Shining Tailors vs Industrial Tribunal Ii, U. P., Lucknow ... on 25 August, 1983

Equivalent citations: AIR1984SC23, 1983LABLC1509, (1983)IILLJ413SC, 1983(2)SCALE397, (1983)4SCC464, AIR 1984 SUPREME COURT 23, 1983 LAB. I. C. 1509, 1983 ALL. L. J. 1100, 1983 UJ (SC) 857, 1983 ICR 515, (1983) 63 FJR 139, (1983) 47 FACLR 406, (1983) 2 LAB LN 656, 1983 (4) SCC 464, (1983) 2 LABLJ 413, 1983 SCC (L&S) 533

Bench: D.A. Desai, O. Chinnappa Reddy

JUDGMENT

1. The State of U.P. referred an industrial dispute between the appellant M/s. Shining Tailors, the employer and the respondent workmen for adjudication to the Industrial Tribunal, Lucknow.

2. Chronology of events leading to the surfacing of the dispute may be briefly slated. Appellant-employer has a fairly big tailoring establishment at Subhashnagar, Faizabad. Respondent-workmen 25 in number formed a Union named Faizabad Tailoring Workers Union (Union for short). The Union espoused the cause of the workmen by making a demand for increasing the tailoring charges and there was a strike in support of the demand. The time worn usual response of the employer was to dismiss some workmen and then declare a lock out, a fact in dispute and terminate the service of all the workmen. This led to the industrial dispute being referred to the Industrial Tribunal under Section 4-K of the U.P. Industrial Disputes Act, 1947. The reference was not happily worded but the Tribunal was called upon to adjudicate on the question whether the lockout declared by the employer on July 27, 1974 and the subsequent action of termination of service of the workmen was legal and valid; if not what relief should be given to the workmen?

3. After the workmen submitted the statement of claim, the employer resorted to the usual clinch of contending that there is no relationship of master and servant or employer and workmen between the appellant and the respondents. A preliminary issue was raised to the effect 'whether there has been no relationship of master and servant between M/s. Shining Tailors, Faizabad and the persons mentioned in the annexure to the order of reference for reasons mentioned in para 5 of the written statement of the employer?' Reasoning of the Tribunal is jumbled and confusing but when properly analysed the Tribunal appears to have reached the conclusion that the respondent-workmen were independent contractors paid on piece rate and were not the workmen of the appellant-employer. As a corollary, the Tribunal further held that as the respondents were not the workmen of the appellant, there was no question of declaring a lockout in respect of them. So saying the Tribunal rejected the reference.

4. The Union filed Writ Petition No. 2466 of 1978 in the Allahabad High Court sitting at Lucknow.

The Division Bench of the High Court in terms held that the reference was competent and accordingly issued a writ of certiorari quashing the award of the Tribunal and remitted the case to the Tribunal for disposing of the reference on merits. Hence this appeal by special leave.

5. We have gone through the record and especially the evidence recorded by the Tribunal. The Tribunal has committed a glaring error apparent on record that whenever payment is made by piece rate, there is no relationship of master and the servant and that such relationship can only be as between principal and principal and therefore, the respondents were independent contractOrs. Frankly, we must say that the Tribunal has not clearly grasped the meaning of what is the piece rate, If every piece rated workmen is an independent contractor, lakhs and lakhs of workmen in various industries where payment is corelated to production would be carved out of the expression 'workmen' as defined in the Industrial Disputes Act. In the past the test to determine the relationship of employer and the workmen was the test of control and not the method of payment. Piece rate payment meaning thereby payment correlated to production is a well-recognised mode of payment to industrial workmen. In fact, wherever possible that method of payment has to be encouraged so that there is utmost sincerity, efficiency and single minded divotion to increase production which would be beneficial both to the employer, the workmen and the nation at large. But the test employed in the past was one of determining the degree of control that the employer wielded over the workmen. However, in the identical situation in Silver Jubilee Tailoring House and Ors. v. Chief Inspector of Shops and Establishments and Anr. , J. speaking for the Court observed that the control idea was more suited to the agricultural society prior to Industrial Revolution and during the last two decades the emphasis in the field is shifted from and no longer rests exclusively or strongly upon the question of control. It was further observed that a search for a formula in the nature of a single test will not serve the useful purpose, and all factors that have been referred to in the cases on topics, should be considered to tell a contract of service. Approaching the matter from this angle, the Court observed that the employer's right to reject the end product if it does not conform to the instructions of the employer speaks for the element of control and supervision. So also the right of removal of the workman or not to give the work has the element of control and supervision. If these aspects are considered decisive, they are amply satisfied in the facts of this case. The Tribunal ignored the well laid test in law and completely misdirected itself by showing that piece rate itself indicates a relationship of independent contractor and error apparent on the record disclosing a total lack of knowledge of the method of payment in various occupations in different industries. The right of rejection coupled with the right to refuse work would certainly establish master servant relationship and both these tests are amply satisfied in the facts of this case. Viewed from this angle, the respondents were the workmen of the employer and the preliminary objection therefore, raised on behalf of the appellant-employer was untenable and ought to have been overruled and we hereby overrule it.

6. Before parting with this case, we may note one submission that the High Court was in error in saying that one a reference is made, a Tribunal cannot consider the validity of the reference by finding out whether there was a subsisting relationship of employer and workmen between the parties to the reference. It is not necessary to comment on this view because much can be said against it but we leave that aspect open to be considered in an appropriate case,

7. For the reasons stated herein and not the one that appealed to the High Court, this appeal fails and is dismissed with costs quantified at Rs. 2,500/-. As the matter is remitted to the Industrial Tribunal and as the reference is a fairly old one, the Industrial Tribunal is directed to dispose it of as expeditiously as possible and not later than three months from the receipt of this order.