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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.787 OF 2007

M/s. Arihant Siddhi Co.Op. Hg. Soc. Ltd. ...Petitioner

vs

Pushpa Vishnu More & Ors. ...Respondents

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Mr. M.D. Nagle, i/b. Mr. P.V. Satam, for the Petitioner.

Ms. Geeta Shastri, Additional G.P., for Respondent No.3.

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CORAM : S.C. GUPTE, J.

DATED: JUNE 22, 2018

(ORAL JUDGEMENT):

. Heard learned Counsel for the Petitioner and Respondent No.3 State. Respondent Nos. 1(a) to 1(g), who are legal heirs of Original Respondent No.1, who have been brought on record by way of an amendment, are absent.

2. The petition challenges an award passed by the Labour Court at Mumbai in a reference made to it under the Industrial Disputes Act. The controversy concerns the claim of reinstatement with full back wages and continuity of service of original Respondent No.1. By the impugned award, the reference was allowed and reinstatement with full back wages and continuity in service was ordered. That order was challenged in the present petition chiefly on the ground that the Petitioner, against whom the award was passed, is not an 'industry'

within the meaning of Section 2(j) of the Industrial Disputes Act.

3. The Petitioner is a Co-operative Housing Society. It had engaged Respondent No.1 as a watchman. Upon his completion of 60 years of age, his services were terminated with effect from 1 November 2000. It is the Petitioner's case that the termination was with mutual consent. That is a matter of dispute. Respondent No.1 was paid ex-gratia/retirement benefit, which was accepted by him. He, thereafter, raised a demand for reinstatement. It was his case that he was a permanent employee of the Petitioner and was terminated without any enquiry or offering proper retrenchment compensation. The reference was resisted by the Petitioner herein on the ground that the Petitioner was a housing society; that the services rendered by Respondent No.1 were personal services; and that the society not being an industry or Respondent No.1 its workman within the meaning of the term under the Industrial Disputes Act, the reference was not maintainable. By its impugned award, the Labour Court held that though the society was a co-operative housing society, it earned profits by way of additional income from its members and accordingly, fell within the definition of industry. The Court held that the profit motive was proved and that the society could not be termed merely as a housing society. It, accordingly, held the reference to be maintainable and then proceeded to decide the other issues concerning legality of the termination and the reliefs to be granted to Respondent No.1.

4. This Court, in its judgment in the case of **M/s. Shantivan-II**

Co. Op. Hsg. Society vs. Smt. Manjula Govind Mahida¹ has considered whether a co-operative housing society can be termed as an industry within the meaning of Section 2(j) of the Industrial Disputes Act merely because it carries on some commercial activity, not as its predominant activity, but as an adjunct to its main activity. This Court has held that such society is not an industry. In a case like this, that is to say, where there is a complex of activities, some of which may qualify the undertaking as an industry and some would not, what one has to consider is the predominant nature of services or activities. If the predominant nature is to render services to its own members and the other activities are merely an adjunct, by the true test laid down in the case of **Bangalore Water Supply and Sewerage Board vs. A. Rajappa**², the undertaking is not an industry.

5. The Labour Court appears to have been swayed by the fact that a few members of the society were carrying on business such as coaching classes and dispensary and the society was charging advertisement charges for the neon signs put up by the members. The Court was of the view that the society was thereby earning income and, in the premises, could not be termed as a mere housing society. The Court also observed that in the premises the services rendered by Respondent No.1 to the society and its members could not be termed as personal services. The Court observed that the judgment of **Som Vihar Apartment Owners' Housing Maintenance Society's** case accordingly had no application to the facts of the present case. There is a fundamental fallacy in this reasoning. As held by the Supreme Court in

1 W.P. No.360 of 2007 dated 21 June 2018.

2 1978(ii) SCC Page 213

Bangalore Water Supply case when there are multiple activities carried on by an establishment, what is to be considered is the dominant function. In the present case, merely because the society charged some extra charges from a few of its members for display of neon signs, the society cannot be treated as an industry carrying on business of hiring out of neon signs or allowing display of advertisements. In the premises, the impugned award of the Labour Court suffers from a serious error of jurisdiction.

6. Rule is, accordingly, made absolute and the petition allowed. The reference before the Labour Court is held to be not maintainable and the order of reinstatement with continuity of service and full back wages passed by the Labour Court is quashed and set aside. No order as to costs.

(S.C. GUPTE, J.)