MANAGEMENT OF M/S. PURI URBAN COOPERATIVE BANK A

v.

MADHUSUDAN SAHU AND ANR.

APRIL 29, 1992

[LALIT MOHAN SHARMA AND MADAN MOHAN PUNCHHI, JJ.] B

Industrial Disputes Act, 1947:

Section 2(s)—Appraiser engaged by Bank for weighing and testing gold ornaments brought to Bank for pledging—Remuneration on commission basis—No relationship of master and servant—Whether a workman. C

The respondent was engaged as an appraiser by appellant bank, for weighing and testing, gold ornaments offered to be pledged to the appellant-Bank to secure loans, whenever required on commission basis. His services were terminable at any time. After about one year and seven months the appellant Bank terminated his services. On a reference from the Government, at the instance of the respondent, the Labour Court set aside the termination order, holding it as illegal and unjustified and ordered his reinstatement in service. However, it held that he was not entitled to back wages since those were not capable of a precise computation and involved an element of speculation. D E

On appeal by both the appellant-Bank as well as the respondent, the High Court affirmed the view of the Labour Court.

In the appeal before this Court on behalf of the appellant-Bank, it was contended that though the appellant might be a workman as commonly understood unless there was a jural relationship of master and servant between the respondent and the Bank, he could not be termed as a workman, for the purposes of the Industrial Disputes Act, 1947. F

Allowing the appeal, this Court, G

HELD : 1.1. Though the respondent claims to be a workman as commonly understood, he was not 'employed' as such, so as to establish a master and servant relationship, which could warrant a re-union in the event of disruption, by the intervention of the Labour Court. [980 H, 981 A] H

A **1.2. Engaging the respondent was to require him to weigh the ornaments brought in the Bank for pledging and to appraise their quality, purity and value. He could be directed to do this, but not the manner in which he shall do it. That was left to him exclusively, as it depended on his skill, technique and experience. Besides, under the terms of engagement he was required to, and he did, execute a bond indemnifying and holding himself responsible to the Bank for all his acts and commissions as an appraiser, and be accountable for the loss sustained by the Bank on account of under-valuation of the gold pledged with it. These terms inhered in the Bank the power to warn him and to remind him that he was not expected to be negligent in his duty. Still there was a fair element of freedom though coupled with responsibility for the respondent in the manner in which he could do his work. [980 F-G]**

B

C

1.3. It is also an uncontroverted position that the respondent was a reputed goldsmith and had remained gainfully employed so as to disentitle him any back wages and that the Bank has, on its approved list, other such like appraisers and it was not obligatory for the Bank to allot work to the respondent or any other, at all. Additionally, in no event can he ask for work, or periodic remuneration or idling wages. These particulars, not by themselves, but in the totality of circumstance indicate lack of master and servant relationship. [981 B]

D

E **1.4. In the circumstances, the courts below were wrong in holding that any master and servant relationship stood established in engaging the respondent as an appraiser of ornaments. [981 C]**

D.C. Works Ltd. **v.** *State of Saurashtra,* **AIR 1957 SC 264 and** *Chintaman Rao* **v.** *State of M.P.,* **AIR 1958 SC 388, referred to.**

F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1813 of 1992.

From the Judgment and Order dated 14.3.1991 of the Orissa High G Court in OJC No. 1483 of 1985.

Narasing Murthy, Kirti Mishra and Sanjib Das for the Appellant.

The Judgment of the Court was delivered by

H **PUNCHHI, J.** In this matter challenge has been made to the judg-

ment and order dated 14.3.1991 of the Orissa High Court passed in OJC No. 1483 of 1985. Notice was issued to Madhusudan Sahu, respondent, the person concerned, indicating that the matter shall be disposed of at the notice stage. Despite presumptive service, no one appeared on his behalf. We heard only learned counsel for the appellant.

Special leave is granted.

The respondent, Madhusudan Sahu (hereafter referred as "Sahu") was engaged as an appraiser by Puri Urban Cooperative Bank, the appellant herein, pursuant to an advertisement dated January 10, 1978. As an appraiser his job was to be available in the Bank, when called, for performing the services of weighing and testing the gold ornaments offered to be pledged to the Bank to secure loans. It was stipulated in the advertisement that the appraiser's commission (termed wages by the High Court) shall be 25 paisa per hundred rupees of loan but in no case shall remuneration be less then Rs. 2 per appraisal. Besides the said commission/wages the appraiser could claim no other sum for his services. As stipulated, Sahu's services were terminable at any time. His services were terminated by the Bank on 27.8.1979. He successfully sought a reference from the Government to the Labour Court. The Labour Court went into the matter and vide Award dated March 27, 1985, set aside the order of termination terming it as illegal and unjustified, ordering Sahu's reinstatement in service. He was held disentitled to back wages since those were not capable of a precise computation and involved an element of speculation. The appellant-Bank as well as Sahu approached the High Court of Orissa challenging correspondingly the Award of the Labour Court insofar as it had gone against their respective interests. The High Court affirmed the view of the Labour Court, which has given cause to the appellant-Bank to move this Court.

The High Court has taken the view, as did the Labour Court, that Sahu is a worker as defined in Section 2(s) of the Industrial Disputes Act, 1947 and on that basis alone entitled to reinstatement. The word 'workman' has been defined therein to mean 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. That does not include *inter*

A *alia* persons employed in supervisory capacity drawing wages exceeding Rs. 1600 per mensem etc. Due to the wide amplitude of the definition of the word 'workman' the High Court endorsed the view of the Labour Court that Sahu was a workman and thus came within the definition, and was thus entitled to the protection of the Industrial Disputes Act, 1947.

B

It was contended on behalf of the appellant that the appellant may be a workman as commonly understood, but work of appraising in the context is partly manual, as goes the weighing part, and partly mental, as goes the appraising part, wholly or partially skilled and/or technical and wages/commission for that work may fall within the expression 'hire or C reward'. Still, it is maintained, that unless there was a jural relationship of master and servant between Sahu and the Bank, he could not be termed as a workman, for the purposes of the Industrial Disputes Act, 1947. It stands established that Industrial Law revolves on the axis of master and servant relationship and by a catena of precedents it stands established that D the *prima facie* test of relationship of master and servant is the existence of the right in the master to supervise and control the work done by the servant (the measure of supervision and control apart) not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work. See in this regard *D.C. Works Ltd.* v. *State of Saurashtra,* AIR 1957 SC 264 at p. 268 and *Chintaman Rao* v. *State of M.P.,* E AIR 1958 SC 388 at p.392. And this principle holds the field.

Now engaging Sahu was to require him to weigh the ornaments brought in the Bank for pledging and to appraise their quality, purity and value. He could be directed to do this but not the manner in which he shall F do it. That was left to him exclusively, as it depended on his skill, technique and experience. Besides under the terms of engagement he was required to, and he did, execute a bond indemnifying and holding himself responsible to the Bank for all his acts and commissions as an appraiser, and be accountable for the loss sustained by the Bank on account of under-valuation of the gold pledged with it. These terms inhered in the Bank the power G to warn him and to remind him that he was not expected to be negligent in his duty. Still there was a fair element of freedom though coupled with responsibility, for Sahu in the manner in which he could do his work.

Therefore, we are of the view that though Sahu claims to be a H workman as commonly understood, he was not 'employed' as such, so as

to establish a master and servant relationship, which could warrant a re-union in the event of disruption, by the intervention of the Labour Court. The allegation of the Bank before the Labour Court, as well as here, that Sahu is a reputed goldsmith and had remained gainfully employed so as to disentitle him any back wages, which appealed to the Labour Court, has remained uncontroverted before us. It also remains uncontroverted before us that the Bank has, on its approved list, other such like appraisers and it is not obligatory for the Bank to allot work to Sahu or any other, at all. Additionally, in no event can he ask for work, or periodic remuneration or idling wages. These particulars, not by themselves, but in the totality or circumstances indicate lack of master and servant relationship.

In view of these jurisdictional facts, as gathered by us, it is difficult to uphold the view of the High Court and that of the Labour Court that any master and servant relationship stood established in engaging Sahu as an appraiser of ornaments.

For these reasons this appeal is allowed, setting aside the orders of the High Court of Orissa and that of the Labour Court, but without costs.

N.P.V. Appeal allowed.