

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4485 OF 2019

Savitribai Phule Pune University
Through the Registrar and Anr.

...Petitioners

V/s
Shri. Alok Shivaji Salve

...Respondent

.....

Senior Counsel Mr. Ram Apte i/by Mr. Rajendra Anbhule, for the Petitioners.
Mr. Jaydeep Deo a/w Mr. Sanjay K. Gunjkar, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATE : DECEMBER 5, 2019

ORAL JUDGMENT :

Heard Learned Counsel for the parties.

2. This Writ Petition challenges an order passed by the Labour Court at Pune in a reference made to it under Section 10 of the Industrial Disputes Act by the Appropriate Government. The impugned order has been passed on a preliminary issue of jurisdiction raised by the Petitioners herein (original first party). The Respondent (original second party) applied for a reference before the Appropriate Government on the ground that he was appointed as an employee of the first party as, what he described in his application as, 'Assistant Librarian'. It was his case that he was a workman working with the first party and had completed 240 days of work in every year prior to his termination; his post was sanctioned and was of a perennial nature; and that he was improperly terminated when he was entitled to be made permanent. Upon the reference being made by the Appropriate

Government (Reference (I.D.A.) No.346 of 2015), the first party raised a preliminary objection before the Labour Court for maintainability of the reference. It was submitted that the second party was not a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. It was also contended that the first party was an educational institute and was not an 'industry' within the meaning of Section 2(j) of the Industrial Disputes Act.

3. On the rival pleadings of the parties, the Labour Court framed an issue of maintainability. The issue involves two aspects, whether the second party was a 'workman' of the first party and whether the second party was an 'industry' within the meaning of the Industrial Disputes Act. The Labour Court took into account the pleadings of the parties as also the evidence of the second party, who had examined himself, and the evidence of the first party, both oral and documentary. The Labour Court observed that the second party was appointed on a monthly salary; the first party used to maintain his attendance sheet; it had given him an identity card identifying him as 'staff' of the first party; and that having regard to the nature of his work, which was to note new stock of books into a register maintained for the purpose, to classify the books and arrange them systematically, to give books to students as per their demands and take back the same from them, to note inward and outward number of books, constituted manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and as such, the second party fell within the definition of 'workman' under Section 2(s) of the Industrial Disputes Act. So far as the character of the first party is concerned, the Court

went by the law stated in the landmark judgment of the Hon'ble Supreme Court in the case of **Bangalore Water Supply Sewerage Board V/s. A. Rajappa and Others**¹. The Court held that according to the law stated in that case, an educational institution cannot be excluded from the definition of 'industry' under Section 2(j) of the Industrial Disputes Act. The Court, accordingly, held both issues in the affirmative and rejected the first party's preliminary objection to the maintainability of the reference.

4. Mr. Apte, learned Senior Counsel appearing for the Petitioner/first party, does not dispute that his client falls within the definition of 'Industry' under Section 2(j) of the Industrial Disputes Act. Learned Counsel, however, submits that the second party was not a 'workman', being a 'teacher' as defined by the relevant statute. Learned Counsel places reliance on the definition of 'teacher' given in Section 2(61) of the Maharashtra Public Universities Act, 2016. It is submitted that Section 2(61) defines a 'teacher' so as to include an 'Assistant Librarian' in a university and that, accordingly, the second party, who, on his own showing, was appointed as an assistant librarian, does not fall within the definition of 'Workman' under Section 2(s) of the Industrial Disputes Act. Learned Counsel relies on a decision of Hon'ble Supreme Court in the case of **A. Sundarambal V/s. Government of Goa, Daman and Diu and Others**². Relying on these cases, it is submitted that a teacher employed in an educational institution, the main function of a teacher being imparting of education which is in the nature of a mission or a noble vocation, cannot fall under any of the categories

¹ AIR 1978 SC 848

² (1988) 4 Supreme Court Cases 42

referred to in Section 2(s) of the Act. Learned Counsel submits that as a teacher, the case of the second party would be governed under the University Act and the disputes such as this would go only before the University and College Tribunal.

5. The question, whether the second party before the Reference Court was a teacher within the meaning of Section 2(61) of the Maharashtra Public Universities Act, 2016 or its predecessor, namely, Section 2(34) of the Maharashtra Universities Act, 1994, and therefore, did not fall within the definition of 'Workman' under Section 2(s) of the Industrial Disputes Act is not a pure question of law. It is a mixed question of law and facts. If that is so, it is imperative that a foundation must be laid for such a plea in the pleadings of the party who contends so before the trial court. Admittedly, this plea or its foundational aspects are not to be found in the pleadings of the first party before the Reference Court. The objection that the second party was a teacher and accordingly, did not fall within the definition of Section 2(s) of the Industrial Disputes Act, was not even raised before the Reference Court. It is impermissible to raise this plea for the first time before this Court in a challenge from the order of the Reference Court.

6. Mr. Apte submits that there is no dispute in the present case that the second party was appointed as an 'Assistant Librarian' and if that is so, learned Counsel submits, coverage or otherwise of his employment in the definition of Section 2(61) of the new Act or under Section 2(34) of the old Act is nothing but a matter of law. Learned

Counsel is not right there. The fact that the second party in his complaint uses the nomenclature of 'Assistant Librarian' to describe his employment is not sufficient to determine the nature of his duties or the status of his appointment. In fact, as pointed out at the hearing of this petition by learned Counsel for the Respondent/second party, there is material produced before the Court to show that the designation of the second party was 'Library Assistant' and not 'Assistant Librarian'. Merely because the employee describes himself as an 'Assistant Librarian', it cannot be said that the employment of the second party was, in fact, of an 'Assistant Librarian'. One has to go by the actual appointment and the nature of duties for which the employee is appointed by the establishment. So far as the appointment is concerned, the only material before the Court indicated that the second party was appointed as a 'Library Assistant' and as far as his duties are concerned, there is evidence on record, which has been correctly appreciated by the Labour Court, that his duties did not indicate any duty performed or to be performed by him as a 'teacher' or as an 'assistant librarian' would be expected to perform in his capacity as a 'teacher' defined under Section 2(61) of the new Act or Section 2(34) of the old Act.

7. Accordingly, there is no merit in the challenge to the impugned order passed by the Labour Court. The Writ Petition is dismissed.

(S.C. GUPTE, J.)