CERTIFICATE

I, Nadirshaw. A. Dhondy , Advocate Supreme Court have examined the Thesis of Mr.Rushiraj M. Patil entitled who is enrolled in the Masters of Management Studies and Research course for the Academic year 2010 – 2012 at SASMIRA's Institute of Management Studies and Research.

His Unique Identification Number is ....

Management Ethics- an idea whose time has come this Thesis is in part completion of the final examination requirement.

He is valid to receive ....marks out of 40.

Dated this ....day of 2012

Signature

Nadirshaw K. Dhondy
Advocate Supreme Court

Acknowledgement

Prologue

Modern definition of workers' compensation is simply a program providing payments, without regard to a finding of negligence of either party, to workers involved in specific job-related injuries. These laws were enacted so that the employee would not have to go through a long and arduous lawsuit and possibly not recover due to the employer's advantageous financial standing.

A workman plays a vital role in an industry. While he is a key element for the growth and development of the 'industry' by way of his services rendered through manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, the later viz., 'industry' provides the base by means of doing business, trade, undertaking, manufacture or calling of employers including service, employment, handicraft, or industrial operation or a vocation of the 'workman'. While the former performs as a resource pool that runs the functionaries of the later, the later employs the former to smoothly accomplish its endeavor by making the most out of the human factor.

However, in most cases there arises conflict of interest between both i.e., the workman and the industry. This fundamentally happens due to contradictory roles played by both; individuals and institutions i.e., 'industry'. Although a number of issues may be involved to cause a conflict, but factors like work culture, natural environment, corporate governance including management , HR issues, labour union politics, ethics in workplace, nonconductive company policies, exploitation, financial status of the industry, etc., are predominant causes that often roots a conflict between both.

Nevertheless, it is often found that in majority of the cases a conflict arise due to wrong policies of the employers, the management and improper handling of the Human Resource System by the forerunners of the industry. Sometimes, even greed of the industry owners become the prime cause. In such a case the real prey is the 'workman'.

Basically a 'workman' is completely dependent upon the industry and he looks toward it during adversity. He is a part of the workforce employed by the industry. He merely knows how to render his services towards the growth and smooth running of the industry. However, the affluent section including the managers and the owners predominantly attempts to exploit his workmanship.

In terms of corporate fraud that has been taking place from time to time where infringement of morality and ethical conduct leads to a closure of a company, say for example Satyam Computers, the victim in which case is both the industry and the workman, a proper intervention by the legal system can revive or compensate its workforce/workmen for the wrong doing of its possessor. However, such issues are quite complex and are beyond the discussion of this paper.

Thus, whenever a workman is victimized for his 'blood and sweat' the Industry must compensate for all his losses.Practitioners of such unlawful and unethical activities must be penalized. His blood has to be borne by industry.

Case Law Index

Mohanlal Prabhuram

v/s

Fine Knitting Mills Co. Ltd.

Case Study Index

Management of India Hume Pipe Co. Ltd.

v/s

K. Palaniswami and Anr.

Dated: 14/12/1966

Prime Time Matter

The Industrial Disputes Act, 1947

DEFINITIONS :

In this Act, unless there is anything repugnant in the subject or context, - (a) "appropriate Government" means - (i) in relation to any industrial disputes concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning Dock Labour Board established under section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956), or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5-A and section 5-B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956), or the Deposit Insurance and Credit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 196 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16 of the Food Corporations Act, 1964 (37 of 1964), or the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited, or the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987) or the Banking Service Commission established under section
(ii) in relation to any other industrial dispute, the State Government;
(aa) "arbitrator" includes an umpire;
(aaa) "average pay" means the average of the wages payable to a workman –
(i) in the case of monthly paid workman, in the three complete calendar months,
(ii) in the case of weekly paid workman, in the four complete weeks,
(iii) in the case of daily paid workman, in the twelve full working days, preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked;

(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under section 10A;

(bb) "banking company" means a banking company as defined in section 5 of the Banking Companies Act, 1949 (10 of 1949), having branches or other establishments in more than one State, and includes the Export-Import Bank of India, the Industrial Reconstruction Bank of India; the Industrial Development Bank of India, the Small Industries Development Bank of India established under section 3 of the Small Industries Development Bank of India Act, 1989 (39 of 1989) the Reserve Bank of India, the State Bank of India, a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969, a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, and any subsidiary bank, as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);

(c) "Board" means a Board of Conciliation constituted under this Act;

(cc) "closure" means the permanent closing down of a place of employment or part thereof;

(d) "conciliation officer" means a conciliation officer appointed under this Act;

(e) "conciliation proceeding" means any proceeding held by a conciliation officer or Board under this Act;

(ee) "controlled industry" means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest;

(f) "Court" means a Court of Inquiry constituted under this Act;

(g) "employer" means - (i) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;

(gg) 'executive', in relation to a trade union, means the body by whatever name called, to which the management of the affairs of the trade union is entrusted;

(h) (i) a person shall be deemed to be "independent" for the purpose of his appointment as the chairman or other member of a Board, Court or Tribunal, if he is unconnected with the industrial dispute referred to such Board, Court or Tribunal or with any industry directly affected by such dispute :

Provided that no person shall cease to be independent by reason only of the fact that he is a shareholder of an incorporated company which is connected with, or likely to be affected by, such industrial dispute; but in such a case, he shall disclose to the appropriate Government the nature and extent of the shares held by him in such company;

(j) "industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not, - (i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes - (a) any activity of the Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1949);

(b) any activity relating to the promotion of sales or business or both carried on by an establishment, but does not include - (1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation : For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951); or

(2) hospitals or dispensaries; or

(3) educational, scientific, research or training institutions; or

(4) institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) khadi or village industries; or

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or

(7) any domestic service; or

(8) any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individuals or body of individuals in relation to such profession is less than ten; or

(9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten;

(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on :

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then, - (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking;

(b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

(kk) "insurance company" means an insurance company as defined in section 2 of the Insurance Act, 1938 (4 of 1938), having branches or other establishments in more than one State;

(kka) "khadi" has the meaning assigned to it in clause (d) of section 2 of the Khadi and Village Industries Commission Act, 1956 (61 of 1956);

(kkb) "Labour Court" means a Labour Court constituted under section 7;

(kkk) "lay-off" (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery or natural calamity or for any other connected reason to give employment to a workman whose name is borne on the muster-rolls of his industrial establishment and who has not been retrenched;

Explanation : Every workman whose name is borne on the muster-rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid off for that day within the meaning of this clause :

Provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to present himself for the purpose during the second half of the shift for the day and is given employment, then, he shall be deemed to have been laid off only for one half of that day :

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day;

(l) "lock-out" means the temporary closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him;

(la) "major-port" means a major port as defined in clause (8) of section 3 of the Indian Ports Act, 1908 (15 of 1908);

(lb) "mine" means a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);

(ll) "National Tribunal" means a National Industrial Tribunal constituted under section 7B;

(lll) "office bearer", in relation to a trade union, includes any member of the executive thereof, but does not include an auditor;

(m) "prescribed" means prescribed by rules made under this Act;

(n) "public utility service" means - (i) any railway service or any transport service for the carriage of passengers or goods by air;

(ia) any service in, or in connection with the working of, any major port or dock;

(ii) any section of an industrial establishment, on the working of which the safety of the establishment or the workmen employed therein depends;

(iii) any postal, telegraph or telephone service;

(iv) any industry which supplies power, light or water to the public;

(v) any system of public conservancy or sanitation;

(vi) any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification :

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time, if in the opinion of the appropriate Government, public emergency or public interest requires such extension;

(o) "railway company" means a railway company as defined in section 3 of the Indian Railways Act, 1890 (9 of 1890);

(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include - (a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuating if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-removal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health;

(p) "settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer;

(q) "strike" means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment;

(qq) "trade union" means a trade union registered under the Trade Unions Act, 1926 (16 of 1926);

(r) "Tribunal" means an Industrial Tribunal constituted under section 7-A and includes an Industrial Tribunal constituted before the 10th day of March, 1957, under this Act;

(ra) "unfair labour practice" means any of the practices specified in the Fifth Schedule;

(rb) "village industries" has the meaning assigned to it in clause (h) of section 2 of the Khadi and Village Industries Commission Act, 1956 (61 of 1956);

(rr) "wages" means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment, or of work done in such employment, and includes - (i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any confessional supply of food grains or other articles;

(iii) any traveling concession;

(iv) any commission payable on the promotion of sales or business or both; but does not include - (a) any bonus;

(b) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the workman under any law for the time being in force;

(c) any gratuity payable on the termination of his service;

(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person - (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

THE PAYMENT OF BONUS ACT, 1965

INTRODUCTION:

This is an Act intended to provide for payment of bonus to persons employed in certain establishments and for matters connected therewith. It came into force from September 25, 1965. It extends to whole of India. It shall provide to: (a) every factory and (b) every other establishment in which 20 or more persons are employed on any day during an accounting year.

WHO IS ENTITLED TO BONUS?

Every employee of an establishment covered under the Act is entitled to bonus from his employer in an accounting year provided he has worked in that establishment for not less than 30 working days in the year on a salary less than Rs. 3500 per month.

If an employee is prevented from working and subsequently reinstated in service, employer's statutory liability for bonus cannot be said to have been lost. Nor can the employer refuse for such bonus. [ONGC vs. Sham Kumar Sahegal [1995] 1 LLJ].

There are however, certain disqualifications of an employee to claim bonus in an accounting year. An employee who has been dismissed from service for

(a) fraud; or

(b) riotous or violent behaviour while on the premises of the establishment; or

(c) theft, misappropriation or sabotage of any property of the establishment is not entitled for bonus.

An employee in the following cases is entitled to bonus:

- ✓ A temporary workman is entitled to bonus on the basis of total number of days worked by him.
- ✓ An employee of a seasonal factory is entitled to proportionate bonus and not the minimum bonus as prescribed under the provisions of the Act.
- ✓ A part time employee as a sweeper engaged on a regular basis is entitled to bonus.
- ✓ A retrenched employee is eligible to get bonus provided he has worked for minimum qualified period.
- ✓ A probationer is an employee and as such is entitled to bonus.
- ✓ A dismissed employee reinstated with back wages is entitled to bonus.
- ✓ A piece-rated worker is entitled to bonus.

An employee in the following cases is not entitled to bonus:

- ✓ An apprentice is not entitled to bonus.
- ✓ An employee employed through contractors on building operation is not entitled to bonus.
- ✓ An employee who is dismissed from service on the ground of misconduct.

PAYMENT OF MINIMUM BONUS (SECTION 10) :

Subject to the provisions of this Act, every employer shall be bound to pay to every employee in respect of every accounting year, minimum bonus which shall be 8.33% of the salary or wage earned by the employee during the accounting year or Rs. 100, whichever is higher, whether or not the employer has any allocable surplus in the accounting year. But if the employee has not completed 15 years of age at the beginning of the accounting year he will be entitled to a minimum bonus which shall be 8.33% of the salary or wage during the accounting year Rs. 60, whichever is higher.

Even if the employer suffers losses during the accounting year he is bound to pay minimum bonus as prescribed by section 10 [State vs. Sardar Dalip Singh Majilhia,1979,Lab. I.C.(913)(All)].

PAYMENT OF MAXIMUM BONUS (SECTION 11) :

Where in respect of any accounting year referred to in Section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum 20% of such salary or wage.

POWER OF EXEMPTION (SECTION 36) :

Though the Act creates liability on the part of employer to pay the minimum bonus and confers a right to the workmen, as mentioned in Section 10, the obligation and right is subject to exemption under Section 36.

There are two stages in Section 36.

- ✓ The Government shall consider the financial position and other relevant circumstances of an establishment or class of establishment.
- ✓ It should be of the opinion that it would not be in the public interest to apply all or any of the provisions of the Act.

THE EMPLOYEES’ PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952

INTRODUCTION:

The Employee’s Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as ‘the Act’) extends to the whole of India except the State of Jammu & Kashmir. It seeks to provide for the institution of provident funds, family pension funds and deposit linked insurance funds for employees in factories and other establishments. The Act is at present applicable to 173 industries and classes of establishments of Schedule I.

Subject to the exceptions contained in Section 16, this Act applies to the following entities, namely:

(a) every establishment which is a factory engaged in any industry specified in Schedule I & in which 20 or more persons are employed ; and

(b) any other establishment which employs 20 or more persons or class of such establishments which the Central Government may, by notification in Official Gazette specify in the behalf.

However, the Central Government may, after giving not less than 2 months notice of its intention to do so, apply the provisions of this Act to any establishment with less than 20 persons in the employment.

EMPLOYEES' PROVIDENT FUNDS SCHEME:

1. The Central Government may by notification in the Official Gazette frame a Scheme to be called the Employees' Provident Funds Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the establishments or class of establishments to which the said Scheme shall apply and there shall be established as soon as may be after the framing of the Scheme a Fund in accordance with the provision of this Act and the Scheme.

2. The Fund shall vest in and be administered by the Central Board constituted under section 5A.

EMPLOYEES' PENSION SCHEME:

1. The Central Government may by notification in the Official Gazette frame a scheme to be called the Employees' Pension Scheme for the purpose of providing for :
(a) superannuation pension retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this Act applies; and
(b) widow or widower's pension children pension of orphan pension payable to the beneficiaries of such employees.

2. There shall be established as soon as may be framing of the Pension Scheme a Pension Fund into which there shall be paid from time to time in respect of every employee who is a member of the Pension Scheme :
(a) such sums from the employer's contribution under section 6 not exceeding eight and one-third per cent of the basic wages dearness allowance and retaining allowance if any of the concerned employees as may specified in the Pension Scheme;
(b) such sums as are payable by the employers of exempted establishments under sub-section (6) of section 17;
(c) the net assets of the Employees' Family Pension Fund as on the date of the establishment of the Pension Fund;
(d) such sums as the Central Government may after due appropriation by Parliament by law in this behalf specify.

3. On the establishment of the Pension Fund the Family Pension Scheme (hereinafter referred to as the ceased scheme) shall cease to operate and all assets of the ceased scheme shall vest in and shall stand transferred to and all liabilities under the ceased scheme shall be enforceable against the Pension Fund and the beneficiaries under the ceased scheme shall be entitled to draw the benefits not less than the benefits they were entitled to under the ceased scheme from the Pension Fund.

4. The Pension Fund shall vest in and be administered by the Central Board in such manner as may be specified in the Pension Scheme.

5. Subject to the provisions of this Act the Pension Scheme may provide for all or any of the matters specified in Schedule III.

6. The Pension Scheme may provide that all or any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in that behalf in that Scheme.

7. A Pension Fund Scheme framed shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the scheme or both Houses agree that the scheme should not be made the scheme shall thereafter have effect only in such modified form or be of no effect as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that scheme".

EMPLOYEES' DEPOSIT LINKED INSURANCE SCHEME:

1. The Central Government may by notification in the Official Gazette frame a Scheme to be called the Employees' Deposit-linked Insurance Scheme for the purpose of providing life insurance benefits to the employees of any establishment or class of establishments to which this Act applies.

2. There shall be established as soon as may be after the framing of the Insurance Scheme a Deposit-linked Insurance Fund into which shall be paid by the employer from time to time in respect of every such employee in relation to whom he is the employer such amount not being more than one per cent of the aggregate of the basic wages dearness allowance and retaining allowance (if any) for the time being payable in relation to such employee as the Central Government may by notification in the Official Gazette specify.

3. The employer shall pay into the Insurance Fund such further sums of money not exceeding one-fourth of the contribution which he is required to make under sub-section (2) as the Central Government may from time to time determine to meet all the expenses in connection with administration of the Insurance Scheme other than the expenses towards the cost of any benefits provided by or under that Scheme.

4. The Insurance Fund shall vest in the Central Board and be administered by it in such manner as may be specified in the Insurance Scheme.

5. The Insurance Scheme may provide for all or any of the matters specified in Schedule IV.

6. The Insurance Scheme may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in that Scheme.

EMPLOYEES' PROVIDENT FUNDS APPELLATE TRIBUNAL:

1. The Central Government may by notification in the Official Gazette constitute one or more Appellate Tribunals to be known as the Employees' Provident Funds Appellate Tribunal to exercise the powers and discharge the functions conferred on such Tribunal by this Act and every such Tribunal shall have jurisdiction in respect of establishments situated in such area as may be specified in the notification constituting the Tribunal.

2. A Tribunal shall consist of one person only to be appointed by the Central Government.

3. A person shall not be qualified for appointment as the Presiding Officer of a Tribunal (hereinafter referred to as the Presiding Officer) unless he is or has been or is qualified to be a Judge of a High Court.

MODE OF RECOVERY OF MONEYS DUE FROM EMPLOYERS:

Any amount due :

(a) from the employer in relation to an establishment to which any Scheme or the Insurance Scheme applies in respect of any contribution payable to the Fund or as the case may be the Insurance Fund damages recoverable under section 14B accumulations required to be transferred under sub-section (2) of section 15 or under sub-section (5) of section 17 or any charges payable by him under any other provision of this Act or of any provision of the Scheme or the Insurance Scheme; or

(b) from the employer in relation to an exempted establishment in respect of any damages recoverable under section 14B or any charges payable by him to the appropriate Government under any provision of this Act or under any of the conditions specified under section 17 or in respect of the contribution payable by him towards the Pension Scheme or the Insurance Scheme under the said section 17 may if the amount is in arrears be recovered in the manner specified in sections 8B to 8G.

POWER OF CENTRAL GOVERNMENT TO GIVE DIRECTIONS:

The Central Government may from time to time give such directions to the Central Board as it may think fit for the efficient administration of this Act and when any such direction is given the Central Board shall comply with such direction.

POWER TO REMOVE DIFFICULTIES:

1. If any difficulty arises in giving effect to the provisions of this Act as amended by the Employees' Provident Funds and Miscellaneous Provisions (Amendment) Act 1988 the Central Government may by order published of the Official Gazette make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for the removal of the difficulty.

Provided that no such order shall be made after the expiry of a period of three year from the date on which the said Amendment Act receives the assent of the President.

(2) Every order made under this section shall as soon as may be after it is made be laid before each House of Parliament.

Case discussion:

Mohanlal Prabhuram
vs
Fine Knitting Mills Co. Ltd.

on 14 October, 1959

Equivalent citations: (1960) 62 BOMLR 195, 1960 (1) FLR 156

Bench: Naik

JUDGMENT

(1) This purports to be an application in revision under section 115 of the C. P. C. from the order of the Ex-officio Commissioner for Workman's Compensation, Ahmedabad the material facts may be briefly stated as follows:
One Deoshankar and another Mohanlal were working in the Fine Knitting Mills Company Ltd., at Ahmedabad. On 29-7-1955, they made applications before the Commissioner under the Workmen's Compensation Act, stating that they received personal injuries by accident arising out of and in the course of the employment. They stated known persons who were instigated by one Meghasing on behalf of the company. The applicant Deoshankar had a fracture on his hand. The applicants were re-moved to the CivilHospital. Deoshankar had a swelling on his right ankle, and Mohanlal had a fracture on his hand. The applicants were re-moved to the Civil Hospital. Deoshankar was discharge on 4-8-1955, and Mohanlal was discharged on 24-10-1955. The monthly wages of Deoshankar amounted to Rs. 110/- and those of Mohanlal amounted to Rs. 120/-. Mohanlal claimed Rs. 176/-. It is not necessary to state the claim made by Deoshankar because he has not come up in revision. The Mill opposed the applications and contended that he applicants did not receive injuries by accident arising out of or in the course of this quarrel that they received the injuries. The Commissioner, believing the evidence of one Shivprased, who was examined for the Mill, held that the applicants had failed to prove that they received injuries by accident arising out of and in the course of their employment. From that decision, Mohanlal alone has come up in revision.

(2) Mr. Patel for the opponent raised a preliminary objection contending that the revision application was not competent. In this connection, he relied upon a decision of this Court reported in Spring Mills Ltd. v. G. D. Ambedkar, 51 Bom LR 148 : AIR 1949 Bom 188. This decision related to the question as to whether an application in revision would lie from the decision given by the authority appointed under the Payment of Wages Act, 1936. In the course of their judgment, however. Their Lordships, relying upon an unreported decision of the Division Bench in Trustees of the Port of Bombay v. Bhima Raoji, (Civil Revn. Appln. No. 255 of 1926 Bom), observed at p. 152 of Bom LR: (at p. 191 of AIR) as follows:
"That was a decision given so long ago as January 11, 1927, by Mr. Justice Fawcett and Mr. Justice Patkar. In a short judgment they stated:
"We think it is clear that the Commissioner under the Workman's Compensation Act, VIII of 1923, is not a Court within the meaning of S. 115, C.P.C. Sir. Thomas Strangman for the applicant has frankly conceded that this is so, and has drawn our attention to the provisions which supports that proposition. In particular those of sub-section (2) of S. 19 and Ss. 23 and 27 seem to me practically conclusive on the point."
In order to appreciate this objection, it is necessary, first of all, to refer to some of the provisions of the Workmen's Compensation Act, Section 20 the Workmen's Compensation Act gives authority to the State Government to appoint a Commission for workmen's compensation for such local area as may be specified in the notification. The powers of the Commissioner have been specified in section 22. Section 23 in substance provides that the Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure for the purpose of taking evidence on oath (which such Commissioner is empowered

to impose) and of enforcing attendance of witnesses and compelling the production of documents and material objects. (and the Commissioner shall be deemed to be a Civil Court for all purposes such as section 195 and of Ch. XXXV of the Cr. P. C., 1898). Section 30 provides for appeals and lays down that an appeal shall lie to the High Court from the decisions enumerated at clauses (a) to (e). The first provisoin, in effect lays down that no appeal shall lie against any order unless the amount in dispute in the appeal is not less than three hundred rupees. The only other section to which reference need be made is section 27, which lays down that the Commissioner may, if he thinks fit, submit any question of law for the decision of the High Court, and if he does so, shall decide the question in confirmity with such decisions. The question as to whether a Commissioner appointed under the Workman's Compensation Act is a Court or a persona designata was decided by the Full Bench of the Patna High Court in Mt. Diril v. Smt. Goalin. ILR 1941-20 Pat 373 : AIR 1941 Pat 65. In that case. Their Lordships
pointed out that:
"there is no necessary antithesis between the expressions `persona designata' and `Court'; in other words, even a persona designata may be a Court. Whether he is a Court or not depends upon his powers and the functions which he has to discharge."
Their Lordships referred to the provisions of Ss. 23, 27 and also 30 of the Workmen's Compensation Act, which have been set out above and came to the conclusion that a Commissioner appointed under the Workmen's Compensation Act is a Court. After the decision of the Full Bench of the same Court for the decision of the question as to whether the Commissioner, who according to the Full Bench decision is a Court can be regarded as a Court subordinate to the High Court. That decision is reported in Mt. Dirji v. Smt.
Goalin. AIR 1942 Pat 33. Relying on a decision of the Bombay High Court in Balakrishna Daji v. Collector , Bombay Suburban, ILR 47 Bom 699 : AIR 1923 Bom 290. Their Lordships held that a Court is subordinate to the High Court if appeals from the decisions of that Court are made to lie to the High Court. Applying this criterion. Their Lordships took the view that a Commissioner under the Workmen's Compensation Act is a Court subordinate to the High Court and as such his decisions are liable to be revised under section 115 of the C. P. C. The Assam High Court in Abdul Rasid v. Hanuman Oil and Rice Mill. AIR 1951 Assam 88, has followed the decision of the Patna High Court in Firm G. D. Gianchand v. Abdul Hamid, AIR 1938 Lah 855.
It will thus be seen that the preponderance of authority is in favour of the view that the Commissioner is a Court and a Court subordinate to the High Court. The test laid down in ILR 47 Bom 699 : AIR 1923 Bom 290, in considering the question as to whether a revision application lies, is that unless the High Court has appellate jurisdiction over a Court, that Court will not be subordinate to the High Court. In view of the provisions of Section 90, under which appeals in certain cases are made to lie to the High Court, it is clear that the High Court exercises appellate jurisdiction over the Commissioner appointed under the Workmen's Compensation Act. As against this, Mr. Patel sought to rely to certain observations contained in 51 Bom LR 148: (AIR 1949 Bom 188), which have been set out above. The actual decision in the case related to the question as to whether the authority appointed under the Payment of Wages Act, 1936, was a Court of civil jurisdiction within the meaning of section 115 of the C. P. C. and Their Lordships held that the authority under that Act provisions of the Workmen's Compensation Act, and also referred to the decision of the Patna High Court cited above, and pointed out that the decision of the Patna High Court stood in conflict with he decision of the Division Bench in Civil Revn. Appln. No. 255 of 1926 (Bom). It is however, interesting to note that in the unreported ever, interesting to note that in the unreported case. Sir Thomas Strangman for the applicant conceded that the Commissioner under the Workmen's Compensation Act is not a Court within the meaning of section 115 of the Code of Civil Procedure. It is thus evident that the decision based on the concession made by the learned advocate for the applicant. The question does not appear to have been fully discussed and thrashed out. It is, also interesting to note the observations made by their Lordships at p. 153 of Bom LR: (at p. 191-192 of AIR) in Spring Mills Ltd. v. G. D. Ambedkar to the effect that it was not safe to apply the decisions with respect to the Workmen's Compensation Act to the construction of a statute like the Payment of Wages Act. Their Lordships also pointed out that the Workmen's Compensation Act created new rights and established special tribunals; that was not the case under the Payment of Wages Act. They also pointed out that the

Workmen's Compensation At provides an appeal to the High Court in certain cases, while there is no such appeal provided under the Commissioner in submitting a case to the High Court. It is on these grounds that they observed that what applies to the Commissioner under the Workmen's Compensation Act would not necessarily apply to the authority under the Payment of Wages Act. It is thus evident that, that in the first place, the decision in 51 Bom LR 148 : AIR 1949 Bom 188 is not directly on the point, and in the second place, the observations contained in p. 152 of Bom LR: (at p. 191 of AIR) thereof, on which strongreliance has been placed by Mr. Patel, are based on a judgment in which the position was conceded by thecounsel. Finally the authority of that decision in so far as it is sought to be applied to the case of aCommissioner under the Workmen's Compensation Act is weakened by the observations contained at p. 153of Bom LR: (at pp. 191-192 of AIR) referred to above. In this view of the case, following the decisions of thePatna and Assam High Courts. I hold that the Commissioner under the Workmen's Compensation Act is aCourt subordinate to the High Court. Consequently, a revision application lies to the High Court from the order of the Commissioner.

(3) Turning to the merits of the claim, on behalf of the two applicants. Deoshankar was the only witness who was examined. He stated that he and Mohanlal were assaulted by Meghasing, operating in the Dyeing Department of the Opponent Mills and three unknown persons when they were working in the Press building Department. He further stated that the assault was sudden and unprovocated. This evidence was disbelieved by the Commissioner on the ground that Shivprasad the reling clerk of the Mills, stated that the workers of the Dyeing Department had brought yarn to the building department and the applicants objected to it, and therefore, a quarrel ensued. I have been shown a certified copy of the statement made by Shivprasad, and I find that nowhere in his deposition he has made the kind of statement which has been attributed to him by the Commissioner in his order. On the other hand, he stated: "After the incident, I learnt that a quarrel had taken place between the applicants on the one hand and Meghasing and others on the other hand." In his cross-examination, he stated: "I went there when the quarrel was going on." Thus, it is clear that Shivprasad had no personal knowledge and whatever he stated about the quarrel was based on hear-say. It may that he went to the place whenthe quarrel was in progrss. In any case, it is clear from the statement that he was not present at the time when the quarrel commenced. He is not, therefore, in a position to say as that how the quarrel started and by whom. Deoshankar has emphatically asserted that it was artising and three other person, who accompanied him assaulted him. It is, therefore, clear that the finding of the Commissioner is not only without evidence, but is opposed to the evidence led in this case. That finding, therefore will have to be upset.

(4) Then Mr. Patel contended that even if the evidence of Deoshankar is accepted in full, still, it does not disclose that the injuries were caused to the petitioner as a result of an accident which occurred to him in the course of his employment. For this purpose, Mr. Patel sought reliance upon certain observations made by the learned Chief Justice Chagla in Bhagubai v. General Manager, Central Rly., . These observations are to the following effect.
"Now, it is clear that there must be a causal connection between the accident and the employment in order that the Court can say that the accident arose out of the employment of the deceased. It is equally clear that the cause contemplated is the proximate cause and not any remote cause. The authorities have clearly laid down that if the employee in the course of his employment has to be in a particular place he has to face a peril and which he has to face, that a causal connection is established between the accident and the employment. It is now well settled that the fact that the employee shares that peril with other members of the public is an irrelevant consideration. It is true that the peril which he faces must not be something personal to him; the peril must be incidental to his employment. It is also clear that he must not by his own act add to the peril which he faces has nothing to do with his own action or his own conduct, but it is a peril which would have been faced by any other employee or any other member of the public, then if the accident arises out of such peril, a causal connection is established between the employment and the accident."
If the evidence of Deoshankar is accepted, then, it is clear that the petitioner did not contribute by his own action or conduct to the peril. It is equally clear that the petitioner was a helpless victim of the assault which was initiated by one of the employees of the Mill, who was assisted by three outsiders. It is also

clear that the attack took place upon the petitioner while he was engaged in carrying out his day to day duties. That being the case, it must be held that the injuries suffered by the petitioner was incidental to his employment. There was also causal connection between the accident and the employment, and, therefore, accident must be taken to have arisen out of employment of the petitioner. It is significant to note that the facts which the Division Bench was considering (in which the decision was given by the learned Chief Justice) were somewhat stronger than the facts of this case. These facts were: The deceased was an employee of the Central Railway at a station on the Railway, living in the railway quarters adjoining the railway station. The only access to the deceased from the quarters to the station was through the compound of the railway station. One night the deceased left his quarters a few minutes before midnight in order to join duty, and immediately thereafter he was stabbed to death by some unknown person. It is noteworthy that the attack on the deceased in that case took place outside the premises of the railway. Yet it was held by the learned Chief Justice that this was an accident which occurred in the course of the employment.

(5) The result is that the application must succeed. The petitioner had claimed Rs. 176/1 by way of damages, and it does not appear that this amount was contested on behalf of the Mills. The application is therefore allowed. Rule is made absolute. The petitioner is awarded Rs. 176/-. The petitioner to recover costs of this petition.

Comments

EPILOGUE

The main findings about the subject are astounding. Within this project conflicts between various industries and the workman is studied upon keenly.

However, one of the important element of this project was to investigate and discuss about the scope and limitations of the 'management' and 'worker' relationship seen through the kaleidoscope of a management student.

In addition, scrutinizing- all kinds of relationship between a workman and the industry, managerial responsibility of industries and institutions appointing workman, their disputes and behavioral pattern, within the light of the principles incorporated within the Legal Frame of Reference, few conclusions are drawn apparently.

Although the main objective was to learn to what extent companies are able to implement the principles of the legal system with reference to definitive Laws and Acts like- Industrial Dispute Act, the Labour Act, Workman's Compensation Act, Workman's Compensation Rules, the Industrial Employment Act, the Minimum Wages Act, Payment of Bonus Act, etc., the concluding result may be as follows:

- Unethical Practices are practiced by managements or the governing 'corporate bodies' of the industry at the cost of the workman's blood.
- Sometimes, an industry with inappropriate management deliberately attempts to exploit its workmen eventually ending up in disputes.
- Disputes like salaries, wages, bonuses etc becomes the main cause of conflict between the industry and the workman. This often ends up with the 'blood' of the work man eventually resulting in his elimination/exit.
- Lack of communication between the management and the workman also results a conflict between the both where the workman ends up as the looser.

However, it is necessary to maintain a certain level of cautiousness with respect to the above conclusions, since these conclusions are based upon the findings with respect to a limited amount of case studies and investigations. The findings are not at all contradictory as they are based on real legal battle through a court of law.

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