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Summary of Shankar Balaji vs. State of Maharashtra 1962

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ABSTRACT

This article is the summary of the land mark case "Shankar Balaji vs State of Maharashtra 1962". A landmark judgment clarifying the concept of agreement or contract of service between the appellant and defendant. The appellant is the owner and occupant of the plant that manufactures bidis, "Jay-Parkash Sudhir Private Ltd." For several days in 1957, Pandurang Trimbak Londhe, also known as Pandurang, rolled bidis in the Factory. The issues that needed to be resolved were whether Pandurang qualified as a worker under the Act's definition and whether he was eligible for leave earnings under section 80 of the Act.

I. INTRODUCTION

Date: 27 October 1961

Citation: 1962 AIR 517, 1962 SCR

Bench: Dayal Raghbar

Act: Factories Act,1948

Petitioner: Shankar Balaji

Respondent: State Of Maharashtra

(A) Fact

There was a guy named Pandurang who used to work in a building making factory. Pandurang's job was to roll the bidies. The appellant was the owner of the factory. There was no written or oral agreement and contract of service between the parties. Pandurang had the freedom to come to the factory at any time, he had the freedom to work for as long as he wanted. Pandurang was free to go on leave whenever he wanted which means he was free regarding the timing, number of hours and regarding the work which he was performing in the factory.

He had the full liberty and freedom. Only one condition was placed in front of him that whenever he wants to go on leave for any number of days, he had to tell the owner of the Factory that he is going only for certain days. This condition was only for the assurance that he is not leaving

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the work and he will come back to the work. Per se there was no supervision of work.

The wages of Pandurang was on a fixed rate means whatever amount of Bidi he used to make he was getting paid accordingly. There was no fixed amount of bidi is to be made by Pandurang. Apart from this Pandurang also had the freedom to work from his home and there was no such condition to come to the factory and work. **This particular statement was in contrast with the judgement and facts of the Birdhichand vs. first civil Judge case.** In Bhirdichand case, the worker was bound to work from the factory only but in this case the worker was not bound to work from Factory. They can work from anywhere they like. He was allowed to work according to his will from wherever he wants to work.

He was paid at fixed rates on the quantity of bidis turned out and there was no stipulating for turning out any minimum quantity of bidis. The Inspector of Factories found that he was not paid the wages for 4 days' leave which he had earned after having worked for a certain period. The appellant was fined Rs.101- for contravening the provisions of s. 79(11) of the Factories Act. The questions which arose for decision were whether Pandurang was a worker within the meaning of that expression under the Act and whether he was entitled to any leave wages under s. 80 of the Act.

II. ISSUE OF THE CASE

i. In this case Pandurang will be consider as a worker or not?

ii. Should we put Pandurang in the definition of section 2(l) or not?

iii. Will the manner of Pandurang's work be considered in the definition of worker?

III. JUDGEMENT

1. Court said, the concept of the employment rely on three things which are employer, employee and contract of employment.

    - Employer

The employer definition is an individual or an organization in the government private, non-profit, or business sector that hires and pays people for their work. As the authority within an organization, the employer defines the terms of employment for employees and provides the agreed-upon terms such as the salary.

    - Employee

An employee is a worker who gets paid an hourly wage or annual salary for a set job. Not all hourly workers are employees. Employees are generally defined by the higher level of control

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that the employer has over the details of the employee's work.

- Contract of employment

An employment contract (or employment agreement) defines the terms of a legal binding agreement between an employee and employer such as compensation, duration, benefits, and other conditions of the employment relationship.

2. The question has arose that the management used to guide the worker to roll the Budi in the given particular manner and the only guideline was for Pandurang to make the Bidi in the given prescribed way. Will just ascertain manner of Bidi making falls under the definition of supervision/contract of the management?

The court said no it will not, the mere fact that the person rolling the bidi has to roll them in a particular manner cannot be said to give a right in the management, to control the manner of work. The manner of work comes under the wide ambit of management. The final say is of management.

3. The third observation was made by the court was we can consider the bidi rolling under the definition of worker but the few conditions should be fulfilled likewise:
    - The worker should come regularly in the factory.
    - Even if they are not coming regularly to the factory then they should be regularly employed in the factory.

Two points have been raised on behalf of the appellant. One is that Pandurang was not a worker within the meaning of that expression in the Act. The other is that even if Pandurang was a worker, he was not entitled to any leave wages under s. 80 of the Act.

The first contention is based on the established facts of the case which, it is submitted, do not make out the relationship of master and servant between the appellant and Pandurang, inasmuch as they indicate that the appellant had no supervision and control over the details of the work Pandurang did in the factory. The following are the established facts:

a. There was no agreement or contract of service between the appellant and Pandurang.
b. Pandurang was not bound to attend the factory for the work of rolling bidis for any fixed hours of work or for any filed period. He was free to go to the factory at any time he liked and was equally free to leave the factory whenever he liked. Of course, he could be in the factory during the hours of working of the factory.

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c. Pandurang could be absent from work on any day he liked. He could be absent up to ten days without even informing the appellant. If he was to be absent for more than ten days he had to inform the appellant, not for the purpose of taking his permission or leave, but for the purpose of assuring the appellant that he had no intention to give up work at the factory.

Employment brings in the contrast of service between the employer and the employed. We have mentioned already that in this case there was no agreement or contract of service between the appellant and Pandurang. What can be said at the most is that whenever Pandurang went to work, the appellant agreed to supply him tobacco for rolling bidis and that Pandurang agreed to roll bidis on being paid at a certain rate for the bidis turned out. The appellant exercised no control and supervision over Pandurang.

Court stated that the court will not considered Pandurang as the worker of the factory and court will not hold him under the ambit of section 2(l) of the factories act,1948.

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