

PETITIONER:
ROHTAS INDUSTRIES LTD.

Vs.

RESPONDENT:
RAMLAKHAN SINGH AND ORS.

DATE OF JUDGMENT 16/02/1978

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
KAILASAM, P.S.
TULZAPURKAR, V.D.

CITATION:
1978 AIR 849 1978 SCR (3) 93
1978 SCC (2) 140

ACT:
Right to file a complaint u/s 26(2) r/w s. 2(4) of the Bihar Shops and Establishments Act, 1953.
Words and Phrases--Scope of the words "subject to the manufacturing process" occurring in s. 2(1) of the Factories Act (LXIII) 1948.

HEADNOTE:

The services of Respondent Ramlakhan Singh who was working as sectional officer in the Waste Paper department of the paper factory of the appellant at Dalmianagar, Bihar State was terminated with immediate effect by a notice dated 10-6-1970, with an offer of one months wages in lieu of notice. The respondent assailed the order of his termination by making a complaint u/s. 26(2) of the Bihar Shops & Establishments Act, 1953. The appellant contested on merits, as well as on the technical ground that it was not maintainable under the Bihar Act as the respondent was not an employee within the meaning of s. 2(4) of the Act. The Labour Court, by its order dated 29-5-1972, held that the respondent was not a factory worker within the meaning of s. 2(1) of the Factories Act, 1948 and hence was an employee within the meaning of the Bihar Act. The Writ Petition filed by the appellant in the Patna High Court against the said order was dismissed asking him to agitate this point after the final decision was made by the Court. The Labour Court, on merits, decided the matter on 28-2-1973, allowed the petition of the respondent and ordered his reinstatement with full back wages. A fresh writ petition challenging the said orders was also dismissed by the Patna High Court.

Allowing the appeal by special leave, the Court,
HELD: Only a person who is an employee u/s 2(4) of the Bihar Shops and Establishments Act, 1953, could file an application u/s 26(2). [95B]

Even (persons employed in a factory by the inclusive clause in the second sentence the definition in S. 2(4) are employees within the meaning of the Bihar Act. But two exceptions have been carved out from the category of such, persons. namely, (1) "Who are not workers within the meaning of the Factories Act", such a worker does not come within the inclusive definition of the term employee; (2) who are

not working in a managerial capacity. In other words even a person employed in a factory and who is not a worker within the meaning of the Factories Act will not be an employee u/s 2(4) of the Bihar Act, if he is working in a managerial capacity. [95D-F]

Reading clause (1) of s. 2 of the Factories Act, 1948, together with clause (k) and (m) thereof, it is clear that a person to be a worker within the meaning of the Factories Act must be a person employed in the premises or the precincts of the factory. [96C]

State of U.P. v. M. P. Singh & Ors., [1960] 2 SCR 605 reiterated.

Raw materials used in the manufacturing process for producing paper and its various products, undoubtedly, will be a "subject of the manufacturing process" within the meaning of clause 1 of section 2 of the Factories Act, whatever also may be or may not be such subject. [97A-B]

In the instant case, the respondent was not working in a managers capacity. Though he was not employed "in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process", he was engaged in a work which was connected with the

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"Subject of the manufacturing process" and therefore, he was a factory worker within the meaning of clause (1) of s. 2 of the Factories Act, 1948. Hence he was not an employee within the meaning of the Bihar Shops and Establishments Act, 1953. The petition of complaint filed by him u/s 26(2) was not maintainable. [96G, 97B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1821 of 1977:

(Appeal by Special Leave from the Judgment and Order dated 19th August, 1976 of a Bench of High Court of Patna in C.W.J.C. a No. 650 of 1973).

A. B. N. Sinha, B. P. Maheshwari and Suresh Sethi for the Appellant.

Lal Varain Sinha, P. P. Singh & H. S. Marwah for Respondent No. 1.

The Judgment of the Court was delivered by
UNTWALIA, J.-This is an appeal by special leave. Shri Ram-lakhan Singh, respondent no. 1 (for brevity, hereinafter called the respondent) was, an employee of M/s Rohtas Industries Ltd., the appellant. The appellant runs a Paper Factory at Dalmianagar in the State of Bihar, wherein paper is manufactured for sale from rawmaterials such as bamboo, cotton rags and waste paper etc. The respondent was appointed and employed in the Waste Paper Department of the Paper Factory and had been working as Sectional Officer in the said Department since 1964. The management received information from one of its dealers, M/s G. D. Bansal of Gwalior, that the respondent was acting against the interest of the Company and was divulging its secrets and confidential matters to outsiders for monetary considerations. Thereupon the management terminated the services of The respondent by a notice dated the 10th of June, 1970 with immediate effect, and according to its case, it had offered one month's wages' in lieu of notice. The respondent assailed the order of his termination by making a complaint in writing to the Labour Court, Patna under section 26(2) of the Bihar Shops & Establishments Act, 1953--hereinafter called the Bihar Act. His case was that

he was discharged from service without any rhyme and reason, no domestic enquiry was held to prove any charge against him, nor was he offered any wages in lieu of one month's notice. The appellant contested the respondent's petition of complaint on merits as well as on the technical ground that it was not maintainable under the Bihar Act inasmuch as the respondent was not an employee within the meaning of section 2 (1) of the said Act.

The Labour Court tried the issue of maintainability of the petition of complaint as a preliminary issue and by its order dated the 29th May, 1972 held that the respondent was not a factory worker within the meaning of section 2(1) of the Factories Act, 1948 and hence was an employee within the meaning of the Bihar Act. The appellant moved the High Court by a writ petition against the said order of the Labour Court but was asked to agitate this point after

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the final decision was made by that Court. The Labour Court, on merits, decided the matter on the 28th of February, 1973 and allowed the petition of the respondent and ordered his reinstatement with full back wages. The appellant challenged the orders of the Labour Court by a fresh writ petition but the Patna High Court dismissed it. Hence this appeal.

We need not discuss or decide the merits of the respective cases of the parties, as in our opinion, the application filed by the respondent under section 26(2) of the Bihar Act was not maintainable.

Only a person who is an employee under section 2(4) of the Bihar Act could file an application under section 26 (2). If he was not such an employee, he had no right to file the complaint. Section 2(4) reads as follows :

" employee' means a person wholly or partially employed for hire, wages including salary, reward, or commission in, and in connection with, and establishment and includes 4 apprentice', but does not include a member of the employers' family. It also includes persons employed in a factory who are not workers within the meaning of the Factories Act, 1948 (LXIII of 1948) and who are not working in managerial capacity, and for the purposes of any proceeding under this Act, include an employee who has been dismissed, discharged or retrenched for any reason whatsoever."

On a plain reading of the definition aforesaid, it follows that even persons employed in a factory by the inclusive clause in the second sentence of the definition are employees within the meaning of the Bihar Act. But two exceptions have been carved out from the category of such persons, namely, (1) "who are not workers within the meaning of the Factories Act"; such a worker does not come within the inconclusive definition of the term 'employee'; (2) who are not working in managerial capacity'. In other words, even a person employed in a Factory and who is not a worker within the meaning of the Factories Act will not be an employee under section 2 (4) of the Bihar Act if he is working in a managerial capacity. It is not disputed that the second exception was not attracted in this case. The respondent was not working in a managerial capacity. He was employed in the Paper Factory. But the only question for determination is whether he was a worker within the meaning of the Factories Act.

For the purpose of deciding the point at issue, it is necessary to refer to certain provisions of the Factories

Act as they stood at the relevant time before the Factories Amendment Act, 1976. The title and the preamble of the Act would show that this is an Act "to consolidate and amend the law regulating labour in factories." Clause (1) of section 2 runs as follows

"worker' means a person employed, directly or through any agency whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery or premises

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used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process."

The definition of "factory" given in clause (in) starts by saying that it "means any premises including the precincts thereof."

Manufacturing process has been defined in clause (k) to mean any process for-

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing' or otherwise treating or adopting any article or substance with a view to its use-, sale, transport, delivery or disposal, or....."

Reading these provisions together, it is quite reasonable and legitimate to hold that a person to be a worker within the meaning of the Factories Act must be a person employed in the premises or the precincts of the factory. As held by this Court in *The State of Uttar Pradesh v. M. P. Singh and others*(1) field workers who are employed in guiding supervising and controlling the growth and supply of sugar cane to be used in the factory are not employed either in the precincts of the factory or in the premises of the factory. Hence the provisions of the Factories Act do not apply to them.

According to the finding of the Labour Court, the respondent was engaged in supervising and checking quality and weightment of waste papers and rags which are the basic raw-materials for the manufacture of Duplex Board and Vulcanised fibre. He used to deal with receipts and maintain records of stocks. He also used to pass the bills of the suppliers of the waste paper and rags and used to check the quality of the supplies. The respondent had admitted that he used to work in the precincts of the factory and in case of necessities had to work inside the factory. He used to go to the paper sorting house when there were instructions for it. But thinking that checking of rags and their quality was not the main duty of the respondent, the Court came to the conclusion that his work was not incidental to manufacturing process. The High Court thought that the Labour Court had found as a fact that the respondent was not concerned with the manufacturing of paper either directly or incidentally and hence he was not a factory worker. In our opinion, the judgments of the Courts below in this regard cannot be sustained.

The respondent was not employed "in any manufacturing process or in cleaning any part of the machinery or premises used for, a manufacturing process." But the question for consideration is whether he was employed in "any other kind of work incidental to or connected with, the manufacturing process or the subject of the manufacturing process." This Court in *State of U.P. v. M. P. Singh* (supra) did

(1) [1960] 2 S.C.R. 605.

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not decide as to what was the precise meaning of the expression "subject of the manufacturing process" in section 2 clause (1) of the Factories Act. We are called upon to decide this question in this appeal. Raw material used in the manufacturing process for producing paper and its various products, undoubtedly, will be a "subject of the manufacturing process," whatever else may or may not be such subject. If that be so, the respondent was engaged in a work which was connected with the subject of the manufacturing process. And as we see the evidence discussed in the order of the Labour Court, there cannot be any doubt that he was working in the factory premises or its precincts in connection with the working of the subject of the manufacturing process namely, the raw-materials. In our judgment, therefore, he was a factory worker within the meaning of clause (1) of section 2 of the Factories Act, 1948. Hence he was not an employee within the meaning of the Bihar Act and the petition of complaint filed by him under section 26(2) was not maintainable.

We accordingly allow this appeal, set aside the judgment and order of the High Court as also those of the Labour Court and dismiss the petition of complaint filed by the respondent. As per the order of this Court made earlier the appellant must pay the cost in this appeal to Respondent No. 1.

Before we part with this case, we would like to put on record that Mr. A. B. N. Sinha appearing for the appellant management assured us that whatever money has been paid to the respondent in lieu of wages so far pursuant to the interim order of the High Court or of this Court will not be claimed back from him. We think that the amount so paid should furnish a sufficient compensation to the respondent for losing his service.

S.R.

Appeal allowed.

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