

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 52 of 2013**

1. Smt. Anita Solanki @ Annu And Ors W/o Jagannath Solanki Aged About 45 Years R/o Bihind Dinesh Vastra Bhandar, Near Taj Tailors Power House, Post Jawahar Market, P.S. Chhawani Bhilai, Distt Durg, Cg, Chhattisgarh
2. Smt. Bisahin Bai D/o Lt Itwari Ram Verma R/o Arya Nagar, Kohka, P.O. And P.S. Supela, Bhilai Tah. And Distt. Durg Pin 490023
3. Smt. Mohani Taram W/o Shri Santosh Taram aged about 45 years R/o 104-C, Zone 2, Khursipar Bhilai, Post Jawahar Market, P.S. Chhawani Bhiali, Distt Durg, Cg

---- Petitioners

Versus

1. Bhilai Mahila Samaj S/o Bhilai Nagar, Sector-4, P.S. Bhatti Thana, P.O. Sector -3, Bhilai, Durg, Distt Durg, Cg, Chhattisgarh 490001

---- Respondents

For Petitioner	:	Mr. Vipin Tiwari, Advocate.
For State	:	Dr. Saurabh Kumar Pande, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****21.09.2021**

1. Aggrieved by the order passed by the Labour Court dated 19.04.2011 in case No. 09/CGIR Act/2008, which has also been affirmed by the Appellate Court i.e. Industrial Court Raipur Vide order dated 10.09.2012 in Civil Appeal No. 21/CGIRAct/A/II/2011, the present writ petition has been filed.

2. Vide the two impugned orders, the Learned Labour Court and also Industrial Court have reached to a conclusion that the claim of the petitioners was not maintainable before the Labour Court under the provisions of the CGIR Act 1960.
3. The brief facts relevant for the adjudication of the present writ petition is that alleging illegal termination, the petitioners have approached the Labour Court u/s 31(3) read with Section 61 of the CGIR Act claiming for a relief of reinstatement with consequential benefits. The Labour Court taking cognizance of the order; issued notice to the respondents and proceeded further and decided the matter. The respondents upon notice entered appearance and opposed the claim application on the ground that firstly the respondent does not fall with the definition of industry under CGIR Act. Secondly, the petitioners herein are not employees of the respondent-Society and there was no employer & employee relationship and that the petitioners were also members of the society and therefore the aforementioned CGIR Act 1960 would not be applicable.
4. The Labour Court proceeded to decide the matter. The petitioners were asked to submit evidence. After the evidences were complete on due appreciation of that evidence led by either side, the Labour Court finally vide its order dated 19.04.2011 Annexure P/4 held that the claim of the petitioners were not tenable before the Labour Court approving the objections raised by the respondent in-respect-of the petitioners' being member of the society and secondly, the respondent-society not falling within the definition of an Industry.

5. The order of the Labour Court was subjected to challenge before the Industrial Court u/s 65 of the said Act of 1960. The Industrial Court also considered the entire contentions that the petitioners have raised in the appeal and further after threadbare consideration of the evidence and the pleadings that were brought before the Labour Court, have rejected the appeal and upheld the order of the Labour Court to the extent of the claim of the petitioners not being maintainable under the provision of the CGIR Act. It is these two orders which have been assailed in the present writ petition.
6. The contention of the petitioners is that the finding of the Labour Court is bad-in-law, erroneous and without proper appreciation of the evidences.
7. According to the petitioners, it's a case where the respondent-society though is a society under the Society Registration Act but it carries out manufacturing process and is also a profit finding establishment and therefore the provisions of the CGIR Act would have automatically applied upon the petitioners.
8. It was further contention of the petitioners that the fact that it is an Industry or an establishment under CGIR Act also stands established from the fact that they are covered under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act 1952. The petitioners also were brought under the purview of the EPF and their provident funds contribution were being deducted and deposited with the Provident Fund establishment and this would also establish the fact that it is an Industry and the finding of the Labour Court to the

extent that it does not fall within the purview of CGIR Act, is erroneous and warrants interference.

9. However, this Court upon scrutinizing the pleadings and the orders passed by the Labour Court clearly finds that the Labour Court in the process of deciding the case vide its order dated 19.04.2011 had specifically dealt with the evidence of the petitioners that has come before the Labour Court. The finding of the Labour Court reflects that the finding is based upon the admission made by the petitioners themselves in the course of their evidences where the workers have (as has been discussed in paragraph 10 of the said order of the Labour Court) admitted the fact that they were never subjected to any recruitment process before they were engaged by the respondent-society.

10. On the contrary, there is an admission of the fact that the petitioners are an associate members of the society by virtue of an annual membership annually fees of Rs. 5/- which enabled them to get work from the respondent-society. There is further an admission recorded by the Labour Court of the petitioners where they have admitted that there was no fixed period of work or working hours under the respondent-society. The petitioners were free to come and work for the period they were interested for and for the period of their choice and they were also paid only to the extent of work discharged by them.

11. It is the further findings of the Labour Court that the workers themselves had admitted that there was no facility of leave for the members and no system under the respondent-society of availing the

facilities of leave etc., and they were free to come to the society for work as and when they wish.

12. These findings of the Labour Court, on due consideration forces this Court to reach to a clear finding that firstly the finding of the Labour Court is a finding of fact, secondly the finding of the Labour Court is a finding based on the evidence that has come on record and thirdly a finding based upon the admission on the part of the petitioners themselves. This evidence of the petitioners is not controverted or reverted by the petitioners in any manner.

13. The Learned Appellate Court also in the course of exercising the appellate power had duly scrutinized the claim of the petitioners and had again threadbare appreciated the pleadings and evidence before the Labour Court and then reached to the conclusion that the finding given by the Labour Court apart from being a finding of fact and a finding based on evidence and hence there was no strong case made out by the petitioners so as to bring them within the definition of “employee” under the provisions of the CGIR Act under 2(13).

14. The definition of an employee under CGIR Act requires an express or implied terms of agreement of employment which from the finding of the Labour Court itself in paragraph-10, the workers have admitted the fact that there was no express or implied terms and conditions of employment. Coupled with the fact that the petitioners have also accepted the fact that there was no procedure for taking leave or availing the benefits of leave. It was left for the petitioners or the members similarly placed to approach the respondent-society for work

as and when they wish and to the extent of work they do, they were paid and for all this, the Industrial Court also affirmed the order of the Labour Court rejected the appeal of the petitioners.

- 15.** The plain perusal of the findings given by the two Courts below gives a clear picture that the findings given by the two Courts below were a finding of fact and also a finding based upon the evidences on record.
- 16.** Today, when the matter is taken up for hearing, the counsel for the petitioners has been raising only those very grounds that was raised before the Labour Court and before the Industrial Court. There was no strong new grounds or material made out to show that there is any error of jurisdiction on the part of the two Courts below and secondly there being any perversity in the finding of the two Courts below or the finding of the two Courts below being contrary to the pleadings and evidences on record.
- 17.** In the absence of the aforesaid materials, this Court in exercise of writ jurisdiction under Article 226 would not sit over of the finding of the two Courts below as a second Appellate Court and again threadbare appreciate evidence pleadings before the Labour Court and reach to another conclusion which otherwise is impermissible under the writ jurisdiction. It is settled position of law that in exercise of writ jurisdiction while considering the awards passed by the Labour Court and the Industrial Court and Industrial Tribunal, the only scope of interference permissible for the Writ Court is, in the event of the finding being perverse, in the event of the order being without jurisdiction or in excess

of jurisdiction or the finding being totally contrary to the pleadings which in the instant case was not the ground of challenge.

18. Thus, this Court does not find any strong case made out by the petitioner calling for an interference by this Court, the writ petition being devoid of merits, deserves to be and is accordingly dismissed affirming the order passed by the two Courts below.

Sd/-

P. Sam Koshy
Judge

Jyotijha