



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.04.2019

PRONOUNCED ON : 16.05.2019

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.36206 OF 2004

AND

W.M.P.NO.43552 OF 2004

The Chief Administrative Officer,
Air Force Administrative College,
Red Fields,
Coimbatore.

... Petitioner

Vs

1. The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
Chennai.
2. The General Secretary,
Coimbatore Desiya Engineering &
General Employees Union,
Coimbatore.

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records pertaining to I.D.No.456 of 2001 on the file of the Hon'ble Central Government Industrial Tribunal-cum-Labour Court, the first respondent herein and to quash the award dated 14.06.2004 passed by the first respondent Tribunal in I.D.No.456 of 2001.

For Petitioner : Mr.B.Ramaratnam
CGSC

For Respondent-2: Mr.V.Ajay Khose

ORDER

The award under challenge in the present Writ Petition is for reinstatement of certain employees of the members of the second respondent's Union with attendant benefits and without back wages.



2. Heard Mr.B.Ramaratnam, learned Central Government Standing counsel for the petitioner and Mr.V.Ajay Khose, learned counsel appearing on behalf of the second respondent.

3. The brief facts of the case is that a few of the employees, who were engaged as bearers of the petitioner's Administrative College Mess, to serve the trainee officers of the college in the mess activities. The wages were paid to these bearers out of the collection of service charges from the trainee officers. When the bearers had allegedly demanded regularisation of their services, their employment was discontinued, which resulted in the industrial dispute. The petitioner's contention before the Industrial Tribunal cum Labour Court was that the workmen concerned were merely workers employed by the trainee officers, who temporarily stayed in the mess attached to the Training College. Since their remuneration was paid by the trainee officers, who stay in the Administrative College for a short course, there was no relationship of 'Master and Servant' or 'Employer/Employee' between them and the petitioner and therefore, the industrial dispute itself was not maintainable. The Labour Court had rejected the plea of the petitioner herein and held that there was Master-Servant relationship between these employees and the petitioner and thereby ordered for reinstatement.

4. The learned counsel for the petitioner submitted that the petitioner is an Administrative Training Institution run by the Central Government in exercise of its sovereign function and therefore, it cannot be termed as 'Industry' as defined under Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). Since there is no 'Employer-Employee' relationship between the petitioner and the temporary bearers and since their remuneration were paid by the trainee officers themselves through the officer's mess, the industrial dispute itself was not maintainable.

5. The learned counsel appearing for the second respondent by placing reliance on various decisions of the Hon'ble Supreme Court submitted that the concerned employees are deemed to be workmen under Section 2(s) of the Act and that by applying the Dominant Nature Test envisaged in Bangalore Water Supply & Sewerage Board Vs. A. Rajappa [1978 (2) SCC 213], the petitioner herein is deemed to be an 'Industry' as defined under Section 2 (j) of the Act. The learned counsel further submitted that even assuming that the petitioner is under the sovereign function of the Indian Air Force, the Administrative College as well as the Mess are severable from the sovereign function and is therefore, liable to be treated as an Industry. In view of the facts of the case leading to the inevitable conclusion that the petitioner is an Industry and the persons employed under them



6. I have given careful consideration to the submissions made by the respective counsels.

9. The submissions of the learned counsel for the petitioner attempting to recuse the petitioner's College from the scope of the definition of an Industry under Section 2(j) of the Act can be straight away negated by applying the Dominant Nature Test laid by the Hon'ble Supreme Court in Bangalore Water Supply Case (supra). The learned counsel for the petitioner had placed reliance on the decision of the case in All India Railway Institute Employees Association V. Union of India reported in 1990 (2) SCC 549 and submitted that since the trainee officers were directly paying the bearers for their personal needs, there does not exist a 'Master-Servant' relationship between the petitioner and these bearers. In the aforesaid decision, it was held that the Railways was not the Principal Employer of the



staffs of the Canteen, since they were not paid directly from the Consolidated Fund of India and therefore held that there was no Employer- Employee relationship between the Railway Administration and the Employees of the Canteen. This ratio came to be analysed by the Hon'ble Supreme Court in the decision of G.B. Pant University of Agriculture and Technology, Nainital V. State of Uttar Pradesh and others reported in 2000 (7) SCC 109. In G.B. Pant University case (supra), the contention was that the University did not have any control over the employees of the Cafeteria but the Food Committee was in charge of the management and control of the Cafeteria and since there was no evidence whatsoever on record, that the employees working in the Cafeteria were appointed by the University in accordance with the provisions contained in the Act or statute framed thereunder, there was no 'Master and Servant' relationship. There was also a further contention on behalf of the University that there was no budgetary allocation to meet the expenses on account of the salaries of the Cafeteria employees and therefore, they cannot be termed as 'Employees' of the University. The University had placed reliance on the All India Railway Institute Employees Association case (supra). The Hon'ble Apex Court, while holding that such Canteen Committee have only been acting for and on behalf of the Corporation as agencies to provide the said services, had directed the University to regularise the services of the employees of the Cafeteria. Responding to the reliance placed by the University to All India Railway Institute Employees Association case (supra), the Hon'ble Supreme Court held thus:

" ... Strong reliance was placed on the decision of this Court in All India Railway Institute Employees Association V. Union of India (1990 2 SCC 549) wherein this Court observed:

12. By their very nature further the services of the Institutes/Clubs are availed of beyond working hours only. It is common knowledge that not all members of the railway staff avail of them. One has to be a member to do so by paying fees. The membership is also optional. That is why most of the staff employed in the Institutes/Clubs is part time. As has been stated by the respondents, out of about 1741 employees engaged in 499 Institutes and 332 Clubs nearly half are part time employees. The services rendered by the employees are not of a uniform nature. They are engaged for different services with different service



WEB COPY

conditions according to the requirement. The Institutes/Clubs further do not engage in uniform activities, the activities conducted by them varying depending upon the infrastructure and the facilities available at the respective places.

13. What is more important as far as the issue involved in this petition is concerned, is that the provisions of the Institutes/Clubs is not mandatory. They are established as a part of the welfare measure for the railway staff and the kind of activities they conduct depend, among other things, on the funds available to them. The activities have to be tailored to the budgets since by their very nature the funds are not only limited but keep on fluctuating. If the costs of the activities go beyond the means, they have to be curtailed. So also, while starting a new activity, it is necessary to take into account its financial implications and the capacity of the Institute/Club to raise the necessary funds. The only varying component of the funds is the membership fee which is uncertain.

The facts of the matter under consideration are rather a pointer to the material difference between the canteens run in the Railways Establishment and that of the Railway Institute and Clubs. This Court on a very poignant note observed that canteen services are no longer looked upon as a mere welfare activity but as an essential requirement where sizeable number of employees work, this Court went on to record that the same however, cannot be said to be of Institutes and Clubs.

While the appellants contention is, as notice above, the respondents contended that under the provisions of the Act and Statute, it is obligatory on the students to reside in hostel and avail of food services to the inmates of the hostel, the Cafeteria is maintained and the obligations of the University cannot be run down."



Applying the aforesaid ratio and by referring to the findings of the Labour Court that there exists the relationship of 'Employer and Employee' between the petitioner and the concerned bearers on the strength of the evidence produced, this Court is of the affirmed view that there was a 'Master-Servant' relationship in the present case.

10. Though much emphasis was not made to the grounds as to whether the petitioner is an Industry as defined under Section 2 (g) of the Act or that the concerned employees of the petitioner were not workmen as defined under Section 2(s) of the Act, in order to avoid any lacuna, the decisions of the Hon'ble Apex Court in this regard, requires a referral.

11. As stated earlier, the Hon'ble Supreme Court in Bangalore Water Supply Case (supra) has laid down the Dominant Nature Test and by applying the same, the petitioner herein, being engaged in a commercial activity and not discharging any sovereign function of the State is deemed to be an 'Industry'. In the case of General Manager Telecom V. A. Srinivasa Rao and others [1997 (8) SCC 767], the Hon'ble Supreme Court had applied the Dominant Nature Test as in Bangalore Water Supply case and held that the Telecom Department of the Union of India to be an Industry under Section 2(s) of the Act. In the said decision, the earlier decisions in Theyyam Joseph's case, reported in 1996 (8) SCC 489 and Bombay Telecom Canteen case reported in AIR 1997 SC 2817 were overruled.

12. Even otherwise, in the case of Chief Conservator of Forests and another V. Jagannath Maruti Kondhare and others reported in 1996 (2) SCC 293, it was held that the petitioners of the Officers Trainee Mess cannot be regarded as a part of the sovereign function of the State. The relevant portion reads as follows:-

16. The aforesaid being the crux of the scheme to implement which some of the respondent were employed, we are of the view that the same cannot be regarded as a part of inalienable or inescapable function of the State for the reason that the scheme was intended even to fulfill the recreational and educational aspirations of the people. We are in no doubt that such a work could well be undertaken by an agency which is not required to be even an instrumentality of the State.

17. This being the position, we hold that the aforesaid scheme undertaken by the Forest Department cannot be regarded as a part of sovereign function of the State, and so, it was open to the respondents to invoke the



WEB COPY

provisions of the State Act. We would say the same qua the social foresting work undertaken in Ahmednagar district. There was, there-fore, no threshold bar in knocking the door of the Industrial Courts by the respondents making a grievance about adoption of unfair labour practice by the appellants.

13. The issue as to whether the affected employees are workmen as defined under Section 2(s) of the Act is concerned, is also been answered by the Hon'ble Supreme Court in Devinder Singh V. Municipal Council, Sanaur reported in 2011 (6) SCC 584, in the following words:

11. In State Bank of India v. N. Sundara Money (1976) 1 SCC 822, a three Judge Bench of this Court analysed Section 2(oo) and held:

"9.....Termination ... for any reason whatsoever' are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is, has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. Maybe, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25-F and Section 2(oo). Without speculating on possibilities, we may agree that "retrenchment" is no longer terra incognita but area covered by an expansive definition. It means "to end, conclude, cease"..."

The ratio of the aforementioned judgement was approved by the Constitution Bench in Punjab Land Development And Reclamation Corporation Ltd., Chandigarh v. Presiding Officer Labour Court, Chandigarh (1990) 3 SCC 682.



WEB COPY

12. Section 2(s) contains an exhaustive definition of the term 'workman'. The definition takes within its ambit any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and it is immaterial that the terms of employment are not reduced into writing. The definition also includes a person, who has been dismissed, discharged or retrenched in connection with an industrial dispute or as a consequence of such dispute or whose dismissal, discharge or retrenchment has led to that dispute. The last segment of the definition specifies certain exclusions. A person to whom the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, is applicable or who is employed in the police service as an officer or other employee of a prison or who is employed mainly in managerial or administrative capacity or who is employed in a supervisory capacity and is drawing specified wages per mensem or exercises mainly managerial functions does not fall within the definition of the term 'workman'.

13. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. It is apposite to observe that the definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."

While thus the petitioner is itself deemed to be an Industry by applying the Dominant Nature Test envisaged in the Bangalore Water Supply case, it can also be viewed to be severable from the sovereign functions of the State. However, it is not the case of the petitioner herein that the Administrative College is



under the Indian Air Force. Thus, viewed from any angle, the petitioner is an Industry falling under the scope of Section 2 (j) of the Act.

14. The petitioner herein having failed to establish that they are not an Industry and that there is no 'Employer and Employee' relationship between them and the concerned bearers, by failing to produce satisfactory evidence before the Labour Court, this Court is not in a position to arrive at a different conclusion than that, which the Labour Court had arrived at. In the result, the Writ Petition stands dismissed. Now that the Award of the Central Government Industrial Tribunal cum Labour Court dated 14.06.2004 has been sustained, the petitioner shall endeavour to disburse of the monetary dues that may be payable to the bearers of the Administrative College covered under the Award dated 14.06.2004, as expeditiously as possible, in any event, within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Presiding Officer,
Central Government Industrial
Tribunal-cum-Labour Court,
Chennai.
2. The General Secretary,
Coimbatore Desiya Engineering &
General Employees Union,
Coimbatore.

+1cc to Mr.V.Ajay Khose, Advocate, S.R.No.43881

W.P.No.36206 of 2004
and
W.M.P.No.43552 of 2004

SPD(CO)
CS/27/06/2019