

HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 405 of 2001

Surya Kant Gupta, Agriculture Farm, Rajaram Maize Product,
Village- Mohad, District-Rajnandgaon (C.G.)

---- Petitioner

Versus

Dy. Labour Commissioner CG.& ors.

---- Respondents

For Petitioner	:	Mr. PKC Tiwari, Senior Advocate with Mr. Shashi Bhushan Tiwari, Advocate.
For Respondents	:	Mr. P.R. Patankar, Advocate.

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

16/11/2016

Heard.

1. This petition, under Article 226/227 of the Constitution of India, has been filed by the petitioner employer assailing correctness, legality and validity of an award dated 10.01.2001 passed by the Labour Court whereby the Labour Court has directed reinstatement of respondents, workers along with payment of back wages to the extent of 20%.
2. Quintessential facts, necessary for adjudication of controversy involved in the petition are that the respondent workers claiming to be engaged as Supervisors and workers in the Industrial Establishment of the petitioner raised a dispute when they were discontinued from the work of Agriculture worker, in which, they claimed to have been employed by the petitioner concern, in the year 1995. On dispute raised, reference was made vide order dated 19.08.1997 by Deputy Labour Commissioner Chhattisgarh for adjudication of following dispute to the Labour Court Rajnandgaon.

“क्या श्री बलियार एवं अन्य 35 श्रमिक (संलग्न सूची) का सेवा पृथक्कीकरण वैध एवं उचित है? यदि नहीं तो वे किस सहायता के पात्र है एवम् इस संबंध में नियोजक को क्या निर्देश दिए

जाने चाहिए।”

3. Upon receipt of the dispute by way of aforesaid reference, by the Labour Court, the respondents filed their statement of claim followed by reply of the petitioner. The Labour Court framed following three issues -

- “1. क्या प्रथमपक्ष कामगार बालियार एवं अन्य 35 श्रमिकों का सेवापृथक्कीकरण अवैध है ?
2. क्या द्वितीयपक्ष “कृषि फार्म” का स्वामी नहीं है? प्रभाव ?
3. क्या कृषि औद्योगिक विवाद अधिनियम के अंतर्गत “उद्योग” की परिभाषा में नहीं आता है ? प्रभाव ?”

4. In order to prove its case, the respondents examined solitary witness Raghuwar Nishad. The petitioner employer examined two witnesses, the employer Suryakant Gupta and his manager Kranti Rishi.

5. Vide impugned award, the Labour Court held that the respondents were engaged by the petitioner in his industrial establishment who had worked for a long period in the Agriculture Farm of the petitioner and were retrenched in the year 1995 without payment of any retrenchment compensation, it being not a case of dismissal followed by departmental enquiry in accordance with the procedure prescribed under the law.

6. Learned Senior Counsel appearing for the petitioner raised serious objection to the very maintainability of the reference and the legality of the award on a pertinent ground of jurisdiction. It was contended before the Court that the Government had no authority to make a reference because prima facie it is not a case of industrial dispute as defined under the Industrial Dispute Act, 1947 (for short “the Act of 1947”). The reference, itself, was wholly incompetent, therefore, the assumption of jurisdiction by the Labour Court was without the authority of law. The Labour Court, it is argued, usurped jurisdiction which, it was not conferred under the laws. Even according to the workers, they were engaged to carry out agriculture activity. According to him, neither in the statement of claim nor in the evidence led before the Labour Court, there is any whisper of any connectivity of the agriculture activity with the industrial activity and merely because according to the respondents, the owner of industrial and agriculture activity was the same, the Labour Court has jumped to the conclusion that the respondents were engaged in the industrial

establishment of the petitioner. Therefore, the impugned order suffers from patent illegality and jurisdictional defect.

7. Learned Senior counsel for the petitioner further contended that the respondents failed to prove the relationship of employer and employee. Only one witness, one of the person claiming to be worker engaged by the petitioner was examined. There were no documentary evidence nor the primary oral evidence of those who claimed to have been employed. Only on the strength of the evidence of one of them, the Labour Court perversely recorded a finding of their existing a relationship of employer and employee between the respondents workers and the petitioner. The Labour Court, it is urged, adopted illegal approach by placing burden on the petitioner to prove the case of the workers. He submits that once the petitioner had disputed and denied the existence of relationship of employer and employee, the primary burden was of the worker to prove that they were engaged by the petitioner in the industrial activity. Therefore, for all these reasons, award cannot be sustained in law.

8. Per contra, learned counsel for the respondents argued that the petitioner has not substantially disputed that the respondents were engaged in the agriculture farm of the petitioner. He submits that the petitioner's industrial activity requires certain raw material in the nature of agricultural produce which were being cultivated in the farm of the petitioner. Therefore, as the production by way of agricultural activity was for the purposes of consumption of the agricultural produce in the industrial activity which is of a predominant nature, the requirement of law is fulfilled to encompass such an activity as part of industrial activity and therefore, the competence of the Government to make a reference cannot be questioned. He then replied by submitting that there is overwhelming evidence on record that the petitioner happened to be the owner of agriculture farm and industrial concern both. The kind of industrial activity with the petitioner was carrying on was intrinsically related with the agriculture activity in which the respondents were engaged. There is no proof of any retrenchment compensation nor any material to show that discontinuance of employment was by way of dismissal having followed after holding departmental enquiry. Therefore, the award does not warrant any interference.

9. As far as challenge to the order of reference is concerned, I find that the petitioner had not raised any dispute by way of any independent proceeding challenging the legality and validity of the order of reference under which the competent authority of the State referred the dispute to the Labour Court.

The challenge to the validity of the reference even otherwise does not hold ground because if one looks into the definition of 'industry' as defined in Section 2 (j) as amended vide Act No.46 of 1982, in appropriate cases where any agricultural operation is carried on in an integrated manner with any other activity [being any such activity as is referred to in provision of clause (j)] and such other activity is the predominant one, agricultural operation may also be treated as an industry. Whether or not in a given case, the agricultural operation would be treated as an industrial activity would really depend upon the set of facts, oral and documentary evidence appearing on the records of the case in proceeding before the Labour Court. Therefore, as far as reference is made, I do not find any ground to interfere with the order of reference.

10. However, the other issue of much more importance arising for decision making is whether on the facts and circumstance of the present case, it can be said that the respondents were employed in the industry of the petitioner within the meaning of the provision contained in Section 2(j) of the Act of 1947 and further whether there existed a relationship of employer and employee so as to entitle respondents to claim protection of the Act of 1947 against alleged retrenchment from employment.

11. The Statement of claim placed on record reveals that the respondents pleaded that they are employed in the establishment of the petitioner since 1982-83 as Supervisor and Labour. Further pleadings are that on 27.05.95, their services have been dispensed with without giving any charge sheet, departmental enquiry or any order in writing. It has also been pleaded that no retrenchment compensation has been given and relevant provisions of law in this regard have not been followed. On this blissfully vague pleadings, the respondents claimed reinstatement. In these pleadings, there is no specific averment as to what kind of work was being carried on by respondents prior to their alleged retrenchment. All that has been said is that they were employed in the establishment as Supervisor

and Labour.

12. To this, reply of the petitioner was that the petitioner was the owner of Rajaram Maize Product factory, there is no attached agriculture land nor any agriculture farm. It was also stated that none of the employees enlisted in the list filed by the employee were engaged. A specific objection was taken that agriculture is not included in the definition of industries and therefore, the claim, itself, is not maintainable under the law.

13. In view of the pleadings of the parties an issue directly arose for determination and the Labour Court, in fact, framed issue as to whether agriculture is included within the definition of 'industry'.

14. A perusal of the award shows that in order to come to the conclusion that the respondents were employed in the industrial concern of the petitioner, the Labour Court has relied upon the evidence led by parties to the effect that the respondents were engaged as agriculturist in the agriculture farm of the petitioner. Relying upon the decision of the Supreme Court in the case of **Bangalore Water Supply and Sewerage Board and others Vs. A. Rajappa and others**¹, the Labour Court has drawn a conclusion in favour of the respondents that they were engaged in industry and thus provision of the Industrial Dispute Act being applicable and there being no retrenchment compensation paid or any departmental enquiry held that retrenchment was illegal.

15. At the first place, the determination of the issue whether the respondents were engaged in industry is completely misdirected and if I may say so, in complete ignorance of the definition of 'industry' as provided in Section 2 clause (j) of the Act of 1947. The provision being relevant, is extracted herein below -

“Industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;

The legislation has given a very wide ambit of meaning to the word 'industry'. The provision also contains certain exclusionary

1 (1978) 2 SCC 213

clauses which have been enumerated in clause 1 to 9 of the Act of 1947.

The first exclusionary clause is with regard to agricultural operation. A reading of the aforesaid provision shows that industry would not include any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity [being any such activity as referred to in the provision of clause (ii) of clause (j)] and such other activity is the predominant one. An explanation follows to explain that for the purposes of that sub-clause, agricultural operation does not include any activity carried on in a plantation, as defined on in a plantation as defined in clause (f) of Section 2 of the Plantation Labour Act, 1951.

16. A rational and logical interpretation of the aforesaid provision would be that an industry would not engulf within itself, any agricultural operation except in certain specified circumstances. When the agricultural operation would become part of industry has been exhaustively enumerated in the provision itself by way of exception and i.e. where such agricultural operation is carried on in an integrated manner with any other predominant activity as mentioned in the main provision. For illustration, if any industrial activities carried on which requires as raw material, an agricultural produce and it can be shown from cogent oral and documentary evidence that the sole object of agricultural activity is to produce an agricultural produce which is wholly or substantially consumed exclusively for the industrial activity in such an integrated manner that the agricultural activity itself becomes a part of the industrial activity, in such a case, agricultural operation may also be included as industry. Therefore, in order to decide whether the agricultural operation would constitute an industrial activity within the meaning of Section 2(j) of the Act of 1947, there has to be evidence on record to prove that the activity of agriculture is so intrinsically and inherently associated with the industrial activity that it also partakes the nature of industry.

17. I shall now scrutinize the evidence keeping in view the statutory provision and its meaning understood in the manner described above. At the cost of repetition, it may be noticed that in the statement of claim, all that has been said is that the respondents worker are engaged as

supervisor and worker in the industrial concern of the petitioner.

18. However, from the oral evidence of the solitary witness of the respondents, what emerges is that the respondents and other workers were engaged in the agriculture farm of the petitioner. Even if the entire evidence led by the respondents is accepted as it is, all that goes to prove is that the respondents were engaged in the agricultural activity and nothing more. The evidence of the respondents is that the respondents workers were working in the agricultural farm of the petitioner. For the sake of argument, even if that is accepted, the only conclusion which can be drawn is that the respondents worker were engaged to work in the agricultural operation in the agricultural farm owned by the petitioner.

19. In order that, this agricultural operation partakes nature of industry, there has to be evidence to show that it was integrated with an industrial activity. No doubt, the petitioner has accepted that he is the owner of Rajaram Maize product and industrial concern, which carries out some kind of manufacturing activity connected with some agricultural produce. However, how the industrial activity is connected or integrated with the agricultural activity has not been whispered in the evidence of respondents. There is hardly any iota of evidence to say as to what was being produced by way of agricultural activity in the agricultural farm owned by the petitioner and that it was being wholly or substantially consumed as raw material for an industrial output in the industrial concern of the petitioner. This kind of evidence is completely lacking in the evidence of respondents.

20. Therefore, without there being any evidence to establish that the agricultural operation is carried on in an integrated manner with any other agricultural activity of the nature specified in clause 2(j) of the Act of 1947 and that being an activity of predominant nature, it can be said to be a case of no evidence to connect agricultural activity with the industrial activity so as to give agricultural activity statutory status of the industry, within the meaning of clause 2(j) of the Act of 1947.

21. In the opinion of this Court, the impugned order passed by the Labour Court is liable to be set aside only on the short ground because the Labour Court has not endeavoured to find out the true nature of the activity

in accordance with the provision of law. Reliance has been placed on the decision of the Supreme Court in the case of **Bangalore Water Supply & Sewerage Board (supra)**. It has not been held anywhere that de hors any connectivity between the agricultural activity with the industrial activity, an agricultural operation, by itself, would become an industrial activity and for that matter would be treated as industry under the statutory scheme of the Act of 1947. Secondly, the definition of word 'industry' as incorporated in clause (j) of Section 2 of the Act of 1947, was itself amended by an amendment Act No.46 of 1982. It contains specific clause of exclusion of agricultural operation with an exception in certain specified circumstances, elaborately discussed herein above. Therefore, for this reason also, the order of the Labour Court does not hold good in the eyes of law.

22. For the reasons stated herein above, I am not inclined to go into other aspect because even other factual aspect are held in favour of the respondents, it cannot be said that the respondents were engaged in an industry as defined under Section 2(j) of the Act of 1947 and therefore, no relief could be granted to respondents under the impugned award. The impugned award is therefore held to be in excess of jurisdiction and is set aside.

23. The petition is accordingly allowed.

Sd/-

(Manindra Mohan Shrivastava)
Judge