

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9262-1999 (O&M)
Date of Decision:-22.02.2018.

Tek Ram

.....Petitioner

Versus

The Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court,
Chandigarh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Shailendra Sharma, Advocate for the petitioner.

Mr. G.S. Bal, Senior Advocate with
Mr. Tarun Singhal, Advocate for respondent No.2.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, petitioner has challenged the award passed by the Central Government Industrial Tribunal-cum Labour Court, Chandigarh (for short "CGIT") dated 16.11.1998 (Annexure P-1).

(2.) Petitioner was stated to have been appointed with the respondent-Management as a Lower Division Clerk in the year 1986. Thereafter, he was appointed as Computer Clerk. He has worked up to 23.03.1991. He raised industrial dispute relating to illegal termination. CGIT held that petitioner is not a workman having regard to the nature of duties discharged by him and status of the respondent-Department are not relating to industry. Thus, reference was rejected. Hence, the present petition.

(3.) Learned counsel for the petitioner submitted that respondent-Department were working in respect of Registration of cows of Haryana Breed and Buffaloes of *Murra* Breed etc. Second respondent-Department is part and parcel of Ministry of Agriculture, Department of Animal Husbandry and Dairy. It was submitted that Supreme Court in the case of *Agricultural Produce Market Committee Vs. Ashok Harikuni and another* reported in *(2000) 8 SCC 61* (para 25 and 28) it is held that Department dealing with the agriculture, animal husbandry, apiculture, horticulture, forest produce and any other produce, livestock and poultry would be industry. Therefore, CGIT has erred in holding that petitioner is not a workman so also Department is not an industry.

(4.) *Per contra* learned counsel for respondent No.2 while resisting the contention of the petitioner submitted that respondent-Department do not fall under the definition of “industry” as rightly held by the CGIT. Therefore, no interference is called for. It was further submitted that petitioner has rendered service from 1986 to 1991 in the cadre of Lower Division Clerk as well as Computer Clerk. Therefore, he is not a workman. Thus, petitioner has not made out a case so as to interfere with the CGIT Order.

(5.) Heard learned counsel for the parties.

(6.) Core issue in the present petition is whether respondent-Department is an industry or not? Supreme Court in the case cited supra in para 25, 28 and 33 held as under:-

“25. We may also usefully produce the Statement of Objects and Reasons of the State Act :

“STATEMENT OF OBJECTS AND REASONS:-

Among other things, provision is made in this Bill for -

(i) defining 'agricultural produce' to include all produce of agriculture, animal husbandry, apiculture, horticulture, forest produce and any other produce, live-stock and poultry;

(ii) notifying the intention of Government to regulate the purchase and sale of agricultural produce in specified area and declaration of market area and of market yard;

(iii) Establishment of market committees for trading in specified kinds of agricultural produce and also separate market committees within the same market area for trading in any particular kind of agricultural produce;

(iv) representation on the market committee to purchasers of agricultural produce, representatives of the purchasers' co- operative societies, representatives of co- operative marketing and processing societies, municipalities, taluk boards and the Central Warehousing Corporation or State Warehousing Corporation;

(v) levy and collection of market fees by the market committee;

(vi) constitution of market committee funds and Central Market Fund;

(vii) conferring borrowing powers on market committee;

(viii) appointment of Government servants as Secretaries, Assistant Secretaries, Technical Accounts and Audit Staff of market committees to ensure efficient administration and control of markets;

(ix) inquiry or inspection by the Chief Marketing Officer;

(x) supersession of market committee for failure to perform duties.

28. *Thus merely an enterprise being statutory corporation, creature under a statute, would not take it outside the ambit of "industry" as defined under the*

Central Act. We do not find the present case falling under any exception laid down in the Bangalore Sewerage Board case (Supra). The mere fact that some employees of the appellant are government servants would make no difference as the true test to find - has to be gathered from the dominant object for which functionaries are working. It cannot be doubted that the appellant is an undertaking performing its duties in a systematic and organised manner, regulating the marketing and trading of agricultural produce, rendering services to the community. In the present case, as we have recorded earlier, we are concerned only with those employees who are not government servants. Testing the dominant object as laid down in Bangalore Sewerage Board case (Supra), we reach to inescapable conclusion that none of the activities of the Agriculture Produce Market Committee could be construed to be sovereign in nature. Hence we have no hesitation to hold that this corporation falls within the definition of "industry" under Section 2(j) of the Central Act.

33. The last submission for the appellant is with reference to sub-section (3) of Section 59 of the said Act. The submission is, this excludes the application of the Central Act to the employees under the State Act. The reliance is placed on the following opening words of this sub-section (3) namely:

"59. (3)Notwithstanding anything contained in the Industrial Disputes Act, 1947."

Having regard to the statement of objects and reasons wherein animal husbandry is one of the item included in the Department of Agriculture, which is taken note of in the Supreme Court decision supra, the present respondent-Department were dealing with the animal husbandry and

Department of Animal Husbandry i.e. Scheme of Central Herd Registration would be part and parcel of animal husbandry activities. Therefore, CGIT has erred in holding that Central Herd Registration respondent-organization is not an industry and so also in rejecting the reference on the score that respondent do not fall under the definition of “industry”. Accordingly award passed by the CGIT dated 16.11.1998 (Annexure P-1) is set aside. Since CGIT order relates back to 16.11.1998 and we are in the year 2018, it is not appropriate to remand the matter for deciding the reference afresh on merits of the matter, while holding that respondent-Department is an industry and petitioner is a workman. Having regard to the service rendered by the petitioner from 1986 to 1991 it is appropriate to award compensation of ₹ 2,50,000/- with reference to the principle laid down by the Supreme Court in the case of **Bharat Sanchar Nigam Limited v. Bhurumal (2014) 7 SCC 177**. Concerned respondent is hereby directed to pay compensation within a period of 4 months from today, failing which petitioner is entitled to interest @ 6% per annum from today.

Petition stands disposed of.

(P.B. BAJANTHRI)
JUDGE

February 22, 2018.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.