IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO. 2822 OF 2019
WITH
WRIT PETITION NO. 2818 OF 2019

National Institute of Virology ...Petitioner
vs.
Ajay Hargovind Sorte ...Respondent

Mr.Rahul Nerlekar for Petitioner.
Mr.Nitin A. Kulkarni for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 3 JANUARY 2020

P.C. :

These two petitions, respectively, challenge an award by the Central Government Industrial Tribunal ("CGIT") at Mumbai and an order dated 7 September 2018 passed by the Labour Court at Pune on an application under Section 33-C(2) of the Industrial Disputes Act, 1947. Both petitions *inter alia* involve a controversy as to the status of the Petitioner, namely, whether the Petitioner is an 'industry' within the meaning of Section 2(j) of the Industrial Disputes Act, though the contexts of this controversy in the petitions are different.

2 In Writ Petition No.2822 of 2019, where the challenge is to an award passed by CGIT, Mumbai on a reference made to it by the Central Government under the Industrial Disputes Act, the objection that the Petitioner was not an industry was fairly and squarely raised in the reference itself. On the other hand, in Writ Petition No.2818 of 2019, the question was raised in an application under Section 33-C(2) of the

Industrial Disputes Act (in which the order impugned in the petition was passed) post an award passed in a reference, which award has since become final; the question was not raised at the reference stage. The two petitions, accordingly, call for different treatment and are, accordingly, dealt with separately in the following order.

3 Rule is issued in Writ Petition No.2822 of 2019 and taken up for hearing forthwith by consent of Counsel. The case of the Petitioner in Writ Petition No.2822 of 2019 is that it is a research institute, established and controlled by the Indian Council of Medial Research, Department of Health Research, Government of India; it claims to be mainly engaged in research work *inter alia* including studies in viral diseases affecting humans, investigating outbreaks, isolation and characterization of these viruses. It is submitted that the Petitioner is not an 'industry' within the meaning of Section 2(j) of the Industrial Disputes Act. The case of the Petitioner before CGIT was that it was a society registered under the provisions of Societies Registration Act, engaged exclusively in research activities as noted above. It was submitted that the entire expenditure towards the costs of its research activities, staff salaries and administrative expenses was borne by the Central Government through Indian Council of Medical Research ("ICMR'), New Delhi, whose main object was pursuit and assistance of research, propagation of knowledge and experimental measures generally in connection with causation, mode of spread and prevention of diseases, primarily those of communicative nature. It was submitted that the research work carried out by the Petitioner was not with an intention of commercial exploitation of the same; there was no sale or commercial exploitation of the research products; the Petitioner did not generate any profit on its activities; and its work was not connected with

production, supply or distribution of material goods or services. It was submitted that the activities of the Petitioner, thus, did not amount to business or manufacture and the Petitioner did not fall within the meaning of the definition of "industry" under Section 2(j) of the Industrial Disputes Act. Though this issue was fairly and squarely raised before it, CGIT simply appears to have disposed of the issue observing that no such issue was raised by the Petitioner in an earlier reference between the same parties. (Incidentally, this earlier reference was the one involved in the companion petition, namely, Writ Petition No.2818 of 2019.) It was observed that the earlier reference was adjudicated by a tribunal and a writ petition filed by the Petitioner from that award was dismissed and even an SLP from that order was dismissed by the Supreme Court and in the premises, the original award of reinstatement with continuity of service with full back wages became final and was implemented. The Tribunal, secondly, observed that in the present proceeding, the second party workman (Respondent herein) had called for documents mentioned in Exhibit-9 to prove the issue as to whether the first party was an 'industry' within the meaning of Section 2(j) of the Act; the Court was pleased to allow that application; but the first party establishment (Petitioner herein) had not produced documents which could lead to drawing of an inference concerning its status as an industry. It was also observed that in the cross-examination of the second party workman, nothing was suggested or brought on record to indicate that the first party was not an industry.

4 The whole approach of the CGIT has resulted in serious miscarriage of justice inasmuch as, in the first place, the onus has been wrongly cast on the Petitioner establishment to prove that it was not an industry. It was essentially for the workman approaching the Industrial

Court for redressal of his grievance to show that the establishment was an industry and accordingly, the Tribunal had the requisite jurisdiction to adjudicate the reference. Be that as it may, even if one were to make an allowance for the fact that there might be a case of shifting burden in a case where it was *prima facie* shown by the second party workman that the first party was an industry and that the Tribunal had the requisite jurisdiction in the matter, in which case the onus might have shifted to the first party establishment, no such thing appears to have happened in the present case and that primarily seems to be because of the approach of the CGIT noted above. It is wholly immaterial, secondly, that in an earlier reference between the same parties, this issue was not raised by the first party in that reference. The issue is a mixed issue of law and facts and the approach of a party concerning its adjudication in an earlier reference can hardly bind that party.

5 It would, in the premises, be pre-eminently in the interest of justice to have the issue adjudicated before the CGIT by remitting the matter to it. The CGIT may permit both parties to lead evidence on the issue and thereafter adjudicate the reference.

6 Rule is, accordingly, made absolute and Writ Petition No.2822 of 2019 is allowed by quashing and setting aside the impugned order of CGIT dated 29 June 2016 and remanding Reference No.CGIT-2/16 of 2012 to the CGIT, Mumbai for a fresh hearing in accordance with law and after taking into account the directions in this order.

7 Coming now to the companion writ petition, namely, Writ Petition No.2818 of 2019, the dimension of the issue raised by the

Petitioner as to its status as an industry within the meaning of Section 2(j) of the Industrial Disputes Act in this case is entirely different. Here, when the dispute of reinstatement with back wages was first raised before the reference court and an award was sought on it, the issue of 'industry' was not even raised by the Petitioner, who was the first party in the reference. The award of reinstatement with full back wages passed in that reference had become final. Since this award was complied with only partly by the Petitioner establishment, namely, by reinstating the Respondent workman without, however, payment of back wages, the Respondent workman approached the Labour Court at Pune in an application under Section 33-C(2) of the Industrial Disputes Act. By her impugned order, the Presiding Officer of the Labour Court partly allowed the application, directing the Petitioner herein to pay a sum of Rs.17,00,076/- to the Applicant workman as back wages and legal dues. Though *prima facie* its status as an industry may not be amenable to be questioned in a case like this, what is important to note is that so far as the quantum of back wages and legal dues are concerned, the Industrial Court appears to have not applied its mind to the correct quantum payable to the Respondent workman as back wages or legal dues. It is submitted by the Petitioner, in its challenge to the impugned order, that the Respondent was merely a daily wager and was not in any regular post under ICMR. It is submitted that the question of regularisation of his services and the scale of salary to be applied in his case could not have been considered by the Labour Court under Section 33-C(2) of the Industrial Disputes Act. On these facts, *prima facie* the matter calls for consideration. Hence, there will be **Rule.** Learned Counsel for the Respondent waives service.

8 It is an admitted position that on these facts, even if one were

to go by minimum wages payable in accordance with law, the Respondent would have been entitled to receive at least a sum of Rs.9 lakhs as back wages payable upto September 2018. As and by way of a condition of interim stay of the impugned order, it would, accordingly, be in the interest of justice to order the Petitioner to deposit a sum of Rs.9 lakhs towards the back wages of the Respondent. Considering that these would merely be minimum back wages on the footing of minimum subsistence wages, it would also be in the interest of justice to allow the Respondent to withdraw the entire amount deposited by the Petitioner subject to an undertaking to bring back the amount in court, in the event of the petition being finally decided against the Respondent. Learned Counsel for the Respondent, after taking instructions from his client, undertakes to do so.

9 Accordingly, pending the hearing and final disposal of the petition, there will be a stay of the impugned order dated 7 September 2018 passed by the Labour Court at Pune subject to the Petitioner depositing in this court a sum of Rs.9 lakhs within a period of six weeks from today. The Respondent shall be at liberty to withdraw this amount subject to the undertaking furnished today, which is noted and accepted as above.

(S.C. GUPTE, J.)