

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 24729 of 2008

M/s. Anglo India Jute Mills Co. Ltd.

Vs.

The State of West Bengal & Ors.

With

WPA 20265 of 2008

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IA No.CAN 1 of 2008 (Old No.CAN 8642 of 2008)

P.K. Chatterjee

Vs.

The State of West Bengal & Ors.

For the Petitioner in
WPA 24729 of 2008
and Respondent in
WPA 20265 of 2008

: Mr. Soumya Majumdar
Mr. Ravi Kumar Dubey
Mr. Tarak Duttaadvocates

For Petitioner in
WPA 20265 of 2008
and Respondent No.3
in WPA 24729 of 2008

: Mr. Jayanta Dasgupta
Mr. Balaram Patra ... advocates

Heard on

: 18.08.2022

Judgment on

: 29.09.2022

Hiranmay Bhattacharyya, J.:-

1. The award dated March 25, 2008 passed by the learned judge 8th Industrial Tribunal in case no. VIII-118/03 is under challenge in the writ petitions filed at the instance of the management and the employee.
2. WPA 20265 of 2008 (for short “WP-1”) has been filed by the employee and WPA 24729 of 2008 (for short “WP-2”) has been filed by the management.
3. The employee claims that he joined the service as a clerk under M/s. Duncan Brothers and Co. Ltd. who was the managing agent of M/s. Anglo India Jute Mills Co. Ltd., as well as several other companies. The first appointment letter dated November 15, 1962 was issued by the managing agent. After the abolition of the managing agency system, M/s. Anglo India Jute Mills Co. Ltd. (for short “the management”) was run by and under its own respective management. It is the further case of employee that in an attempt to deprive the employee concerned from the benefits of past service and with an ulterior motive, the management issued a letter of appointment dated May 7, 1968 in favour of the employee for a period of two years. Thereafter, letters of fresh employment for fixed periods were issued during the period from 1962 to 27.02.2001 and there had been no break of service. The employee claims that he worked against permanent vacancy

and used to do perennial nature of job and he was in continuous service for more than 30 years. The employee further alleges that the letter dated 27.02.2001 was issued terminating his employment without complying with the provisions of the Industrial Disputes Act. The employee claims that during his tenure of service under the company, he discharged duties which were purely clerical in nature and he neither had authority to perform nor did he perform any duty of supervisor or manager. The employee claims that the termination of service was illegal and arbitrary. He further claims that his last drawn salary was Rs. 9700/- and he used to get other fixed allowances under the head travelling allowance and medical allowance. The employee by a letter dated March 6, 2001 requested the management to withdraw the letter of termination dated February 27, 2001 and to allow him to work but the management refused to accept the request of the employee.

4. The employee then raised an industrial dispute before the competent authority. All attempts to conciliate the dispute having failed, the dispute was referred to the Tribunal in exercise of the power conferred by Section 10 read with Section 2A of the Industrial Disputes Act, 1947 (for short “the 1947 Act”). The issues referred to before the Tribunal were whether the management is justified in terminating the

employee from his employment and to what relief he is entitled to.

5. Before the Tribunal, the writ petitioner in WP-1 prayed for an award directing the management to reinstate him in service and to pay him full back wages and other consequential benefits. He also pleaded that since wrongful and illegal termination of his service he has not been gainfully employed anywhere.
6. The management contested the reference case by filing a written statement denying the material allegations contained in the written statement of the employee. The management challenged the maintainability of the order of reference on the ground that the writ petitioner in WP-1 was not a workman as his employment was managerial, administrative and supervisory in nature. It was further contended that the employee was employed under the company vide letter dated February 27, 1998 on a purely contractual basis as a manager and the same was accepted by him. Such contractual employment came to an end on February 28, 2001 and as such the question of payment of compensation in lieu of notice period does not arise. It was further stated therein that the termination was legal and justified and as such the petitioner in WP-1 was not entitled to any relief.

7. The learned judge of the Tribunal passed the award dated March 25, 2008 directing the management to pay Rs. 50,000/- to the writ petitioner in WP-1 as compensation. Against the aforesaid award these writ petitions have been filed.
8. Mr. Majumder, learned advocate for the petitioner in WP-2 contended that from the terms and conditions of employment incorporated in the appointment letters issued to the employee it would appear that he was engaged as a manager. He contended that the learned Tribunal did not take into consideration the terms and conditions incorporated in the appointment letters while deciding the issue as to whether the employee was a workman when his service was terminated. He further contended that it would be evident from the evidence adduced by the parties that the employee performed the duties of a manager and the salary and other benefits which were extended to him would also go to show that he was engaged in the managerial post. He also contended that the Tribunal shifted the onus upon the management to prove that he was not a workman when the onus lies upon the employee to prove that he was engaged as a workman. He contended that the materials that were placed before the Tribunal were not considered and the finding arrived at by the Tribunal is wholly unwarranted on the face of the evidence already on record. He relied upon a decision of the Hon'ble Supreme Court in the

case of *Mukand Ltd. vs. Mukand Staff & Officers' Association* reported at (2004) 10 SCC 460 to highlight the grounds on which interference by the High Court is available in a writ petition challenging a decision of the Tribunal. He also relied upon a decision of the Hon'ble Supreme Court in the case of *S.K. Maini Vs. M/s. Carona Sahu Company Limited and others* reported at (1994) 3 SCC 510 in support of his contention that the nature of the duties performed by the employee shall decide whether he comes within purview of "workman" as defined in Section 2(s) of the 1947 Act.

9. Mr. Dasgupta, the learned advocate for the petitioner in WP-1 contended that the assessment of the age of the petitioner by the Tribunal is an arbitrary one and the same is without any basis. He relied upon the judgment of the Hon'ble Supreme Court in the case of *Bhuvnesh Kumar Dwivedi vs. M/s. Hindalco Industries Ltd.* reported at 2014 LLR 673 and contended that the learned Tribunal ought to have allowed full back wages after setting aside the order of termination. He further submitted that the Tribunal arrived at a finding of fact that the writ petitioner in WP-1 is a workman and such finding should not be interfered with in Judicial Review.
10. Heard the learned advocates for the parties and perused the materials placed.

11. The employee produced several appointment letters issued by the company from time to time starting from the first appointment letter dated November 15, 1962 which was marked as Exhibit 1 and was issued by the M/s. Duncan Brothers, the managing agent. He also produced the appointment letter dated 07.05.1968 being Exhibit 1/1 by which the management employed him as Junior Overseer's grade for a period of two years with effect from 01.05.1968. Subsequent appointment letters were also produced and the same were also marked as exhibits. The last of such appointment letter dated 27.02.1998 for a period of two years with effect from 01.03.1998 was produced by the employee and the same was also marked as exhibit. The employee was offered appointment as manager vide appointment letter dated 27.02.1998 and he was allowed various benefits including reimbursement, telephone expense, medical expense for himself and his wife and also travelling allowance. The said appointment was made for a period of two years with effect from 1st March, 1998. However, the period of appointment was further extended for a period of one year with effect from 1st March 2000 vide letter dated 15.03.2000. Thereafter, the letter of termination dated 27.02.2001 was issued.
12. The petitioner in WP-2 has challenged the maintainability of the order of reference on the ground that the employee was not a workman within the meaning of Section 2(s) of the 1947 Act.

Therefore, this court shall first decide as to whether the finding of the learned Tribunal that he was a workman can be sustained.

13. It is well settled that whether an employee is a workman under Section 2(s) of the 1947 Act is to be determined with reference to his principal nature of duties and functions and should not be swayed by the designation used in the letters of appointment.
14. The Hon'ble Supreme Court in *S.K. Maini* (supra) held that the designation of an employee is not of much importance but what is important is the nature of duties which are being performed by the employee. The Hon'ble Supreme Court held thus:-

“9. It has been rightly contended by both the learned counsel that the designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The determinative factor is the main duties of the employee concerned and not some works incidentally done. In other words, what is, in substance, the work which employee does or what in substance he is employed to do. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or for a fraction of time also does some manual or clerical work, the employee should be held to be doing supervisory works. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the

purview of 'workman' as defined in Section 2(s) of the Industrial Disputes Act."

15. From the aforesaid decision it boils down that if an employee is mainly doing manual or clerical work, the mere fact that a small fraction of the working time is devoted to some other type of work, the employee cannot be brought outside the purview of workman as defined in Section 2(s) of the 1947 Act.
16. The Hon'ble Supreme Court in *Lloyds Bank Ltd. vs. Panna Lal Gupta & ors.* reported at AIR 1967 (SC) 428 held that a manager or administrator generally occupies a position of command or decision and is authorised to act in certain matters within the limits of its authority without the sanction of his superior.
17. The learned Tribunal after discussing the evidence adduced by the parties in details held that the nature of duties performed by the employee was purely a clerical job. There is also no evidence to show that he was authorised to act in certain matters that falls within his authority without the sanction of his superior.
18. The employee discharged his onus to prove that the nature of duties performed by him was clerical in nature by producing evidence in that regard. The onus thus, shifted upon the management to prove their positive case that the employee occupied the position to command and had the powers to take decision. It was specifically observed by the learned Tribunal

that the management did not produce a scrap of paper in support of their case that the employee had the power to take independent decision in the matter of payment, sanction of leave to the employees and to represent the company before other authorities, statutory bodies and Government and also to take independent decision in the legal matters of the company. It was also recorded by the learned Tribunal that the management did not produce the Jute Purchase Register, bill receiving register etc. which the employee claims to have maintained in course of his clerical duties. This court is therefore, of the considered view that an adverse inference is to be drawn against the management for withholding the best evidence.

19. Mr. Majumder would contend that the employee was a member of the senior staff provident fund and only the manager, senior executives and secretaries are entitled to get membership of the senior staff provident fund of the company. He, thus, contended that membership of the petitioner of the senior staff provident fund would indicate that the petitioner was not a workman as the workers of the company are members of the other provident fund namely the workers provident fund. It is not in dispute that the petitioner was initially employed under Duncan Brothers and company limited. The Tribunal after taking note of the evidence of the employee that all the employees of M/s. Anglo India Jute Mills

Ltd. who were employed initially by M/s. Duncan Brothers and Co. Ltd. became the member of the senior staff provident fund held that the said evidence could not be rebutted by the management.

20. It is well settled that if the conditions of service of a workman can bring them within the definition of “workman” under the 1947 Act, merely because of the fact that in the contract such person has been designated as managers cannot take him out of the category of workman. A Hon’ble Division Bench of this Court in the case of *Guest Keen Williams Ltd. vs. Assistant Labour Commissioner, Govt. of West Bengal & ors.* reported at 1986 LAB I.C. 1668 held thus-

“6. After considering the respective contentions made by the learned counsel for the parties, it appears to us that there is enough force in the contention made by Sri Mukherjee, appearing on behalf of the respondents. In our view, Sri Mukherjee is justified in his contention that if in fact the members of the Junior Management Staff Association can be held to be workman within the meaning of the Industrial Disputes Act on consideration of the nature of duties being performed by them, then simply because they had agreed to be designated as the members of the management staff or that they have actually been designated as such, they cannot be precluded from contending that they are still workmen within the meaning of the Industrial Disputes Act, and as such they are entitled to the benefit of the aforesaid social welfare legislation.”

21. In view thereof, this Court is unable to accept the contention of Mr. Majumder that since the writ petitioner in WP-1 was

designated as manager in the last appointment letter dated 27.02.1998, the writ petitioner in WP-1 is precluded from claiming himself to be a workman.

22. The learned Tribunal after considering the evidences available on record arrived at a finding of fact that the employee was a workman as defined under Section 2(s) of the 1947 Act and the nature of duties performed by him was purely clerical in nature. The said factual finding, in the considered view of this court, cannot be said to be a perverse finding. The said finding cannot be also said to be unwanted by the evidence as argued by Mr. Majumder.
23. The next question that arises is whether it is a case of retrenchment of service or a case of non-renewal of contract after the same expired by efflux of time.
24. It is not in dispute that the employee rendered service uninterruptedly since November, 1962 till February 28, 2001. There is no break of service even for a single day. The learned Tribunal observed that the evidence of the employee that the office used to maintain his leave account as per the West Bengal Shops And Establishment Act during the period of his employment in the company and the period of accumulated leave was carried forward to the account of the next year as per the rules remained un rebutted. It is also not in dispute

that the nature of job which the employee used to perform was perennial in nature.

25. The Hon'ble Supreme Court of India in the case of *Bhuvnesh Kumar Dwivedi vs. M/s. Hindalco Industries Ltd.* while dealing with the issue of extension of period of service by issuing several appointment letters till the service was finally terminated observed that such action of the company is with a oblique motive so as to retain the employee as a temporary worker and to deprive him of his statutory right of permanent worker status. The Hon'ble Supreme Court held that such conduct of the company perpetuates unfair labour practice as defined under Section 2(ra) of the 1947 Act which is not permissible in view of Sections 25 T and 25 U of the said Act read with entry at Serial No. 10 in the Vth schedule of the said Act regarding unfair labour practices.
26. In view of the aforesaid proposition of law laid down in *Bhuvnesh Kumar Dwivedi* (supra), this Court is of the considered view that the finding returned by the learned Tribunal that the contract of service made by the employer with the employee for fixed periods time to time was nothing but an unfair labour practice with a view to deprive the employee many of his legitimate claims as regular employee calls for no interference.

27. On such factual finding the learned Tribunal held that the employee was retrenched from service in violation of Section 25F of the 1947 Act and the termination cannot be said to be justified.
28. The learned Tribunal after making assessment of the age of the employee held that an order of reinstatement cannot be passed. However, the learned Tribunal passed an award of Rs. 50,000/- in favour of the employee.
29. The employee did not produce any evidence to show his actual age. From WP-2 it appears that the petitioner stated his age to be 63 years as on August, 2008. After taking into consideration the age of the petitioner at the time of filing of the writ petition, the petitioner would at best have about two years of service left at the time when he was retrenched from service taking into consideration the normal age of retirement of an employee in an establishment of this nature. Therefore, after taking into account the last drawn wages together with the other benefits and the period of service left at the time of retrenchment, this Court feels that the compensation awarded by the Tribunal is inadequate.
30. This Court, therefore, holds that the writ petitioner in WP-1 shall be entitled to a further sum of Rs. 2,50,000/- in addition to the compensation awarded by the Tribunal. Accordingly, the management is directed to pay the aforesaid sum of Rs.

2,50,000/- over and above the compensation awarded by the Tribunal to the writ petitioner in WP-1 within a period of 8 weeks from the date of communication of this order.

31. For the reasons as aforesaid the impugned award dated March 25, 2008 is modified only to the extent as indicated hereinabove. WP-1 stands allowed. Consequently WP-2 stands dismissed.
32. There shall be, however, no order as to costs.
33. Urgent photostat certified copy of this judgment be given to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)