of LDC was 260-400, UDC. 330- 560 and Technical Assistant 425-700. It is thus evident that the posts of Technical Assistant carried higher responsibilities. The three claimants were deployed against tile vacant posts of the Technical Assistant without specifying as to be attended by the workman. Thus they were discharging functioned at per procedure. There are no materials on record to indicate that the three workman were given lesser duties than those holding the post of Technical Assistant substantively, or they performed the duties unsatisfactorily. The deployment order does not indicate looking after the work in absence of some employees for a brief period, in addition to



their own duties, but it is their case when the deployment was against existing vacancies and such deployment lasted for years. Thus, on the principle of "Equal pay for Equal work, they are entitled to same pay and allowance, had they been working as Technical Assistant. Accordingly, all the three workmen are entitled to initial pay of the scale of the post of Technical Assistant with admissible allowance on the Technical Assistant with admissible allowance on the initial pay less drawn already. The changes in initial pay and allowances made from time to time, should be taken care of in computing the arrears.

7. The Management has pleaded that the Films Division is not an "Industry". 'Industry' is defined under section 2(j) of the ID. Act. The films Division Government of India, admittedly sells prints etc. of Films made by it on the prescribed payment. Schedule of rates for sale or hire of Films are prescribed by the Films Division from time to time. Documents filed by the workman are admitted by the Management. From these documents, it is fully proved that the Films Division has been engaged in sale of prints etc. may be, with or without profit motive. As such, the Films Division is an "Industry".

8. The Management relied on some clarification of the Government that Films Division is neither work charge department nor an Industrial Establishment. In Labour Law, Industrial Establishment and "Industry" carries different legal meaning and so defined separately under section 2(j) and 2 (ka) respectively. The submission advanced by the management, that the three claimants are not workmen and should seek redress before Central Administrative Tribunal is misconceived. These workmen were not discharging supervisory or managerial functions and are covered by the definition of workman given under section 2(s) of the I.D. Act.

9. Thus, in totality of the facts and circumstances of the case, the award is as follow:-

That the workmen Gulshan Kumar Bhatia, Deep



Chand was Zahnul Hasan were entitled to enhanced pay and allowances at par with the initial pay for post of Technical Assistant on the period they actually were deployed to look after the duties of the Technical Assistant.

That they are also entitled to increased amount in view of the provisions in the initial pay and allowances, from time to time during the said period.”

21. Upon perusal of the above paragraphs, it is made out that the learned Industrial Tribunal found the claim of the respondents to be tenable on the basis of the principle of “equal pay for equal work”. It found no material on record to indicate that the workmen were given lesser duties than those holding the post of Technical Assistant.

22. While adjudicating the issue whether the petitioner is an industry under Section 2(j) of the I.D. Act, the learned Court below held that it is an “Industry” as it sells prints etc. of films made by it on prescribed payment, with or without profit motive.

23. Furthermore, the learned Tribunal also noted that “Industrial Establishment” and “Industry” carry different legal meaning and are defined under Section 2(ka) and 2(j) of the I.D. Act respectively.

24. Therefore, learned Tribunal concluded that the submissions of the petitioner regarding an alternative remedy was misconceived as the workmen duly fall within the definition of workman as provided under Section 2(s) of the I.D. Act.

25. In any case, the law regarding jurisdiction of the labour Courts in service matters is clear, where this Court has reiterated the settled



position of law time and again. A similar objection regarding jurisdiction of the Tribunal was taken by the Railways in ***Divisional Railway Manager v. Uma Shanker, 2010 SCC OnLine Del 1600*** and this Court had dismissed the said objection by observing as follows:

“The language of Section 28 (supra) is quite unambiguous. The same bars the jurisdiction of courts except the Supreme Court, Industrial Tribunal, Labour Court, with respect to recruitment and matters concerning recruitment to any Service or post or service matter. It is clear from the same that the jurisdiction of the Industrial Tribunal was not barred.”

26. This Court, therefore, does not find any force in the submission that the respondent should have approached the Central Administrative Tribunal for redressal and by not doing so, they are to be non-suited.

27. Therefore, in light of the same, this Court is of the view that the learned Industrial Tribunal has rightly exercised its jurisdiction in adjudicating the claims of the workmen represented through the respondent union as the jurisdiction of the learned Industrial Tribunal is concurrent with that of the Central Administrative Tribunal and Section 28 of the Administrative Tribunals Act, 1985 does not bar jurisdiction of Industrial Tribunals.

28. With respect to the question whether the Films Division constitutes an industry under Section 2(j) of the I.D. Act, it is apposite to rely on the “triple test” formulated by the Hon’ble Supreme Court in ***Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978)***



2 SCC 213 which provides that any activity will be an industry if it fulfils the three-pronged test. The said tests are as follows:

- i. Systematic and organized activity*
- ii. With the cooperation between Employers and employees*
- iii. For the production and distribution of good and services whether or not capital has been invested for this activity.*

29. Hence, the above said factors are important for determination whether an entity can be construed as an industry or not. Therefore, this Court needs to examine if the said factors are met by the petitioner entity or not.

30. In the instant case, it is important to note that the petitioner has not denied that the activities primarily include the production and sale of documentaries and it also allows producers to purchase “stock shots” for utilizing them in their feature films.

31. The petitioner also has an organisational framework that enables it to operate multiple offices across the country. Therefore, it is apparent that there is systemic and organised activity that happens with the cooperation between employers and employees.

32. In this regard, it is also relevant to note that all activities under the Films Division have now been transferred to National Film Development Corporation from 1st January, 2023.

33. Hence, as per the test propounded in ***Bangalore Water Supply & Sewerage Board (Supra)***, this Court is of the considered view that the petitioner entity falls within the definition of “industry” under



Section 2(j) of the I.D. Act and is amenable to the provisions of the Act.

34. Lastly, with respect to the submission that the employees are not “workmen” under Section 2(s) of the I.D. Act, it is important to note that the Tribunal observed that they were not discharging supervisory or managerial functions so as to take them beyond the scope of the definition.

35. A bare perusal of Section 2(s) of the I.D. Act indicates that a workman includes any person (including an apprentice) employed in an industry to do manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. It excludes those employed in the Army, Navy, Air Force and in the police service, in managerial or administrative capacity. The nature of work performed by the respondent, therefore, squarely falls within the definition.

36. From the foregoing discussion, it is crystal clear that the petitioner entity duly falls within the scope of jurisdiction of the Labour Tribunal and therefore, the learned Tribunal rightly adjudicated the dispute between the parties.

37. In view of the foregoing discussion, this Court is of the considered view that the petitioner has failed to satisfy this Court to exercise its jurisdiction provided under Article 226 of the Constitution of India. Therefore, the impugned award dated 6th July, 2001, passed by the learned Industrial Tribunal, New Delhi in ID no. 71/93 is hereby, upheld.



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38. Accordingly, the instant petition stands dismissed along with pending applications, if any.

39. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 1, 2024

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Click here to check corrigendum, if any