

## **Ananda Bazar Patrika (P) Ltd. vs The Workmen on 7 February, 1969**

**Equivalent citations: [1969(18)FLR186], (1969)ILLJ670SC, (1970)3SCC248, AIRONLINE 1969 SC 45**

**Author: V. Bhargava**

**Bench: V. Bhargava**

### **JUDGMENT**

Sri.V. Bhargava, J.

1. This appeal by special leave is directed against an award of the second labour court, West Bengal, made on a reference of an industrial dispute which arose between the appellant, Ananda Bazar Patrika (Private), Ltd., and respondents, its workmen. This dispute related to the retirement of one Prafulla Kumar Gupta. The workmen raised the dispute that the retirement of Gupta was against the service conditions applicable to the workmen of the appellant-company and, therefore the issue, which was referred for adjudication, was as follows:

Is the company justified in retiring Prafulla Kumar Gupta? If not, what relief is fee entitled to ?

2. The claim of the workmen was resisted by the appellant before the labour court on one single ground, viz., that Gupta was not workman, so that no industrial dispute could arise in regard to his retirement. The labour court rejected this contention of the appellant and held that Gupta was a workman at the date of retirement and, consequently, gave the award against the appellant. It is this order of the labour court that is challenged before us.

3. As the circumstances related above show, the sole question that fell for decision was whether Gupta was a workman on the data of his retirement or not. Admittedly his total wages at the relevant date exceed Rs. 500 per month and the contention of the appellant-company was that he was employed Ma supervisory capacity and, consequently, under Section 2(s)(iv) of the Industrial Disputes Act, he was not a workman. On behalf of the workmen, the plea was that Gupta was clerk and was not employed in supervisory capacity and that is the contention which has been accepted by the labour court.

4. The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out, incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity. This principle finds support from the decisions of this Court in *South Indian Bank, Ltd. v. A.R. Chacko* 1964-I.L.L. J. 19 and *May & Baker (India), Ltd. v. their workmen* 1961-II L.L.J. 94. In the present case, we have, therefore, to examine the evidence to see whether the labour court is right, in holding that, because of the main work of Guptas being clerical in nature, he was not employed in supervisory capacity.

5. In the course of the hearing of this appeal learned Counsel took us through the evidence of both the witnesses examined on behalf of the appellant-company as well as the sole witness examined on behalf of the workmen. The witness examined on behalf of the workmen is Gupta himself. When he was in the witness-box, no attempt was made on the part of the appellant-company to question him on facts which, according to the written statement of the company, constituted his employment in supervisory capacity. In Para. 2(f) of the written statement, the appellant-company had pleaded that Gupta used to supervise the work of the clerks working under him, allot work to them, give them directions regarding work, grant them permission to leave office during working hours, and recommend their leave. These facts were put forward in the background of the assertion that he was in-charge or manager of the provident fund section of the appellant-company. "Gupta admitted that he was in charge of the provident fund section and was designated as manager. As has been repeatedly held by this Court, the mere designation as manager cannot be decisive of the nature of employment. The appellant-company in order to succeed had to show that Gupta was in fact mainly doing the work stated in the pleading. Gupta was not asked in the cross-examination whether he was supervising the work of the clerks working under him, or used to allot work to them or give them directions regarding their work. The only points established were that the three clerks, who were working in the same section under him, had to obtain his permission to leave during office hours and all their leave applications had to be routed through him and were forwarded with his recommendation. Gupta stated that the main duties, which he was required to carry out, were those of writing out the cash book and of filing up the various returns required to be prepared in the section of which he was put in charge.

6. The two witnesses examined on behalf of the appellant-company also stated that Gupta was in charge of the provident fund section and was designated as manager and that the three clerks working under him could not leave office during working hours without his permission. They were also required to send their applications for leave through him. One of the witnesses, who worked as subordinate to Gupta, added that Gupta used to distribute the work among the clerks and that the clerks could not disobey him. He did not, however, make any positive statement that Gupta had any powers to give directions to the other as to the actual manner in which they were to carry out their duties, nor did he state that Gupta actually used to scrutinize the work done by the other clerks in order to ensure that it was being properly done. The second witness was the successor of Gupta after

his retirement. In general words, he did add that the work done by Gupta as manager of the provident fund section was of supervisory nature and that the employees under him were bound to carry out his orders. Again, he did not state that he himself, as successor of Gupta, had any powers at all to give instructions to the Junior clerks and to the actual manner in which they were to perform their duties and to carry on their work. He also did not state that he was required to scrutinize the work done by them in order to ensure that it was being properly carried out.

7. On these facts, we are unable to hold that the labour court committed any error in arriving at the decision that Gupta was employed on clerical work and not in supervisory capacity. The principal work that Gupta was doing was that of maintaining and writing the cash book and of preparing various returns. Being the senior most clerk, he was put in charge of the provident fund section and was given a small amount of control over the other clerks working in his section. The only powers he could exercise over them was to allocate work between them to permit them to leave during office hours, and to recommend their leave applications. These few minor duties of a supervisory nature cannot, in our opinion, convert his office of senior clerk in charge into that of a supervisor. The labour court was, therefore, right in holding that Gupta was a workman on the date of his retirement and that an industrial dispute did, in fact, exist.

8. The appeal fails and is dismissed with costs.