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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **CWP-18613-2018**
Date of Decision : August 02, 2018

Mohd. Akbar Petitioner.

Versus

The Presiding Officer, the Industrial Tribunal Patiala
and others.
.... Respondents.

2. **CWP-18629-2018**

Mehboob Khan Petitioner.

Versus

The Presiding Officer, the Industrial Tribunal Patiala
and others.
.... Respondents.

3. **CWP-18630-2018**

Sukhwinder Singh Petitioner.

Versus

The Presiding Officer, the Industrial Tribunal Patiala
and others.
.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Manu K. Bhandari, Advocate
for the petitioner(s).

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SHEKHER DHAWAN, J.

Challenge in the above titled three writ petitions filed under Article 226 of the Constitution of India is to the three different awards dated 8.1.2018 passed by learned Industrial Tribunal, Patiala (for short, **“the Tribunal”**) whereby, it has been held that the respondent-Management, Punjab Wakf Board does not fall within the meaning of “industry” under the Industrial Disputes Act, 1947 (for short, **“the Act”**) and the references have been answered against the workmen-petitioners. As the controversy involved in all the three writ petitions is the same, therefore, those are being taken up together for disposal. For facility of reference, facts are being taken from CWP-18629-2018.

2. Petitioner – Mehboob Khan was appointed as Junior Compounder on temporary and adhoc basis for a period of six months on 23.03.2001. Thereafter, the tenure of his services were extended from time to time. His services were terminated vide order dated 1.9.2010 without issuance of any show cause notice, charge sheet or holding of any enquiry. Even no compensation was paid to the workman. The petitioner allegedly continued and served the management from 23.3.2001 to 31.08.2010, i.e. for a period of 9 years and 5 months.

3. Respondent-Management came with the plea that the respondent – Punjab Wakf Board does not fall within the ambit of “industry” as held by Hon`ble Division Bench of this Court in CWP No. 13690 of 1992, **Kanshi Ram Verma Vs. The Presiding Officer**, decided on 19.10.1992 (Annexure P/7), wherein it has been held that the Punjab Wakf

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Board does not fall within the meaning of “industry” under the Act as the Wakf Board was established for maintaining, controlling and administering the income derived from the Wakf property and the functions of the Board are purely religious. On these facts, the Tribunal pronounced the award dated 8.1.2018 holding that the Punjab Wakf Board does not fall within the definition of “industry” under the Act.

4. Learned counsel for the petitioners contended that the Tribunal has not considered the matter in its true prospect because the Punjab Wakf Board is covered under the definition of “industry” as per law laid down by Hon`ble Apex Court in **Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and others, AIR 1978 SC 548; State of U.P. Vs. Jai Bir Singh, 2005(4) SLR 628 and Philadelphia Mission Hospital Vs. Presiding Officer, Labour Court, Ambala and another, 2004(6) SLR 853.**

5. Plea was also taken that the entire Suleh Khan dispensary was shifted to the Hazarat Halima Maternity and General Hospital and therefore, in all fairness the petitioner should have been automatically transferred to the said hospital and there was no need for terminating the services of the petitioner. As per the petitioners, the entire equipment and furniture of the dispensary was shifted to the Hospital vide order dated 10.8.2010 (Annexure P/4). The petitioner was asked to contact the Management Committee of the hospital for consideration of his case for employment and accordingly, the petitioner approached the Management Committee of the hospital, but he could not get any positive response and

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subsequently, he approached the Tribunal which has pronounced the impugned award against the petitioner without considering all these important facts.

6. Having considered the submissions made by learned counsel for the petitioners and appraisal of the record, this Court is of the considered view that the matter in controversy is squarely covered as per judgment of Hon`ble Division Bench in **Kanshi Ram Verma's case (supra)**, wherein while considering the ambit and scope of judgment of Hon`ble Apex Court in **Bangalore Water Supply's case (supra)**, Hon`ble Division Bench observed as under:-

“ If, in a pious or altruistic mission, many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then the institution is not an industry even if stry servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt, not other generosity, compassion, developmental passion or project.”

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“The institution of 'wakf' or the provision of dedicating property, movable or immovable, for religious purposes and for the uplift of the poorer sections of the society have been a distinguishing feature of the socio-economic structure of Islam. Devotion to the way of God or the way of

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goodness or piety and a strong desire to win Divine approbation have been the root cause of the origin and development of the institution. The term 'wakf' as defined in clause (1) of Section 3 of the Wakf Act, 1954, means a permanent dedication made by a person professing Islam. The Act has conferred very wide powers and functions upon the Board in order to ensure that the wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which the wakfs were created. Their main functions are : -

- (a) to maintain a record containing information relating to the origin, income, object and beneficiaries of every wakf;
- (b) to ensure that the income and other property of wakfs are applied to the objects and for the purposes for which such wakfs were created or instead;
- (c) to give directions for the administration of wakfs;
- (d) to settle schemes of management for a wakf;
- (e) to scrutinize and approve the budgets submitted by mutawallis and to arrange for the auditing of accounts of wakfs;
- (f) to appoint and remove mutawallis in accordance with the provisions of this Act;
- (g) to take measures for the recovery of lost properties of any wakf;
- (h) to institute and defend suits and proceedings in a court of law relating to wakfs;
- (i) to sanction leases of property for more than

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three years or mortgage or exchange properties according to provisions of Muslim Law;

(j) to administer the Wakf Fund;

(k) to call for such returns, statistics, accounts and other information from the mutawallis with respect to the wakf property as the Board may, from time to time, require;

(l) to inspect, or cause inspection of, wakf properties, accounts and records or deeds and documents relating thereto;

(m) to investigate and determine the nature and extent of wakfs and wakf property; and to cause, whenever necessary, a survey of the wakf properties;

(n) generally do all such acts as may be necessary for the due control, maintenance and administration of wakfs.

The Board, as noticed above, primarily is established for the maintaining, controlling and administering the income derived from the property of the Wakf. The functions of the Board are purely religious and, therefore, we are of the considered view that the Board does not fall within the meaning of 'Industry' under the Industrial Disputes Act and the judgment in the case of Bangalore Water Supply (supra) has no application so far as the activities and functions of the Board are concerned. Dismissed.”

7. Learned Tribunal pronounced the awards dated 8.1.2018 while relying upon the judgment of Hon`ble Division Bench of this Court wherein the meaning of “industry” was discussed keeping in view the fact that the

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true focus is functional and decisive test is the nature of activity with special emphasis on the employer-employee relations.

8. As regards to the second contention raised by learned counsel for the petitioners that the entire Suleh Khan dispensary was shifted to the Hazarat Halima Maternity and General Hospital and as such, there was no necessity for terminating the services of the petitioner. As are the facts of the case, the Management considered the case of the petitioners for employment, but they could not be accommodated. On that account, the petitioners have no legal right calling for interference by this Court and learned Tribunal has rightly declined the claim of the petitioners.

9. In view of the above, the present writ petitions are without any merit and the same stand dismissed.

(SHEKHER DHAWAN)
JUDGE

August 02, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes