

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.416 OF 2015

1.Chembur Mahila Samaj & Anr. ...Petitioners.
V/s.

Mr.Sadanand Gokul Bandbe ...Respondent.

WITH

CIVIL WRIT PETITION NO.417 OF 2015

1.Chembur Mahila Samaj & Anr. ...Petitioners.
V/s.

Mrs.Nandita Mahadeo Gothankar ...Respondent.

Mr.Abhay L. Patki, Advocate for the Petitioners.
Mr. A.G. Nagwekar, Advocate for the respondent.

CORAM : Smt. R. P. SondurBaldota, J.
DATE : 6th July, 2015.

PC.:

1. The above two petitions filed by the same petitioner give rise to common questions for decision arising from the identical applications filed by the respondents i.e. applications under Section 33-C(2) of the Industrial Disputes Act, 1947 ("I.D. Act" for short) for recovery of the amounts due from the petitioner towards their bonus, earned wages and overtime wages etc. Their applications were partly allowed by the impugned orders. The claim for difference of minimum wages is allowed and the claims for payment of overtime wages, bonus and leave allowances are dismissed.

2. The petitioner had contested the complaints challenging

the jurisdiction of the Labour Court to entertain the complaints, as well as, on merits. It had contended that, it is a Charitable institution registered under the Bombay Public Trusts Act engaged in social activities like running working women's hostel, poli-bhaji kendra, library, educational and cultural activities. All the activities are carried out with donation from the public at large, contributions from Bombay Municipal Corporation, State Government and central government. It works on “no profit no loss” basis and therefore it is not an “Industry” as defined under the I.D.Act.

3. Despite the specific defence taken, the Labour Court, did not frame issue of its jurisdiction to entertain and try the applications of the respondents. The issues framed by it relate only to the merits of the case. However, paras-6 and 7 of the impugned order deal with the question of jurisdiction raised by the petitioner by describing it as Issue no.3 and thereafter the issues on merits are considered to partly allow the applications.

4. The submissions advanced for challenge to the impugned orders are essentially on the question of jurisdiction. Mr. Patki, the learned Advocate appearing for the petitioner refers to the decision of the Apex Court in **Bangalore Water Supply and Sewerage Board V/s. A/ Rajappa, 1978 Lab I.C. 467 S.C.** to submit that the Labour Court has not properly appreciated the principles laid down in the decision while deciding the applications. According to him, out of several categories describing the “Industry” stated in the decision, the Labour Court has referred to only one of them i.e. category no.3. He submits that, the Apex Court in the decision cited has narrated the dominant nature test wherein the complex activities that would qualify for exemption have been enumerated. According to him,

the essential ingredient to decide whether an establishment is an “Industry” would be an systematic activity organised between an employer and employee for production and distribution of goods. Since the activity conducted by the petitioner does not fall in any of the categories as enunciated by the Apex Court, it ought to have been held by the Labour Court that the petitioner is not an “Industry” within the definition of the I.D. Act.

5. Admittedly, there is no evidence on record to establish that the activities conducted by the petitioner are purely social activities and they are not for commercial purposes and whatever income generated by the petitioner is utilized solely for its activities, as also, for several social purposes which include grant of donation, education aid, providing uniform to under privilege children etc. The evidence on record, infact shows that, there are several commercial activities conducted by the petitioner. It runs women's hostel, bhajan classes, poli-bhaji kendra etc. The relevant evidence on this aspect has come on record in cross-examination of the witness of the petitioner. The witness admitted that, building of the petitioner consists of ground plus three floors. On the ground floor, there is a Hall known as “Ranade Hall”. On the first floor, there is “Aneja Hall”. On the second and third floor there is “Working Women's Hostel”. There are 17 rooms available in the hostel which accommodate 34 working women. Each occupier of the room has to pay Rs.4,500/- per month for accommodation, Rs.100/- for rent of laptop and Rs.20/- for use of mobile. The petitioner earns Rs. 18,36,000/- per year from the hostel activities. The other two Halls, are also rented out for different purposes earning income for the petitioner. Besides, the respondents have been serving with the petitioner not out of any passion or job satisfaction but

for their livelihood. In view of these facts, the Labour Court held that, the petitioner is an “Industry” for the purposes of the Industrial Disputes Act. Considering the evidence noted above, in my opinion, there is no infirmity in the view of the Labour Court. Though the petitioner does some social work, it cannot be said that it is exclusively for social work and there is no commercial activity undertaken by it. Therefore, there can be no substance in the contention that the petitioner is not an “Industry” within the definition of the I.D. Act.

6. Perusal of the impugned orders show that, the decision of the Labour Court on merits of the case of the respondents on appreciation of the evidence led by them is a probable view taken by it. Hence, there can be no interference with the decision on merit also.

7. The Writ Petitions are dismissed.

(SMT. R. P. SONDURBALDOTA, J.)