

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

WRIT PETITION NO.5752 OF 2001

Chairman, Nasik District

Development Department

... Petitioner

Versus

Shri Sunil Babanrao Datte

... Respondent

.....

None for the Petitioner.

Mr. Nikhil Wadikar i/b Mr. Nandu Pawar for the Respondent.

.....

CORAM : S.C. GUPTE, J.

DATE : 10 DECEMBER 2019

P. C. :

. Heard learned Counsel for the Respondent. None appears for the Petitioner. This petition was once dismissed for non-prosecution and was later restored on the application of the Petitioner. The petition is of the year 2001. Today's board of final hearing matters was notified on Friday, 6 December 2019; the Petitioner thus has had adequate notice. In the premises, this court is not inclined to adjourn the matter and accommodate the Petitioner any further.

2 The subject matter of this petition concerns reinstatement of the Respondent herein, who was the second party workman before the Labour Court at Nasik in a reference made under Section 10(1) read with sub-section 12(5) of the Industrial Disputes Act, 1947. The

Respondent claims to be a workman of the Petitioner industry, employed in a perennial post and having worked for more than 240 days in a year. He opposed his termination, which he said was without notice or notice pay. Before the labour court, the Petitioner employer raised an issue concerning its status as an 'industry'. The labour court came to a conclusion that the Petitioner employer had not adduced any evidence to show its functions so as to make out a case that it fell outside the definition of 'industry'. No fault can be found in the conclusion arrived at by the labour court that the Petitioner was an industry. As the Supreme Court observed in the case of **The Corporation of the City of Nagpur Vs. Its Employees**¹, the definition of employee under the Industrial Disputes Act is very comprehensive; 'industry' is defined both from the standpoints of the employer and of the employees. If its activities fall under either part of the definition, it would be an 'industry' within the meaning of the Act. It is not in dispute that the Petitioner was an employer of the Respondent. It carried out an undertaking or calling as rural development department of a local authority. So far as the Respondent is concerned, what he was engaged in by the Petitioner was nothing but a calling or service or employment. There is no obvious reason why the Petitioner would not fall within the definition of Industry under Section 2(j) of the Industrial Disputes Act. There is, after all, an organized and systematized form of activity carried on by the Petitioner department, which amounts to an undertaking or calling. If it was the Petitioner's case, in the premises, that it deserves

1 1960(2) Supreme Court Reports 942

to be excluded from the definition of 'industry' under Section 2(j) by reason of its activities being sovereign activities or for any other reason, it was for the Petitioner to plead and prove such case before the labour court. As the court has noted, there was no pleading or proof in this behalf on the part of the petitioner. The court has, accordingly, rightly come to a conclusion that the petitioner was an 'industry'.

3 The other aspects of the impugned order involves the status of the Respondent as a workman of the Petitioner. The court has rightly come to a conclusion that the Respondent was in continuous service as a peon from 24 September 1985 to 16 October 1986, having, thus, completed more than 240 days in a year. The court relied on a certificate issued by the Petitioner of his having successfully completed such service. The post was considered to be a perennial post and it was vacant. The court observed that it was not the employer's case that the workman was not properly selected or appointed. The court, in the premises, held that the termination of the Respondent amounted to retrenchment and since such retrenchment was made without notice or notice pay, and in breach of the provisions of Section 25F of the Industrial Disputes Act, the same was illegal and void *ab initio*. Even this conclusion on the part of the labour court cannot assailed as a perverse conclusion. The conclusion is supported by some evidence on record. The labour court has taken into account all relevant and germane circumstances of the case and materials produced before it and has not taken into account any irrelevant or

non-germane circumstance or material.

4 The writ petition accordingly has no merit and is dismissed.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

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