

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.596 of 2013

Date of Decision: 18.09.2015

State of Haryana

... Petitioner

Versus

Sh. Rajinder Parshad & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Ms. Vibha Dhiman, AAG, Haryana,
for the petitioner.

Mr. Mayank Sharma, Advocate,
for respondent No.1.

1. To be referred to the Reporters or not? .
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

The State of Haryana in the Department of Excise and Taxation has come against the award of the labour court and pleads that it suffers from errors of law and fact and pray that it deserves to be set aside on account of them.

This petition was entertained on January 14, 2013 on the argument pressed by the State of Haryana while relying on a Division Bench judgment of this Court rendered in CWP No.1463 of 2004, decided on 3.2.2004 contending that the Excise and Taxation Department performs sovereign functions of the State and is therefore not an industry by definition under Section 2(g) of the Industrial Disputes Act, 1947. This Court had stayed the operation of the impugned order, subject to the provisions of Section 17B of the Act. The State instead of complying with Section 17B of the Act and making payment of last drawn wages has reemployed the respondent. He is working on his previous post subject to

outcome of the petition.

Learned counsel for the respondent/workman relies on the judgment of the Supreme Court in **Corporation of the City of Nagpur v. Its Employees**, AIR 1960 SC 675: 1960 SCR (2) 942 to submit that the activity of the Excise & Taxation Department is an industrial activity. In this ruling the Supreme Court dealt with a large number of activities undertaken by the Corporation of Nagpur, the first of which, which came up for discussion was its Taxation Department, cf. Para.22 (i) of the report. The employees of the Corporation were held entitled to the benefits of the ID Act, 1947.

Be that as it may, since the award has been complied with, the question of jurisdiction will remain open in this matter in view of reference by the Supreme Court in **State of U.P v. Jai Bir Singh**, (2005) 5 SCC 1 to a suitable larger bench to reconsider the decision of the Supreme Court in **Bangalore Water Supply vs. R. Rajappa & ors.**, AIR 1978 SC 548. The reference was made in the year 2005 and is pending in the Supreme Court.

Therefore, the continued services of the respondent/workman will remain dependent on the final outcome of the reference proceedings before the Supreme Court to opine whether any change of the law regarding industry is necessitated. The other parameters of grant of relief under the Act stand satisfied since the finding returned by the labour Court is that there has been violation of the troika of protections afforded by Sections 25-F, 25-G and 25-H of the Act, the breach of which the principles invites the ratio found in **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed)**, reported in 2013 (4) SCT

716. Therefore, this petition for the reasons recorded above has no merit and is ordered to stand dismissed. The Labour Court award will remain final between the parties subject to the outcome of the reference in Jai Bir Singh's case to a larger Bench, subject to evaluation of the equities that may come to pass by passage of time if the respondent workman is still in service in implementation of the award.

(RAJIV NARAIN RAINA)
JUDGE

18.09.2015
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