

IN THE HIGH COURT OF DELHI AT NEW DELHI

+L.P.A. No.1975/2006.

Date of Hearing:05.05.2008

Date of Decision: 04.07.2008

#Baljeet Singh

....Appellant

!

Through: Mr.Sanjoy Ghose,Adv.

Versus

\$The Management of
State Farms Management of India Ltd.

.....Respondent

^

Through Mr.C.N.Sreekumar with
Mr.P.R.Nayak and Mr.Dushyant
Parashar, Advocates.

CORAM :-

***THE HON'BLE MR.JUSTICE A.K.SIKRI**

THE HON'BLE MR. JUSTICE J.R.MIDHA

- 1.Whether Reporters of Local papers may be allowed to see the Judgment?
- 2.To be referred to the Reporter or not?
- 3.Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

:

1. The appellant herein is a workman employed with M/s.State Farms Management of India Ltd. and had challenged his termination by raising industrial dispute. He

has witnessed luck of his pendulum shifting from one end to another inasmuch as the Labour Court has given the Award in his favour holding termination to be illegal and directing reinstatement into service with back wages. The said Award is upturned by a learned Single Judge of this Court in Writ Petition filed by the respondent herein (hereinafter referred to as 'the Management') vide judgment dated 28.4.2006 and quashing the Award of the Labour Court. The appellant has preferred the present appeal against the said judgment of the learned Single Judge. What is in store for him would be unfolded in these pages, as we are proposing to decide this appeal by this judgment.

2. The appellant herein was appointed as Apprentice by the Management w.e.f. 19.7.1983. Two years period as an Apprentice came to an end on 18.7.1985 whereafter the appellant was taken as daily wager in the capacity of Lower Division Clerk w.e.f. 23.7.1985. The period of daily wage was extended from time to time and continued till 22.3.1986. Since no further extension was given, the engagement of the appellant as daily wager came to an abrupt end from 22.3.1986. The appellant perceived this as

termination from service and raised industrial dispute questioning the purported termination on the ground that it was violative of Section 25(F) of the Industrial Disputes Act,1947 inasmuch as he was not paid retrenchment compensation as well as notice pay while terminating his services, as the same was a pre-condition thereof. It is not in dispute that provisions of Section 25(F) of the Industrial Disputes Act,1947 are applicable in those cases where a workman serves the employer for 240 days in a year. The appellant had not completed 240 days service as a daily wager from 23.7.1985 to 22.3.1986 as there were certain breaks in between. However, the plea of the appellant was that service rendered by him as Apprentice right from 19.7.1983 should also be included in computing the total service rendered by him.

3. The claim of the workman was contested by the Management on various grounds i.e. provisions of Section 25(F) were not attracted as the workman had not rendered 240 days of service; the period of Apprentice could not be included while computing 240 days; the non-extension of

the workman did not amount to retrenchment as the case of the workman fell in 'Excepted category' of Clause (bb) of Section 2(OO) which defines retrenchment inasmuch as it was a case where non-renewal of contract on an expiry of specific period could not be treated as retrenchment as per the definition contained in the aforesaid provision. On the basis of pleadings between the parties, following issues were framed:

- Whether the workman worked with the management from 19th July,1983 to 22nd March,1986 as alleged in para no.3 of the statement of claim? If not, to what effect? (OPW)
- As per terms of reference.

4. The Labour Court decided both the issues in favour of the workman. We may point out that though the Management had not taken specific plea in the written statement to the effect that the Management was not an 'industry' under the provisions of Section 2(j) of the Industrial Disputes Act, this objection was taken for the first time during the course of the arguments and because of this reason the learned Tribunal refused to entertain the said objection while rendering its Award dated 18.7.1998. From the reading of the impugned Award, it becomes clear that the Tribunal opined that as the workman was engaged as Clerk

from 23.7.1985 to 22.3.1986, total period of employment was more than 240 days. However, there were short breaks in between for a total period of 6 days and the contention of the Management was that if those 6 days are excluded, period will fall short of 240 days. The Tribunal, however, held that the Management could not have the benefit of exclusion of 6 days which were in the nature of artificial breaks. The Tribunal also held that the termination would not be covered by exception contained in clause (bb) of Section 2(oo) of the Industrial Disputes Act in view of judgment of Punjab & Haryana High Court reported in 1996 LLR 259 and that of Madras High Court reported in 1992(I)LLR150. On this basis it was opined by the Industrial Tribunal that benefit of the provisions of Section 25(F) of the Industrial Tribunal Act was available to the appellant and as the Management did not adhere to the said provisions while terminating the services of the workman, the termination was illegal. The Tribunal also held that even if the workman had not completed 240 days as daily wager, the services could not be terminated without any justification as no employer could adopt 'hire and fire policy'.

5. The learned Single Judge while allowing the writ petition vide impugned judgment did not agree with the Industrial

Tribunal on both counts. In the first instance it is held that since the appointment was on temporary basis as daily wager for a fixed tenure pursuant to written orders, it would not amount to retrenchment as it fell in 'Excepted category' mentioned in Clause (bb) of Section-2(OO). It was also observed that when the workman was taken as Apprentice vide orders dated 19.7.1983 it was clearly stipulated in the said original contract that he had to pass Trade Test. As he had failed to clear the said test, his appointment could not be so continued. For this reason also the termination could not be treated as retrenchment. The learned Single Judge also noted the submission of the Management that even if it was treated as retrenchment merely for non-compliance of Section 25(F) of the Industrial Disputes Act, direction for reinstatement could not have been made. The learned Single Judge also discussed the issue of 'industry' and concluded that in view of the judgment of the Division Bench of Madras High Court, relating to the establishment of the appellant itself holding that said establishment was not an 'industry' within the meaning of Section 2(j) of the I.D. Act, and the Management not able to satisfy the test of being 'industry' the Award was not tenable and without jurisdiction.

6. In this appeal preferred by the workman against the said judgment, the findings of the learned Single Judge are assailed. We will take note of the respective submissions of the parties while discussing the issues involved.

7. It is clear from the aforesaid narration that there are primarily two issues, namely,

- (a) Whether the Management is an 'industry' or not?
Incidental issue herein is as to whether the Management is entitled to take this plea at all or not which was not raised in the written statement filed before the Labour Court and, therefore, no issue is framed thereupon.
- (b) Whether the purported termination of the workman is retrenchment or it comes under the exception provided by Clause (bb) of Section-2(oo) of the I.D. Act.

INDUSTRY:

8. The learned Single Judge has dealt with the contention of the respondent that it was principally engaged in agricultural activity and was clearly outside the purview of the definition of 'industry' under Section 2(j) of the Act. The learned Single

Judge notices that no such stand has been taken before the Industrial Adjudicator and no evidence has been led in this respect. The Court, however, has proceeded to hold that industrial adjudication was not fettered by the technical rules of procedure and that delay would not defeat a belated request for amendment when such a delay can be compensated by payment of adequate costs. The learned Single Judge thereafter, relied on the Madras High Court decision in **State Farms Corporation of India Ltd. Vs. The Second Additional Courts, Madras and others 1997(1)LLN 361 (hereinafter `Madras Case')**. It held that in the said case the petitioner was a farm which was a unit of the respondent. The Court proceeded to notice the order passed in **WP(C)No.2037/1996** entitled **State Farms Corporation of India Ltd., Beej Bhawan, Nehru Place, New Delhi Vs. Govt. of India** to hold that this Hon'ble Court has relied upon the Madras Case to hold that the respondent was not an 'industry'. At para 45 of the impugned order, while accepting that the appellant's stand that industry issue cannot be raised for the first time in the writ court deserved to sustain, held that in light of the judgment dated 26th September, 2005 the respondent entity was not an industry.

9. Assailing this finding, it was the submission of learned counsel for the appellant that the learned Single Judge failed to appreciate that the issue, as to whether an establishment is an industry or not, is a mixed question of law and fact and evidence have to be led by the party which contends that its establishment is not an `industry'. No such defence was taken nor evidence led before the learned Industrial Adjudicator. Distinguishing the judgment of Madras High Court, he submitted that it is evident that the unit concerned therein was not the Head Office of the Respondent but was a Central State Farm situated at Melchgam, West Post, North Arcot District, Tamil Nadu. In that case, the unit was actually a farm unlike in the instant case whereas the appellant was employed in a clerical capacity in the Head Office situated at Delhi. The submission was that one unit of a particular establishment can be held to be outside the purview of the definition of `industry' whereas another unit/activity can be held to be `industry' and in support of this proposition, he cited the decision of the Supreme Court in the case of **Nagpur Corporation Vs. its employees, AIR 1960 SC 675**. He also sought to distinguish the judgment dated 26.9.2005 rendered by a Single Judge of this Court in W.P.(C)No.2037/96 on the ground that it was an ex-parte order and, therefore, aforesaid distinguishing features could not be

pointed out. He also contended that the learned Single Judge failed to appreciate that the Apex Court in **Hari Nagar Cane Farm's case (1964) SC 903** has held that a limited company formed for the express purpose of carrying on agriculture, employing workmen could not contend that its activity does not fall within the definition of Section 2(j) of the I.D.Act.

10. It is not in doubt that the issue of 'industry' is a mixed question of law and fact. Therefore, ordinarily speaking such an issue cannot be decided unless there is a proper evidence led before the Industrial Tribunal. At the same time it is also to be borne in mind that whether the establishment is 'industry' or not is a jurisdictional issue and goes to the root of the matter. In case a particular establishment is held to be not an 'industry', Industrial Tribunal has no jurisdiction to deal with the disputes of employees of that establishment. Thus even when such an issue was not taken in the written statement, the Tribunal could have still gone into the question, however, subject to the condition that it was possible to decide the issue on the basis of admitted facts on record. View from this angle, if the Management is able to produce judicial pronouncements whereby it is held that same very Management/Establishment is already held not to be an industry by a Court of law, that would be the material which can be taken into consideration by the

Industrial Tribunal in forming the opinion on this issue. In view of this, we do not think that the learned Single Judge committed any error in proceeding ahead in determining the issue as to whether the Management is an 'industry' or not under the provisions of Section 2(j) of the I.D.Act when the two judgments were produced, one of the Division Bench of Madras High Court and another judgment of a Single Judge of this Court relying upon the judgment of the Division Bench. We may note that the learned Single Judge was conscious of this fact as is clear from the following observations made in para-45 of the judgment:

“The stand taken by the respondent may deserve to be sustained in a case where such issue had not fallen for judicial scrutiny and consideration and there was no judicial finding and precedent on the matter. In the present matter, this court in its judgment dated 26th September, 2005 has categorically held that the petitioner is not an industrial establishment. There is no dispute that the present petitioner was a petitioner in Writ Petition (C) No.2037/1996”.

11. The next step would be to consider as to whether the learned Single Judge was right in relying upon the aforesaid two judgments and deciding the issue of 'industry' against the workman. Before delving into this discussion, we may point out that the learned Single Judge initiated the deliberations on this issue by referring to the Constitutional Bench judgment of Apex

Court in the case of **Bangalore Water Supply & Sewerage Board Vs. Rajappa (1978) 2 SCC 213**. Thus, the principles laid down therein were kept in mind inasmuch as it is specifically observed in the impugned judgment that as per the aforesaid judgment of the Supreme Court, absence of a profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. The learned Single Judge thereafter referred to two judgments and quoted as under:

(a) **Ramesh Chander Singh Vs. Union of India, 1981**

Labour IC 781, wherein the Court held as under:-

“13. Where a complex of activities, some of which qualify for exemption, others not, involve employees on the total undertaking some of whom are not “workmen” or some departments are not productive of goods and services if isolated, even then the predominant nature of the services and integrated nature of the departments will be true test. The whole undertaking will be “Industry” although those who are not “workmen” by definition may not benefit by the status.

Applying this criteria to the facts of the instant case we find that the National Sugar Institute is predominantly a research institute and its objective is to devise ways and means of economizing in sugar production and also to design machines and machine parts so as to make the working of the sugar mills more efficient. It also helps the industry in solving their specific problems and to advise the industry

in various other ways to make the whole industry more effective and viable. The defendant has admitted in its written statement that the Institute charges for advice to the Industries and also undertakes other jobs of research on payment by the Industries. It is indeed an organized and systematic enterprise but to my mind it does not qualify to the various requirements which can make an enterprise an industry. It is purely a technical institute which provides the industry with its know-how and skill and gives advantage of its research to the industry, of course, on payment but not on profit. Under these circumstances, I find myself unable to agree with the submissions made by the appellant that the research institute was an industry."

(b) **P.Jose Vs. The Director, Central Institute of Fisheries & Anr.1986 Labour I.C. 1564**, the Bench

ruled as under:-

"7. Except to contend that the petitioner is a casual worker, the learned counsel for the petitioner has not placed anything before this Court to sustain his plea that the 1st respondent is an 'industry' within the meaning of 'the Act'. In this connection it is relevant to recall the pleadings in the counter-affidavit sworn on behalf of the respondents. In the counter-affidavit it has been stated thus:

"The Central Institute of Fisheries, Nautical and Engineering Training, is not engaged in research in deep sea fishing. The Institute is meant for training personnel in deep sea fishing and allied operations and not for research."

Such institutions as the respondent-institute will not be an 'industry' because it belongs to the restricted category of institutions mentioned in the decisions of the Supreme Court in **Bangalore Water Supply & Sewerage Board**

Vs. Rajappa, (1978) 2 SCC 213: (1978) Lab IC 467 at p.514, para 161).

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9. For the reasons stated above, I have no hesitation to hold that the petitioner is not entitled to the benefits of the provisions contained in Chapter V A of the Industrial Disputes Act.

In this view of the matter, the Original Petition is liable to be dismissed. The Original Petition is accordingly dismissed. No order as to costs.”

12. Reference was also made to the judgment of Punjab and Haryana High Court in the case of **State of Punjab Thr. The Director of Agriculture Punjab, Chandigarh and Anr. Vs. Shri Daljit Singh & Anr. 1986(1)SLR 420**. In that case the issue was as to whether Agriculture Department of the Punjab State comes within the ambit of industry. The Punjab High Court answered the said issue in the negative on the premise that Agriculture Department of the Punjab Government deals with the governmental activity which was not an analogous to trade and business nor there was an element of economic venture inasmuch as function of the Agriculture Department of the Government was to render help to the agriculturist in the pursuit of farming. The nature of work was thus largely advisory.

13. With this we now proceed to discuss the two judgments relating to the Management itself. No doubt before the Madras

High Court it was the Central State Farm of the Management with respect to which the Madras High Court considered the issue as to whether that is the industry or not. However, it is also not in dispute that within one establishment a certain department may qualify as industry whereas certain other department may not as held in **Nagpur Corporation(Supra)**. However, insofar as the Management establishment is concerned, the main and predominant purpose of the State Farms Corporation is production of high breed quality seeds for the farmers and the Head Office is doing nothing but adding to the said predominant activity. The learned Single Judge has made the following pertinent observations in this behalf:

“I find that it is not even the contention of the respondent that the petitioner is engaged in any systematic activity producing goods or rendering any service. The seeds produced at the Farms are supplied to the State Governments and even the head office would be part of the same functions being performed by the petitioner. The main and predominant purpose of the State Farms Corporation is production of high breed or quality seeds for the farmers, which is clearly agricultural activity. In view of the above, it has to be held that the predominant activity of the petitioner is agricultural in nature”.

14. Furthermore, this Court in its judgment dated 26.9.2005 in WP(C)2037/96 had accepted the aforesaid judgment of the Madras High Court while deciding the case of the Head Office

itself. It is no ground to say that this was an ex-parte judgment, more so when the appellant herein was also party to the said case. The said judgment was, therefore, rendered inter parties, and thus even if it was an ex-parte, it would be binding precedent and in view thereof the same question which was an issue in the said petition, inter parties shall operate as res judicata. We, therefore, do not find any error in the judgment of the learned Single Judge on this issue.

RE: RETRENCHMENT

15. In view of our decision on the first issue, it is not even necessary to go into this question. We may, however, only say that it is not even necessary to decide as to whether engagement of the appellant would fall under the 'Excepted category' mentioned in Clause (bb) of Section-2 (oo) and would amount to retrenchment or not on that ground. It was necessary for the appellant to pass the said test and in the absence whereof the Management which is a public body could not have given him employment on regular basis. The daily wage arrangement continued which was given for specific period and extended from time to time for few months only. In a course like this even if it is presumed that the provisions of Section 25(F) were attracted, the appellant could not have been given the relief of reinstatement with back wages but could get

some compensation only. **[See:M.P.State Agro Industries Development Corpn. Ltd. & Anr. Vs. S.C.Pandey (2006)2 SCC 716]**

16. We, therefore, are not impressed by any of the arguments made by learned counsel for the appellant on the basis of which challenge to the judgment of learned Single Judge is laid. Accordingly, we dismiss this appeal without any orders as to costs.

**(A.K. SIKRI)
JUDGE**

July , 2008
skk.

**(J.R.MIDHA)
JUDGE**