

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 1185 of 2008**

Principal, Nirmala Senior Secondary English Medium School, Dalli
Rajhara, District Durg (CG)

---- Petitioner**Versus**

1. Ku. Sushma Nageshwar D/o Shri P. Nageshwar, House No. 158,
Indira Colony, Dalli Rajhara, District Durg (CG)
2. Appellate Authority under Chhattisgarh Shops and Establishments
Act, 1958 – cum – Assistant Labour Commissioner, Government of
Chhattisgarh, Durg Labour Division, Durg (CG)

---- Respondents

For Petitioner	: Shri Aman Tamboli under instruction of Shri R. S. Marhas, Advocate
For Respondents	: Shri Shashank Thakur, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****15.05.2018**

The present writ petition has been preferred against the order dated 22.10.2007 passed by the Assistant Labour Commissioner, Durg in the capacity of Appellate Authority under the Shop and Establishments Act 1958 in Appeal No. 47/Shop Appeal/District Durg/2007.

2. The facts leading to the filing of the present writ petition are that respondent no.1 had filed an appeal before the Assistant Labour Commissioner i.e. the Appellate Authority under the CG Shops and Establishments Act. The dispute was in respect of termination of services of respondent no.1 and the claim was for reinstatement with back wages. The petitioner herein moved a preliminary objection before the Authority

concerned so far as the maintainability of the appeal under the Shops and Establishments Act alleging that the petitioner's establishment is a school and it would not come within the definition of commercial establishment under the Shops and Establishments Act. Therefore, the entire appeal should be rejected. The Appellate Authority vide impugned order Annexure P-1 dated 22.10.2007 rejected the objection of the petitioner. It is this order which has been assailed in the present writ petition.

3. At this juncture, it would be necessary to refer to the judgment of the Madhya Pradesh High Court in the case of Secretary, Board of Secondary Education and Teachers' Training and Ors. Vs. Sunil Kumarlal and Ors. reported in 2000 (2) LLJ 263 (MP) wherein it has been categorically held as under:

"It is relevant here to state that when 'commercial establishment' was being defined under Section 2(4) of the M.P. Shops and Establishments Act, 1958, law in relation to registration of Societies was M.P. Societies Registration Act, 1959. It is further relevant here to state that Section 2(4)(a) of the M.P. Shops and Establishments Act was substituted by M.P. Shops and Establishments Act, 1967. At that particular point of time, M.P. Societies Registration Act, 1973 was not in existence. In that view of the matter, Legislature could not have stated about the application of the M.P. Shops and Establishments Act to a Society registered under the M.P. Societies Registration Act, 1973. It is relevant here to state that Section 3(A) of the M.P. Societies Registration Act, 1973 has provided that a Society registered or deemed to be registered under the M.P. Societies Registration Act, 1959 shall be deemed to be registered under the 1973 Act. In that view of the matter, I am of the considered opinion that reference to M.P. Societies Registration Act in Section 2(4) (a) in M.P. Shops and Establishments Act, 1958 has to be

read to mean M.P. Societies Registration Act, 1973. It is not in controversy that the petitioners are Societies registered under M.P. Societies Registration Act, 1973. In that view of the matter, I have no hesitation in holding that it is a 'commercial establishment' within the meaning of Section 2(4) of the M.P. Shops and Establishments Act. Once it is held so, it becomes an 'establishment' under Section 2(8) of the said Act. Section 1(3)(b) of the Payment of Gratuity Act applies to an establishment within the meaning of any law for the time being in force in relation to Shops and Establishments in a State. Petitioners being an establishment within the meaning of Section 2(8) of the M.P. Shops and Establishments Act, provisions of Payment of Gratuity Act apply to them.

4. The view of the MP High Court further gets strengthened from the judgment of the Hon'ble Supreme Court in the case of Ruth Soren Vs. Managing Committee, East I.S.S.D.A. and others reported in (2001) 2 SCC 115 wherein paragraphs 4 & 5 it has been held as under:

“4. An “establishment” for the purposes of the Act means an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary thereto. Concept of industry, as defined under the Industrial Disputes Act, would include any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen. There is an organised activity between employers and employees to impart education. Such an activity, though may be industry will not be a profession, trade or business for the purposes of Article 19 (1) (g) of the Constitution, would not be one falling within the scope of “establishment” under the Act. Therefore, the view taken by the Division Bench of the High Court is unexceptionable. The High Court did appreciate that Unni

Krishnans case (supra) itself made a distinction between what was stated in Bangalore Water Supply & Sewerage Board vs. A. Rajappa (supra).

5. In Corporation of City of Nagpur vs. its Employees, [1960] 1 LLJ 523 at p. (540), this Court held that Education Department of the Corporation to be an industry. The reason given is that imparting education amounts to service and can be done by a private person also. In University of Delhi vs. Ramnath (1963) 2 LLJ 335, this Court held that imparting education is not industry as the work of the University cannot be assimilated to the position of trade, calling, business or service and hence cannot be industry. The majority view in Bangalore Water Supply & Sewerage Board vs. A. Rajappa (supra) a decision of seven-Judge Bench, is that in the case of an educational institution, the nature of activity is “exhypothesi” and imparting education being service to community is an industry. Various other activities of the institution such as printing press, transport department, clerical, etc. can be severed from teaching activities and these operations either cumulatively or separately form an industry. Even so, the question for consideration is whether educational institution falls within the definition of “establishment” carrying business, trade or profession or incidental activities thereto. “Establishment”, as defined under the Act, is not as wide as “industry” as defined under the Industrial Disputes Act. Hence reliance on Bangalore Water Supply & Sewerage Board vs. A. Rajappa [supra] for the appellant is not of any help.”

5. It would be relevant at this juncture to refer to the definition of “Commercial Establishment”. Rule 2 (4) (a) of the Madhya Pradesh Shops and Establishments Act, 1958 envisages as under:

“commercial Establishment” means an establishment which carries on any business, trade or profession or any work in

connection with, or incidental or ancillary to, any business, trade or profession and includes:-

(a) a society registered or deemed to have been registered under the Madhya Pradesh Societies Registration Act, 1959 (1 of 1960) and a charitable or other trust, whether registered or not, which carries on whether for gain or not, any business, trade or profession or work in connection with or incidental or ancillary to such business, trade or profession;”

6. Undisputedly, the petitioner is a registered society under the Societies Registration Act prevalent in the State and therefore the said Act would be squarely applicable so far as the petitioner’s establishment is concerned.

7. In the light of the authoritative decision of the MP High Court as also by the Supreme Court, this Court is of the opinion that the contention put forth by the petitioner assailing the impugned order does not have much force. Accordingly, the writ petition being devoid of merit stands dismissed.

**Sd/-
P. Sam Koshy
Judge**