



JSA Prism Employment Law

November 2024

Determinative factor for 'workman' under the Industrial Disputes Act, 1947 is the principal duties and functions performed in the establishment, and not merely the designation of post

In the case of *Lenin Kumar Ray vs. M/s Express Publications (Madurai) Ltd.*¹, the Hon'ble Supreme Court of India ("Supreme Court") re-confirmed that it is a well settled position under law that the determinative factor for 'workman' covered under section 2(s) of the Industrial Disputes Act, 1947 ("ID Act") is "*the principal duties and functions performed by an employee in the establishment and not merely the designation of his post*". It further opined that the onus of proving the nature of employment rests on the person claiming to be a 'workman' within the definition of section 2(s) of the ID Act.

Brief facts

The management in this case is a newspaper establishment publishing a daily newspaper, i.e., New Indian Express ("Management"), having its publication unit at Bhubaneswar, Odisha. Mr. Lenin Kumar Ray ("Employee"), was initially appointed as a 'Junior Engineer (Electronics and Communication)' by the Management on June 7, 1997 and was subsequently confirmed in the said post on July 13, 1998. He was thereafter promoted to the post of 'Assistant Engineer (E&C)'.

The Employee was relieved from service on October 8, 2003, by payment of approximately INR 6,995 (Indian Rupees six thousand nine hundred and ninety-five) towards 1 (one) month's salary in lieu of notice. Aggrieved by the dismissal, he approached the labour department, who referred the matter for conciliation. After failure of conciliation and based on the appropriate authority's determination that an industrial dispute existed between the parties, a case was then registered before the Labour Court ("Labour Court"). The Labour Court passed an award reinstating the Employee in service along with compensation of INR 75,000 (Indian Rupees seventy-five thousand) in lieu of back wages, after having held that the employee was a 'workman' in terms of section 2(s) of the ID Act.

Challenging the above order, the Management filed a writ petition which was partly allowed by the Odisha High Court ("Odisha HC"), which set aside the Labour Court's order to the extent that the employee is to be reinstated and paid compensation of INR 75,000 (Indian Rupees seventy-five thousand), while upholding that the Employee falls under the definition of 'workman' under the ID Act. Aggrieved and dissatisfied with the respective portions of the Odisha HC's order, parties preferred appeals with the Supreme Court.

¹ 2024 INSC 802 (decided on October 21, 2024)

Issue

The Supreme Court was tasked to determine whether:

1. the Employee was a 'workman' under section 2(s) of the ID Act;
2. the Employee's termination was contrary to requirements and processes laid down under the ID Act; and
3. previous courts erred in their respective decisions in re: reinstatement of the Employee's employment with the Management and payment of compensation to the Employee.

Observations and analysis

Some of the critical observations laid down by the Supreme Court are as follows:

1. the Supreme Court reiterated that the ID Act was enacted to settle industrial disputes. It was brought with the object to ensure social justice to both the employers and employees and advance the progress of industries, by bringing about the existence of harmony and cordial relationship between parties. It deliberated that the law is well settled that the determinative factor for 'workman' covered under section 2(s) of the ID Act, is the principal duties and functions performed by an employee in the establishment and not merely the designation of his post. Further, the onus of proving the nature of employment rests on the person claiming to be a 'workman' within the definition of section 2(s) of the ID Act;
2. in the present case, there was no specific document adduced relating to the actual work and functions performed by the Employee. In the absence of any concrete material to demonstrate the nature of duties discharged by the Employee, the Supreme Court held that the employment orders issued by the Management should be considered for this purpose. Perusing the Employee's employment orders, the Supreme Court concluded that while the Employee did supervise job functions of 2 (two) juniors, he was primarily staffed on the administrative side. Coupled with the fact that he drew salary of more than INR 1,600 (Indian Rupees one thousand six hundred) (i.e., more than the then threshold prescribed for 'workman' determination under the ID Act²), the Supreme Court upheld that the Employee does not come within the definition of 'workman' and consequently, the Odisha HC's order upholding the Labour Court's finding that the employee was a 'workman' within section 2(s) of the ID Act was set aside; and
3. since the Employee was paid final dues as per terms of his appointment order, the Supreme Court further held that there has been no violation of procedure on the Management's part in terminating services of the Employee, as he was not a 'workman' under the ID Act. It further affirmed the Odisha's HC order insofar as it concerned setting aside the Labour Court's award to reinstate the Employee and pay compensation of INR 75,000 (Indian Rupees seventy-five Thousand) in lieu of back wages.

Conclusion

The definition of 'workman' under the ID Act has been a subject matter of discussion by various courts. In *Vishakanathiah T.N. vs. Management of Mysore Petro Chemicals Ltd., Raichur*³, the High Court of Karnataka had laid down broad parameters to determine whether an employee would qualify as a 'workman'. They are as follows:

1. it is the dominant purpose of employment that is relevant and not some additional duties which may be performed by the employee;
2. it is not the designation of post held by the employee, which is relevant, but what is relevant is the nature of duties performed by the employee;

² Pursuant to the amendments to the ID Act in 2010, this amount increased to INR 10,000 (Indian Rupees ten thousand), with effect from September 15, 2010.

³ 2005 (1) LLJ 364

3. courts have to find out whether the employee can bind the company in the matter of some decision taken on behalf of the company; and
4. the nature of supervisory duties performed by the employee; does it include directing the subordinates to do their work and/or to oversee their performance, etc.

In the case of *Management of Tata Consultancy Services Limited vs. Selvinth Gnanesh Joshua and Others*⁴, the Madras High Court went a step further and emphasised the importance of piercing the veil of the designation held by an employee and determine the duties performed by the employee.

The Supreme Court's decision in the current case acts as a refresher on the importance of understanding the need to distinguish between a mere 'designation' of an employee and their actual job functions performed in determining whether or not they would be a 'workman' under the ID Act and consequently, enjoy the protections accorded to them thereunder.

Employment Practice

JSA has a team of experienced employment law specialists who work with clients from a wide range of sectors, to tackle local and cross-border, contentious and non-contentious employment law issues. Our key areas of advice include (a) advising on boardroom disputes including issues with directors, both executive and non-executive; (b) providing support for business restructuring and turnaround transactions, addressing employment and labour aspects of a deal, to minimize associated risks and ensure legal compliance; (c) providing transaction support with reference to employment law aspects of all corporate finance transactions, including the transfer of undertakings, transfer of accumulated employee benefits of outgoing employees to a new employer, redundancies, and dismissals; (d) advising on compliance and investigations, including creating compliance programs and policy, compliance evaluation assessment, procedure development and providing support for conducting internal investigations into alleged wrongful conduct; (e) designing, documenting, reviewing, and operating all types of employee benefit plans and arrangements, including incentive, bonus and severance programs; and (f) advising on international employment issues, including immigration, residency, social security benefits, taxation issues, Indian laws applicable to spouses and children of expatriates, and other legal requirements that arise when sending employees to India and recruiting from India, including body shopping situations.

JSA also has significant experience in assisting employers to ensure that they provide focused and proactive counselling to comply with the obligations placed on employees under the prevention of sexual harassment regime in India. We advise and assist clients in cases involving sexual harassment at the workplace, intra-office consensual relationships, including drafting of prevention of sexual harassment (POSH) policies, participating in POSH proceedings, conducting training for employees as well as Internal Complaints Committee members, and acting as external members of POSH Committees.

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⁴ 2015-2-LW127



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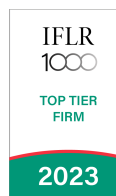


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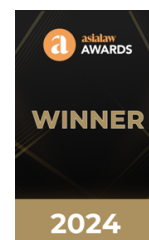


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