

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15055 of 2012

=====

Bihar College of Pharmacy , New Bailey Road, Patna through Rajendra Kumar, the
Chairman, Bihar College of Pharmacy , New Bailey Road, P.S. Khajpura, District
Patna.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Labour Resources
Department, Bihar, Patna.
2. The Principal Secretary, Labour Resources Department, Bihar Patna.
3. Kumar Ram Baran Son of late Yodhan Singh Resident of Village- Sakra, P.O.
Siswan, P.S. Hasua, District Nawada.
4. The Learned Presiding Officer, Labour Court, Patna.
5. The Union of India through the Joint Secretary Labour & Employment
Ministry , Jaisabmer House, Mansingh Road, New Delhi-110011.

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate
For Respondent/State : Mr. Ashish Kumar Lal, AC to GA-5
For Union of India : Mr. Sujeet Kumar Sinha, CGC
For respondent no. 3 : Mr. Durgesh Prasad Sinha, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-03-2017

The present writ application has been filed by the
petitioner for quashing of the order dated 19.01.2012 passed in
Misc. Case No. 8 of 2005 by the Presiding Officer, Labour Court,
Patna by which it has been held that the respondent no. 3 Kumar



Ram Baran (for short 'private respondent') is entitled to receive his due wages of Rs.1,51,327/- from the petitioner with 6 per cent interest from January, 2001 till the date of realization.

2. The private respondent had filed an application before the Labour Court under Section 33(c)(2) of the Industrial Disputes Act, 1947 (for short 'I.D. Act, 1947') for payment of arrears of wages from June, 1990 to April, 1994, September, 1998 to February, 2000, May 2000 to December, 2000, June, 2001 to July, 2001, September, 2001 to June, 2002 and November, 2002 to January, 2003. His stand before the Labour Court was that the petitioner is engaged in commercial and industrial activities. It charges heavy fee from the students for imparting them medical education. It is also engaged in purchasing and selling of machineries, equipments, tools, plants etc. to general public and as such it is an 'Industry' within the meaning of Section 2(j) of the I.D. Act, 1947 and the private respondent having been employed by the competent authority on the post of clerk is entitled to receive due wages.

3. Mr. Arun Kumar, learned counsel for the petitioner submitted that the order dated 19.01.2012 passed by the Labour Court is erroneous in view of the fact that the petitioner, being an educational institution does not come within the purview



of the meaning of 'Industry' as defined under Section 2(j) of the I.D. Act, 1947. He submitted that even the private respondent cannot be called workman within the meaning of Section 2(s) of the I.D. Act, 1947. He submitted that the petitioner was not provided adequate opportunity to contest the matter before the Labour Court and on this ground also the order of the Labour Court is vitiated. In support of his contention, he has drawn attention of the Court towards Section 2(j) of the Industrial Disputes (Amendment) Act, 1982 (for short 'Amendment Act, 1982) by which the educational, scientific research or training institutions have been excluded from the definition of 'Industry'.

4. *Per contra*, learned counsel for the private respondent submitted that the Amendment Act, 1982 has not been implemented and notified till date. He submitted that sufficient opportunities were given to the petitioner to represent its case. According to him, even though the petitioner was being represented through lawyer since beginning, it deliberately chose not to avail of opportunities given to it. Hence, the Labour Court rightly decided the matter on the basis of materials available on record. He submitted that the petitioner is not only engaged in commercial activities, but is also engaged in purchasing and selling of equipments, tools, plants etc. and as such, the petitioner is an



‘Industry’ within the meaning of Section 2(j) of the I.D. Act, 1947. He submitted that since the private respondent was employed for quite a long period by the petitioner as a clerk, the Labour Court has rightly treated him to be a workman.

5. Learned counsel for the State of Bihar has supported the arguments advanced on behalf of the workman. He submitted that there is no procedural illegality or irregularity in the order passed by the Labour Court. He contended that the materials available on record would clearly make it evident that the petitioner is an industry and the private respondent was employed as a workman (clerk) in the industry.

6. I have heard learned counsel for the parties and perused the record.

7. At this juncture, it would be pertinent to note that pursuant to order passed by this Court, the original record of the Labour Court has already been received.

8. In order to examine as to whether or not the petitioner was given adequate opportunity to represent its case before the Labour Court when I look to the record of the Labour Court, it would be evident that the petitioner was given several opportunities to file show-cause, but despite being represented through a lawyer, it failed to file its show cause. On 16.01.2006, the



Labour Court passed an order to proceed *ex parte* against the petitioner whereafter the private respondent adduced his evidence before the Court. On 26.04.2007, an application was filed on behalf of the petitioner to recall the *ex-parte* order, which was dismissed on the same day. Again, an application was filed on 26.09.2007 to recall the *ex parte* order, which was allowed on payment of cost of Rs.300/- and the petitioner was directed to file show-cause, documents and list of witnesses, but neither the petitioner deposited the cost nor it filed its explanation to the show cause. Ultimately, the petitioner was debarred from filing show-cause, documents and list of witnesses vide order dated 25.04.2008. Thereafter, on 20.05.2008, once again a petition was filed by the petitioner to recall the said order dated 25.04.2008, which was rejected vide order dated 08.08.2008 and the case was fixed for *ex-parte* argument. Once again, a petition was filed by the petitioner to review the order dated 08.08.2008, which was rejected vide order dated 01.10.2008 whereafter, on 04.11.2010, counsel for the petitioner filed a petition along with photo copy of the order passed in CWJC No. 2792 of 2009 whereby the further proceeding of the case was stayed. The said writ application was subsequently dismissed for want of prosecution vide order dated 30.08.2011. Thereafter, the Labour Court proceeded with the matter and



decided the case on the basis of oral and documentary evidences available on record.

9. In view of the facts noted above, I am of the considered opinion that the petitioner had been afforded adequate opportunities to place its case before the Labour Court. However, it failed to avail of those opportunities.

10. The next question for consideration before this Court is as to whether or not the petitioner would be covered by the meaning of term 'Industry' as defined under Section 2(j) of the I.D. Act, 1947, which reads as under :-

“2 (j) "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.”

11. It is the case of the petitioner that it is an educational institution. From the evidence adduced, it transpires that in the aforesaid institute medical education was being imparted to the students on payment of fee. It also transpires that apart from medical education, the petitioner is also engaged in sell and purchase of machineries, equipments, tools etc.

12. In *Brahmo Samaj Education Society & Ors. vs. West Bengal College Employees' Association & Ors.* [1960-I-LLJ



472 (Cal)], the society owned two colleges. A dispute arose between the society and non-teaching staff of the college. It was pleaded that the society was purely an educational institution and not an industry because there is no production of wealth with the co-operation of labour and capital as is necessary to constitute an industry. The Calcutta High Court observed that our conception of industry has not been static, but has been changing with the passage of time. An undertaking which depends on the intelligence or capacity of an individual does not become industry, simply because it is a large establishment. There may be some educational institutions to which profits go because of excellence of teachers; such institutions are not industry. On the other hand, there may be an institution which is so organized that it is not dependent upon the intellectual skills of any individual, but it is an organization where a number of individuals join together to render services which might have even a profit motive. Many technical institutions are run on these lines. There are many institutions which do business by manufacturing or selling things and thereby making a profit; they certainly come under the definition of industry.

13. In *Ahmedabad Textile Industry's Research Association vs. State of Bombay & Ors. [AIR 1961 SC 484]*, an institutional organization was formed for funding the scientific



research institute. The Supreme Court held: “*though the association was established for the purpose of research, its main object was the benefit of the members of the association. The association is organized and arranged in the manner in which a trade or business is generally organized; it postulates the cooperation between the employers and employees; moreover the personnel who carry on research have no right in the result of the research.*” For these reasons the association was held to be an industry.

14. On the contrary, in ***University of Delhi & Anr. vs. Ram Nath & Ors. [AIR 1963 SC 1873]***, it was observed by the Supreme Court that work of imparting education was mere a mission and avocation than a profession or trade or business and therefore the University is not an industry, but this decision has been expressly overruled by the Supreme Court in ***Bangalore Water Supply & Sewerage Board vs. A. Rajappa and Ors. [AIR 1978 SC 548]*** in view of the Triple Tests laid down in that case.

15. In the landmark judgment of the 7-member Bench in ***Bangalore Water Supply & Sewerage Board*** (supra), the ambit and scope of the term ‘Industry’ as defined under Section 2(j) of the I.D. Act, 1947 has been discussed in detail. In the said case, the Bench established the Triple Tests and the dominant nature test for interpreting the definition of ‘Industry’. The



summary of the judgment is as under :-

“(a) (i) Systematic activity, (ii) Organized by Co-operation between employer and employee (iii) For the production and/or distribution of goods and services calculated to satisfy human wants and wishes (inclusive of material things or services geared to celestial bliss i.e. making, on a large scale or Prasad or food is an industry)

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) If the nature of the activity is with special emphasis on employer, employee relationship and true focus is functional.

(d) If the organization is trade or business, it will be covered by the definition of industry though organization is philanthropic.”

16. In *Bangalore Water Supply & Sewerage Board* (supra), the Bench also considered the specific question as to whether university or college or school or research institute be called an ‘Industry’? On analyzing the issue in detail, it held that the bulk of the employees in the university are the teaching community. Teachers are not workmen and cannot raise disputes under the I.D. Act, 1947. The subordinate staff, being only a minor



category of insignificant numbers, the institution must be excluded, going by the predominant character test. It is one thing to say that an institution is not an industry. It is altogether another thing to say that a large number of its employees are not workmen and cannot therefore avail of the benefits of the Act and so the institution ceases to be an industry. The test is not the predominant number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity. In the case of the university or an educational institution the nature of the activity is, ex hypothesi education, which is a service to the community. So long as services are part of the wealth of a nation education being service, it is an industry.

17. Another issue, which the Bench considered in the said decision, was as to whether charitable institutions are 'Industry'? On a detailed analysis of the issue, it held that charitable institutions fall into three categories; (a) those that yield profit, but the profits are siphoned off for altruistic purposes; (b) those that make no profit, but hire the services of employees, as in other like businesses, but the goods and services, which are the output, are made available, at low or no cost, to the indigent needy; and (c) those that are oriented on a humane mission fulfilled by men, who work, not because they are paid wages, but because they



share the passion for the cause and derive job satisfaction. The Bench held that the first two are industries, but not the third on the premise that they all involve cooperation between the employers and the employees.

18. The consequences of the decision in ***Bangalore Water Supply & Sewerage Board*** (supra) are that research institutes, educational institutions, hospitals, professions like attorney, co-operative societies, clubs, philanthropic enterprises, if they fulfil the Triple Tests, they cannot be exempted from the scope of Section 2 (j) of the I.D. Act, 1947 as the Bench held that charitable institutions make no profit, but hire the services of employees, as in other like business, and from the point of view of workers, there is no charity, they are concerned about the disposal of products.

19. The Supreme Court held that noble objectives, pious purposes are no reason to bring charitable institutions out of the definition of 'Industry'.

20. The decisions of the Supreme Court in ***Management of Safadarjung Hospital, New Delhi vs. Kuldip Singh Sethi [AIR 1970 SC 1406]***; ***National Union of Commercial Employees & Anr. vs. M. R. Meher, Industrial Tribunal, Bombay and Ors. [AIR 1962 SC 1080]***; ***Secretary, Madras Gymkhana***



Club Employees' Union vs. Management of the Gymkhana Club [AIR 1968 SC 554]; University of Delhi & Anr. vs. Ram Nath & Ors. (supra); and *Dhanrajgirji Hospital vs. Workmen [AIR 1975 SC 2032]* and such other rulings whose ratio runs counter to the principles enunciated in *Bangalore Water Supply & Sewerage Board* (supra) have expressly been overruled.

21. After the decision in *Bangalore Water Supply & Sewerage Board* (supra), a large number of institutions, particularly, charitable institutes, universities approached the Government of India for amendment in definition of 'Industry' and accordingly, Industrial Disputes Act was amended in the year 1982. However, sub-section (2) of Section 1 of the Amendment Act, 1982 states that the Act shall come into force on such a date as the Central Government may by notifying in the Official Gazette, appoint.

22. It is true that under the Amendment Act, 1982 relied upon by the petitioner, educational establishments are excluded from the definition of 'Industry', but the Amendment Act, 1982 has not been notified in the Official Gazette by the Central Government.

23. In view of the discussions made above, I am of the considered opinion that the petitioner is an 'Industry' within



meaning of term 'Industry' as defined under Section 2(j) of the I.D. Act, 1947 as there is evidence on record to suggest that the petitioner is not only engaged in commercial activities while imparting education but is also engaged in purchase and sell of equipments, tools, plants etc. which means that the petitioner is engaged in trade and business.

24. The next question to be answered in the present case would be as to whether or not private respondent would come within the meaning of term 'Workman' as defined under Section 2(s) of the I.D. Act, 1947.

25. In order to appreciate the issue, Section 2(s) of the I.D. Act, 1947 which defines the term 'Workman' is reproduced hereunder :-

"2(s) "Workman" means 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, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-



- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature.]”

(emphasis mine)

26. In view of the clear meaning of term ‘Workman’ as defined under Section 2(s) of the I.D. Act, 1947, there is no reason as to why the private respondent would not be called a workman. It is the case of the private respondent that he was employed as a clerk for sufficiently long period and was being paid wages from time to time. However, for certain period, as noticed above, wages were not paid by the petitioner. In that view of the matter, I find no hesitation in coming to the conclusion that the Labour Court has rightly held private respondent to be a workman.

27. For the reasons discussed, hereinabove, I am of



considered opinion that there is no error in the order passed by the Labour Court. Accordingly, the writ application, being devoid of any merit, is dismissed.

28. The parties shall bear their own costs.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15.03.2017
Transmission Date	NA

