

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8033 OF 2020

Sayyad Jamil Ahmed s/o. Maqbool Ahmed .. Petitioner
Age. 39 years, Occ. Service,
R/o. Plot No.283, Al-Hilal Colony,
Aurangabad.

Versus

The Joint Director .. Respondent
Higher Education, Aurangabad Division,
Near Deogiri College,
Aurangabad.

Ms.A.N. Ansari, Advocate for the petitioner.
Mr.Y.G. Gujarathi, AGP for respondent/State.

CORAM : N.J.JAMADAR, J.
RESERVED ON : 23.03.2021
PRONOUNCED ON : 04.05.2021

J U D G M E N T :-

01] Rule. Rule made returnable forthwith and, with
the consent of the learned Counsels for the parties,
heard finally at the stage of admission.

02] The challenge in this petition, under Article
227 of the Constitution of India, is to the judgment and

order dated 29th February, 2020, passed by the learned Member, Industrial Court, Aurangabad, in Complaint [ULP] No.2 of 2014, whereby the preliminary issue as to whether the respondent is an "industry" came to be answered in the negative and, resultantly, the complaint filed by the petitioner/complainant came to be dismissed.

03] The background facts can be stated in brief as under :-

a] On 30th September, 2011, the complainant was appointed as a driver to drive the official vehicle of the respondent, initially for a period of eleven months on fixed salary of Rs.6000/- per month. The appointment was renewed by a further term of eleven months by order dated 1st September, 2012. It was followed by another order dated 2nd August, 2013 for an identical term and fixed salary.

b] The complainant thus approached the Industrial

Court alleging unfair labour practices as described in
Items 5,6 and 9 of Schedule IV of the Maharashtra
Recognition of Trade Unions & Prevention of Unfair Labour
Practices Act, 1971 [the Act, 1971] with the assertions
that there was a vacant sanctioned post of driver on the
establishment of the respondent. The complainant was
appointed as a driver after subjecting him to driving
test and interview. The work of the driver was of
permanent nature. The complainant worked for more than
240 days continuously with the respondent in each of the
years from his initial appointment. Yet, in order to
deprive the complainant of the status and privileges of a
permanent employee, the respondent continuously kept the
complainant a temporary employee by issuing appointment
orders for 11 months only. The respondent controls and
supervises the higher education in Aurangabad region.
The activities of the respondent fall within the ambit of
section 2[j] of the Industrial Disputes Act, 1947 and,
thus, the respondent is an industry.

c] By judgment and order dated 1st August, 2018, the learned Member, Industrial Court allowed the complaint; declared that the respondent committed unfair labour practices under Items 5,6 and 9 of Schedule IV of the Act, 1971 and directed the respondent to give permanency benefits to the complainant from the date of filing of complaint.

d] The respondent challenged the said order before this court in Writ Petition No.2066 of 2019. By judgment and order dated 19th September, 2019, this Court partly allowed the petition, and the order passed by the Industrial Court dated 1st August, 2018 was quashed and set aside and the Complaint [ULP] No.2 of 2014 was restored to the file of the Industrial Court. It was inter alia directed that the Industrial Court shall frame and try the issue as to whether the complainant proves that the respondent is an industry under section 2[j] of the Industrial Disputes Act, 1947.

e] Post remand, the learned Member, Industrial Court, in conformity with the order of this Court framed and tried the preliminary issue as to whether the respondent is an industry. The learned Member, Industrial Court was persuaded to enter a finding that the complainant failed to prove that the respondent is an industry and he is a workman within the meaning of section 2[s] of the Industrial Disputes Act, 1947 and employee under section 3[s] of the Act, 1971. In the process the learned Member observed that though the respondent regulates and governs the educational institutions, yet, the said authority is exercised in discharge of regal and sovereign functions of the State. Placing reliance on the judgments of the Supreme Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Ors., AIR 1978 SC 548 and State of Bombay Vs. Hospital Mazdoor Sabha, AIR 1960 SC 610, the Industrial Court negatived the claim of the complainant/petitioner that the respondent was an industry.

f] Being aggrieved by and dissatisfied with the aforesaid decision on the preliminary issue, the complainant/petitioner has invoked the writ jurisdiction of this Court.

04] I have heard Ms. A.N. Ansari, learned Counsel for the petitioner and Mr.Y.G. Gujarathi, learned Counsel for the respondent at some length. With the assistance of learned Counsels for the parties, I have also perused the material on record.

05] Mrs.Ansari, learned Counsel for the petitioner strenuously urged that the Industrial Court committed a grave error in returning a finding that the respondent is not an industry. Amplifying the submission Ms.Ansari would urge that the learned Member, Industrial Court totally misconstrued the legal connotation of the term "industry". The learned Member, according to Ms. Ansari, misapplied the ratio of the judgment of the Supreme Court

in the case of Bangalore Water Supply [Supra]. By a catena of decisions, it has been held that the educational institutions and universities clearly fall within the ambit of the definition of industry under section 2[j] of the Industrial Disputes Act, 1947. By a superficial reading of the judgments of the Supreme Court in the cases of Bangalore Water Supply [Supra] and Hospital Mazdoor Sabha [Supra], the learned Member came to an incorrect conclusion, urged Ms. Ansari.

06] In order to lend support to the aforesaid submissions, Ms. Ansari placed reliance on the observations in the case of Bangalore Water Supply [Supra] and a judgment of this Court in the case of Mumbai Vidyapeeth Kamgar Sanghatana Vs. University of Mumbai, 2019 SCC OnLine Bom 801 and a Full Bench judgment of Gujarat High Court in the case of Gujarat Forest Producers, Gatherers & Forest Workers Union Ahmedabad Vs. State of Gujarat & Ors., 2004[2] Guj.L.R.1488.

07] Per contra, Mr. Gujarathi, learned AGP stoutly supported the impugned judgment. It was submitted that having regard to the nature of the activities performed and functions discharged by the respondent, by no stretch of imagination, it can be said that the office of the respondent would fall within the ambit of the definition of industry. The respondent discharges supervisory functions, which are sovereign and regal in nature.

08] To bolster up these submissions, Mr. Gujarathi placed reliance on the judgment of the Supreme Court in the case of Secretary, State of Karnataka Vs. Umadevi & Ors., [2006] 4 SCC 1 and of this Court in the cases of Mukhyadhikari Nagar Parishad, Tuljapur Vs. Vishal Vijay Amrutrao & Ors., 2015[5] Mh.L.J.75 and Municipal Council, Trirora and Anr. Vs. Tulshidas Baliram Bindhade, 2016[6] Mh.L.J.867.

09] The learned Member, Industrial Court determined the question as to whether the respondent falls within

the definition of industry, on the touchstone of the principles enunciated in the case of Bangalore Water Supply [supra], particularly, in para 140 thereof. Para 140 reads as under :-

"140. 'Industry', as defined in Section 2[j] and explained in Bajerji [supra] has a wide import.

[a] Where [I] systematic activity, [ii] organized by co-operation between employer and employee [the direct and substantial element is chimerical] [iii] for the production and/or distribution of goods and services calculated to satisfy human wants and wishes [not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale *prasad* or food], *prima facie*, there is an 'industry' in that enterprise.

[b] Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

[c] The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

[d] If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking."

10] The learned Member also adverted to the pronouncement of the Supreme Court in the case of Hospital Majdoor Sabha [Supra], wherein the question 'as to whether the State carrying on an undertaking of running a group of hospitals for the purpose of giving medical relief to the citizens and imparting medical education would fall within the definition of industry?', arose for consideration. The observations of the Supreme

Court in para Nos.16 and 17 are material and hence extracted below :-

"16. In considering the question as to whether the group of Hospitals run by the appellant undoubtedly for the purpose of giving medical relief to the citizens and for helping to impart medical education are an undertaking or not, it would be pertinent to enquire whether an activity of a like nature would be an undertaking if it is carried on by a private citizen or a group of private citizens. There is no doubt that if a hospital is run by private citizens for profit it would be an undertaking very much like the trade or business in their conventional sense. We have already stated that the presence of profit motive is not essential for bringing an undertaking within S.2[j]. If that be so, if a private citizen runs a hospital without charging any fees from the patients treated in it, it would nevertheless be an undertaking under S.2[j]. Thus the character of the activity involved in running a hospital brings the institution of the hospital within S.2[j]. Does it make a difference that the hospital is run by the Government in the interpretation of the word "undertaking" in S.2[j]? In our opinion, the answer to this question must be in the negative. It is the character of the activity which decides the question as to whether the activity in question attracts the provisions of S.2[j], who conducts the activity and whether it is conducted for profit or not do not make a material difference.

17. We have yet to decide which are the attributes the presence of which makes an activity an undertaking within S.2[j], on the ground that it is analogous to trade or business. It is difficult to state these possible attributes definitely or exhaustively; as a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organised or arranged in a manner in which trade or business is generally organised or arranged. It must be casual nor must it be for ourself nor for the pleasure. Thus the manner in which the activity in question is organised or arranged, the condition of the co-operation between employer and the employee necessary for its success and its object to render material

service to the community can be regarded as some of the features which are distinctive of activities to which S.2[j] applies. Judged by this test there would be no difficulty in holding that the State is carrying on an undertaking when it runs the group of Hospitals in question."

11] In the aforesaid case, the Supreme Court expounded two tests; one, whether an activity of a like nature would be an undertaking if it is carried on by a private citizen or a group of private citizens. Two, it is the character of the activity which decides the question as to whether the activity in question attracts the provisions of section 2[j], who conduct the activity and whether it is conducted for profit or not, do not make a material difference. It was thus concluded that the manner in which the activity in question is organized or arranged, the condition of co-operation between the employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which section 2[j] applies. Applying these tests, it was held that the State is carrying an undertaking when it runs a group of

hospitals.

12] In the backdrop of the aforesaid exposition of legal position, reverting to the facts of the case, it is imperative to note the character of the activities carried on, and the nature of functions discharged, by the respondent. Mr.Digamber Gaikwad [DW-1] affirmed that the respondent is not a commercial establishment and it implements the grants in aid scheme to the aided non-government colleges within its jurisdiction. In the cross-examination of Digambar Gaikwad [DW-1] on behalf of the petitioner, it was elicited that office of the respondent supervises the business of college. It does not have any source of income. The activities like appointment, payment, approval etc. are systematically run by his office. He went on to concede that one sanctioned post of driver was vacant and the complainant/petitioner was appointed on contract basis.

13] If the aforesaid nature of the activity carried

on by the respondent is considered, on the anvil of the parameters, to judge the character of the activity, it becomes evident that the element of co-operation between the employer and the employee, the direct and substantial element being commercial, is conspicuous by its absence. The systematic activity in the matter of appointment, approval and payment of grant-in-aid to the institutions is in exercise of supervisory and regulatory functions. This supervisory activity is not for the purpose of rendering services calculated to satisfy wants and wishes, though the institutions, which are provided the administrative support and grant-in-aid, may be rendering such services.

14] Ms. Ansari, learned Counsel for the petitioner would urge that the universities and educational institutions have been held to fall within the ambit of 'industry'. Reliance was placed on the judgment of a learned Single Judge in the case of Mumbai Vidyapith [Supra], wherein the university was held to fall within

the ambit of definition of industry. The submission, in my considered view, loses sight of the fact that the institutions imparting education and the department of the State supervising and regulating the management of the educational institutions stand on different footing. There is a qualitative difference between the activities of the educational institutions and the administrative apparatus, which ensures that the educational institutions are run in conformity with the governing rules and regulations. The later is in exercise of purely governmental function of the State.

15] In the circumstances of the case, on the basis of the character of the activity, performed by the respondent, the learned Member, Industrial Court does not seem to have committed any error in returning the finding that the respondent is not an industry. The element of public employment is clearly involved. The fact that the petitioner was appointed on contract basis and continued as such, thus, does not cloth him with the status of

“workman” under section 2[s] of the Industrial Disputes Act, 1947 and “employee” under section 3[5] of the Act, 1971, qua the respondent.

16] Resultantly, no interference is warranted in the impugned judgment and order passed by the Industrial Court. The petition, therefore, deserves to be dismissed.

17] Hence, the following order :-

O R D E R

The petition stands dismissed.

Rule discharged.

No costs.

[N . J . JAMADAR , J .]