

...

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**1. CWP-4381-2014
Date of Decision : July 16, 2018**

Arya Pradeshik Pratinidhi Sabha and another
.... Petitioners.

Versus

The Presiding Officer, Industrial Tribunal, Bathinda
and another.
.... Respondents.

2. CWP-21223-2014

Asha
.... Petitioner.

Versus

Presiding Officer, Industrial Tribunal, Bathinda
and another.
.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. R.S.Cheema, Advocate
for the petitioners in CWP No. 4381 of 2014.
and for respondents No.2 in CWP No. 21223 of 2014

Mr. P.K.Bansal, Advocate,
for the petitioner in CWP No. 21223 of 2014
and for respondent No.2 in CWP No. 4381 of 2014 .

SHEKHER DHAWAN, J.

The above titled two writ petitions arise out of the same

...

controversy and are against the common award dated 15.1.2014 passed by the Industrial Tribunal, Bathinda (for short, "the Tribunal") whereby, reference made by Asha, workman was answered in her favour and she was reinstated in service with continuity and 30% back wages from the date of demand notice, i.e. 24.09.2007. By filing CWP-4381-2014, the Management has challenged the said award whereas, workman Asha, has impugned the award dated 15.1.2014 to the extent that she was allowed 30% back wages whereas, she was entitled to full back wages. Hence, both these writ petitions are being taken up and disposed of together by this common order.

2. Facts relevant for the purpose of decision of these two writ petitions; that Asha, (hereinafter referred to as "the workman") was employed with Arya Anathalaya, (for short, "the Organization") as a part time Sweeper on 16.05.1990 and was drawing Rs.150/- per month which was increased to Rs.850/- per month. Her services were terminated on 31.05.2005 without any notice, charge sheet, enquiry or payment of compensation. An industrial dispute was raised on the point. The Management came with the plea that it is a social organization serving the orphan children and used to look after their education and betterment. The Management does not indulge in production or sale activities, rather the same is being run on donations and as such, the organization is not covered under the definition of "industry" under the Industrial Disputes Act, 1947 (for short, "the Act"). Because of paucity of funds, the Management was unable to pay her wages and as such, she was relieved

...

of her duties and the industrial dispute raised by her was not maintainable.

3. On this reference, learned Tribunal pronounced award dated 15.1.2014 thereby accepting Asha to be workman and the Management to be “industry” covered under the definition of “industry” and ordered for reinstatement with continuity of service and allowed 30% back wages in favour of the workman.

4. Being aggrieved of passing of the impugned award, the Management has challenged the award on the ground that it is not covered under the definition of “industry” and Asha is not a workman and learned Tribunal has completely ignored this fact while pronouncing the impugned award. On the other hand, Asha, workman has challenged the award dated 15.1.2014 to the extent that she is entitled to 100% back wages instead of 30%, awarded by the Tribunal.

5. Learned counsel representing the Management mainly contended that learned Tribunal has completely ignored the basic facts that Asha was not covered under the definition of workman and the Management - Arya Anathalaya is not an “industry” because the same was not carrying on any business activities for profit. There was no income of the management except by way of donation. The object of running the Organization was to look after the education and well-being of the orphan-children. Because of paucity of funds, the Organization could not make payment of wages to the workman and she was thus, relieved from her job. It was not a case of termination of service or retrenchment as claimed by the workman. Learned Tribunal has completely ignored these facts while

...

pronouncing the impugned award.

6. While arguing these points, learned counsel representing Asha (workman) contended that she actually worked for more than 15 years from 16.05.1990 to 31.05.2005 and she was getting Rs.850/- per month as wages. Her services were terminated by the Management on 1.6.2005 without issuing any notice or payment of any compensation though, she had worked for a period of more than 240 days in the preceding calendar year. As such, she was entitled to reinstatement with continuity of service with full back wages.

7. While arguing on the point that the Organization is an “industry”, learned counsel for the workman contended that the Organization was covered under the definition of “industry” as defined under Section 2 (j) of the Act. Learned Tribunal has already recorded its findings on the reference having been made on this point and there are no grounds to set-aside the said findings and she is entitled to reinstatement with continuity of service and 100% back wages.

8. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the first point involved in these cases is whether Arya Anathalaya is covered under the definition of “industry” as defined under Section 2(j) of the Act. For ready reference, Section 2(j) of the Act is being reproduced below:-

(j) “*industry*” means any systematic activity carried on by cooperation between an employer and his workmen (whether

...

such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not, –

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes –

(a) any activity of the Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1949);

(b) any activity relating to the promotion of sales or business or both carried on by an establishment,

but does not include –

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation.—For the purposes of this sub-clause, “agricultural operation” does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951); or

(2) hospitals or dispensaries; or

(3) educational, scientific, research or training institutions; or

(4) institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) khadi or village industries; or

...

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or

(7) any domestic service; or

(8) any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individuals or body of individuals in relation to such profession is less than ten; or

(9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten;”

9. The ambit and scope of Section 2(j) of the Act came up for interpretation before Hon`ble Apex Court in **Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and others, AIR 1978 SC 548** wherein, Hon`ble Supreme Court held that the true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking. Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself. 'Undertaking' must suffer a contextual and associational shrinkage as explained in **D.N.Banerji Vs. P.R. Mukherjee and others, AIR 1953 SC**

...

58 and in this judgment, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in above mentioned although not trade or business, may still be 'industry' provided the nature of the activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold of 'industry' undertakings, callings and services adventure 'analogous' to the carrying on of trade or business. All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer and employee may be dissimilar. It does not matter, if on the employment terms there is analogy. The consequences are (i) professions, (ii) Clubs (iii) educational institutions (iiia) co-operatives, (iv) research institutes (v) charitable projects and (vi) other kindred adventures, if they fulfill the triple tests listed in I (supra), cannot be exempted from the scope of Section 2(j).

10. In **D.N.Banerji's case (supra)** also, the scope of "industry" was discussed by Hon`ble Supreme Court and it was observed as under:-

“(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee, (the direct and substantial element is chimerical)(iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale, prasad or food), prima facie, there is an 'industry' in that enterprise.

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

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

...

(d) If the organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking.”

11. In similar case, **Punjab Police Housing Corporation Limited Vs. Suresh Kumar and another, 2012 (5) SLR 762 (Pb. & Hr.)**, a Co-ordinate Bench of this Court was of the view that the expression “industry” as defined in Section 2(j) of the Act is of wide amplitude and it includes any business, trade, undertaking, manufacture or calling of employees and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.

12. Applying the same test of law to the present set of facts, learned Tribunal has already recorded finding on the basis of material and evidence available on the file that the Organization has got property and this fact has been admitted by the witness, Rakesh Parshad Sharma, Accountant, examined by the Management as MW-1 during his cross-examination who stated that Arya Anathalaya received income from agriculture land, rental income of house and commercial property and as such the Organization was covered under the definition of “industry” under the Act. There are no grounds to take a different view keeping in view the definition of “industry” as defined under Section 2(j) of the Act and the view taken by Hon`ble Apex Court and this Court. The writ petition filed by the Management is devoid of any merit and the same stands dismissed.

13. As regard to the status of Asha as a workman, she was employed as Sweeper since 1990 on payment of wages @ Rs.850/- per month and her services were terminated on 31.5.2005 without issuance of

...

any notice, charge sheet or holding enquiry and the same has rightly been held to be termination of the workman. Learned Tribunal has rightly ordered for reinstatement of the workman with continuity of service and 30% back wages. There are no grounds to interfere with the said findings as regard to reinstatement and continuity of service as well as back wages, awarded by learned Tribunal. Both the writ petitions, i.e. one filed by Asha, workman and the other by the Management are without any merit.

14. In view of the above, both the above mentioned writ petitions stand dismissed.

**(SHEKHER DHAWAN)
JUDGE**

July 16, 2018.
som

Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes