



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD) .No.4432 of 2014

and

M.P (MD)No.1 of 2014

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The Executive Officer,
Arulmigu Swami Nellaiyappar
Gandhimathi Amman Temple
Tirunelveli Town,
Tirunelveli District-627 006 ...Petitioner

.Vs.

- 1.The Presiding Officer,
Labour Court,
District Court Complex,
Palayamkottai,
Tirunelveli District.
- 2.The Commissioner,
Hindu Religious & Charitable Endowments Department,
Chennai-600 034.
- 3.The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
Tirunelveli-2.
- 4.Mr.S.Ramasami Iyyer ...Respondents

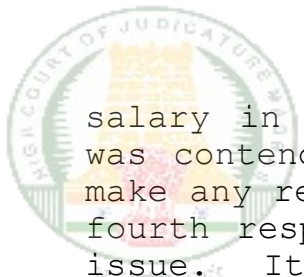
Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, to call for the records pertaining to the impugned order in C.P.No.05/2012 dated 07.09.2012 on the file of the respondent No.1 and quash the same as illegal.

For Petitioner :Mr.G.Karthick
For R2 to R4 :No appearance

ORDER

This Writ Petition is filed by the Executive Officer of Arulmigu Swami Nellaiyappar Gandhimathi Amman Temple, Tirunelveli Taluk, challenging the order of the Labour Court in C.P.No.05/2012 dated 07.09.2012.

2.The fourth respondent in the writ petition was engaged as Madappalli Worker in the Temple and the nature of work assigned to him was to prepare temple Prasatham and other products. The fourth respondent approached the Labour Court alleging that he was not paid



salary in accordance with the G.O.Ms.No.401, dated 04.09.1998. It was contended by the petitioner that the fourth respondent did not make any request to him for arrears or enhancement of salary and the fourth respondent approached the Labour Court, without raising any issue. It is the specific case of the petitioner that the temple does not come under the purview of the Industrial Disputes Act, 1947 and that therefore, the petition filed by the fourth respondent before the Labour Court is not maintainable against the petitioner. The Labour Court, by the impugned order, awarded a sum of Rs.1,31,445/- with interest at the rate of 7.5% with effect from 02.01.2012. Aggrieved over the same, the above writ petition is filed.

3.The learned counsel appearing for the petitioner raised a preliminary objection as to the maintainability of the petition before the Labour Court on the ground that the second respondent, who is an employee of the Temple vested with HR&CE cannot be brought under the definition of worker under the Industrial Disputes Act. The learned counsel did not make any submission with regard to any other irregularities in the order of the first respondent. The learned counsel for the petitioner reiterated the preliminary objection raised as regards the maintainability of the petition filed before the Labour Court.

4.The issue whether employees of Temple are entitled to gratuity under Payment of Gratuity Act is particularly with reference to the Temples administered by HR&CE, has been considered in several decided cases. The learned counsel for the petitioner relied on the Full Bench of this Court, in the case of ***E.GOPAL -vs- ARULMIGU DHANDAYUTHAPANI SWAMY TEMPLE, PALANI AND OTHERS***, reported in ***2013(3) CTC 689***, wherein it is held that the Temple/Religious Institution would normally fall within the definition of "establishment" and that the employees working in religious institution are entitled to avail benefits of Gratuity Act. The Hon'ble Full Bench of this Court considered the question whether a Religious Institution/Temple will come within the purview of Section 1(3) of the Payment of Gratuity Act, in the light of the law laid down by the Hon'ble Supreme Court in ***State of Punjab -vs- Labour Court, Jullundur, 1981(1) LLJ 354***.

5.The Full Bench of this Court, considering the specific plea that was raised by the petitioner in the present case, held as follows:

"16. Before going through the aforesaid order of the Division Bench, it would be profitable to note the order of the learned single Judge, which gave rise to the aforesaid Division Bench decision.

The matter related to payment of gratuity to the retired employees of the Arulmigu Subramaniaswamy Devasthanam, Tiruchendur, under the Payment of the



Gratuity Act. The main contention of the employees before the learned single Judge was that at the time of retirement, the employees are paid only the provident fund but not pension and the Devasthanam comes under the purview of the Payment of Gratuity Act and as per Section 2-J of the Industrial Disputes Act, the Devasthanam has to be treated as an industry. The stand of the Management was that the employees are entitled to provident fund and not either pension or gratuity and that the management does not come under the category of 'industry' nor fall under the ambit of Section 1(3) of the Payment of Gratuity Act.

In the absence of furnishing of already decided cases toward their stand point by either of the counsel, the Court proceeded to pass orders on the facts pleaded by parties and the circumstances encircling the case.

17. While dealing with the applicability of Section 1(3) of the Payment of Gratuity Act, the learned single Judge observed as follows:-

'12. Coming to the applicability of Section 1(3) of the Payment of Gratuity Act, 1972 to the employees of the respondent Devasthanam, excepting to denote under Section 1(3)(b) to the effect of having ten or more persons employed in relation to the Shops and Establishment Act, nothing else is found for being applicable to religious institutions like the respondent Devasthanam. The other establishments indicated therein are either commercial or industrial establishments and not a religious institution such as the respondent institution such as the respondent Devasthanam. Therefore, it is safe to conclude that for the respondent Devasthanam, Section 1(3) of the Payment of Gratuity does not apply at all, needless to mention that the members of the petitioner Sangam are not entitled to claim gratuity as they have claimed in the above writ petition.'

18. When the matter was taken in appeal, the Division Bench by a short judgment dismissed the writ appeal by observing as follows:-

'2. This writ appeal is directed against the order of the learned Single Judge rejecting the contention of applicability of Payment of Gratuity Act, 1972 (in short 'the Act') to the religious institution / respondent herein. The fact that the respondent is a religious institution is not disputed. If that be so, Section 1(3) of the Act read with Shops and Establishments Act, makes it clear that Section 1(3) of the Act does not apply to the respondent. That apart



even on 17.10.98, the appellant / sangam had made an application to the Joint Commissioner / Executive Officer of the respondent endowment for payment of gratuity and even though, the plea was rejected on the ground of inapplicability of the provisions of the Payment of Gratuity Act, 1972, the order had become final, as it remains unchallenged. For the above reasons, the writ appeal is dismissed.'

19. A reading of the aforesaid decisions rendered by the learned single Judge and confirmed by the Division Bench would show that neither the decision of the Apex Court or the other High Courts or this Court had been relied on / referred to in order to arrive at a conclusion that a religious institution does not come under the purview of the Payment of Gratuity Act, 1972. The learned single Judge merely on the basis of facts encircling the case proceeded to observe that Section 1 (3) of the Act is not applicable to religious institutions. Neither the learned single Judge nor the Division Bench had the benefit of going through the decisions of the Honourable Supreme Court rendered in the context of applicability of the term 'establishment'.

20. The Honourable Supreme Court in *State of Punjab v. Labour Court, Jullundur*, 1980(1)SCC 4 : 1981 (1) LLJ 354 (cited supra) had given a wider meaning to the expression 'law' in Section 1(3) (b) of the Payment of Gratuity Act by stating that it can apply to every establishment within the meaning of any law for the time being in force in relation to an establishment in a State and it was not necessary that the law should be one relating to shops and establishment alone. In other words, it was laid down that Section 1(3)(b) can even apply to non-commercial establishments."

The above judgment does not lend any support to the petitioner or has relevance in this case.

6. The High Court of Calcutta in its judgment **dated 22.09.2003 in W.P.No.16959 of 2002** in the case of **NATHJI BHANDAR AND ORS. -VS- STATE OF WEST BENGAL AND ORS.**, reported in **108CWN(8)** has held as follows:

"7. According to me, by virtue of Hindu Law if one temple is declared as public temple by the Court it will not take away the right of the livelihood of a person attached to such temple. Moreover, Section 2(i) is very particular in this respect. It does not speak for a moment that as because one establishment by virtue of definition declared as temple ipso facto it will take away right of the workmen attached to it. The meaning of



the temple is not relevant for the purpose of the Industrial Disputes Act, 1947. The meaning of the nature of the works attached to such temple is relevant for the purpose of due consideration. At the time of hearing of the matter by the Learned Judge of any Industrial Tribunal of Labour Court it is open to consider whether any workman whose grievance is to be adjudicated attached merely with the spiritual or religious activities of such temple or not. If such service is not attached to the spiritual or religious activities the right of such other persons cannot be ignored from due consideration by the Court or Tribunal as an industrial dispute. The meaning of industry is very clear to the extent. It says about the systematic activities by co-operation between the employer and workmen which is available in a temple. It relates to production, supply or distribution of goods or services with a view to satisfying human wants to wishes meaning thereby the scope of such work is limited to the aforesaid extent. Only the wants and wishes which are merely spiritual or religious is eliminated. Therefore, if one is attached directly to the idol for the purpose of conduct of religious rites as produced or working as mediator between a God and worshippers and the people directly concerned with such persons cannot be said to be the workmen but not other persons who are not directly involved. In such type of activities unless and until excluded by any operation of law. In the present case, the specific Act and Rules do not say that Sri Nathji Bhandar of Calcutta is a temple as per Section 2(viii) of the Act. The persons concerned are not directly involved with such type of religious and spiritual activities of the idol situate at Sri Nathji Temple at Nathdwara District, Udaipur, Rajasthan. Hence, my considered view is that Sri Nathji Bhandar, Calcutta cannot be held to be a temple for the sake of Industrial Disputes Act, 1947. Therefore, as a consequential effect the meaning of industry as Section (j) or the Industrial Disputes Act, 1947 squarely applies in this case."

7.The Division Bench of THE High Court of Himachal Pradesh, in the case of **JAGBIR SINGH AND ORS., -VS- STATE OF H.P. AND ORS.**, reported in **2000(1)SCT 30(HP)**, had an occasion to deal with a similar issue, whether a religious Trust included in the schedule to the Religious Institutions and Charitable Endowments Act, 1984 is an industry and the employees are its workman who will be governed by the provisions of Industrial Disputes Act. Considering the facts that the writ petitioners were engaged in the temple not in relation to "Pooja and Archana", the Division Bench held as follows:

<https://hcservices.ecourts.gov.in/hcservices/>



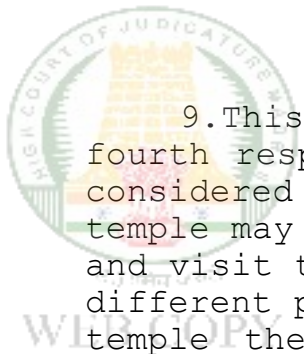
"9. Neither in the writ petitions nor in the rejoinders (except CWP NO.295/98 titled Parashotam Lal and Ors. v. Commissioner-cum-Dy. Commissioner, Baba Balak Nath Temple Trust and Ors. Wherein as per the petitioners they were engaged in construction wing) the petitioners have mentioned that in which wing/department/Section of the Trust they were engaged and also the nature of work being performed by them during the course of their engagement on daily wage. But in the facts and circumstances stated in the replies-affidavits of the Trust we have no hesitation to hold, by applying the tests laid down in para 140 of Bangalore Water Supply (supra) that the Trust is an 'industry' being undertaking, which is engaged in (I) systematic activity, (ii) organised by Co-operation between employer and its employees (iii) for the production and /or distribution of goods and services calculated to satisfy human wants and wishes of devotees and pilgrims visiting the temple of the Trust by carrying on activities of construction, development and maintenance of the buildings and properties of the Trust including that of the Temple and the 'Thedas' where the offerings are made, running of langar for the devotees and pilgrims, the running of canteen, maintenance of mini museum, library, school, colleges etc., as stated in the reply-affidavit of the Trust. It is of no consequence that langar is being run free of any charge and canteen is being run on no profit no loss basis as absence of profit motives of gainful objectives in the activities of the undertaking is irrelevant. The true focus is functional and decisive test is nature of the activity with the special emphasis on the employer-employee relations having semblance to trade or business, which test is satisfied by the facts brought on record by the Trust to hold it 'Industry' as defined in Section 2(j) of the Act."

8. The scope of Section 2(j) of Industrial Disputes Act, was considered by a Seven Members Bench of Hon'ble Supreme Court in the case of **Bangalore Water Supply and Sewerage Board -vs- A.Rajappa and ors.**, reported in **AIR 1978 SC 969**. The following view expressed by Hon'ble Justice Y.V.Chandrachud, of Supreme Court in para 175 of the judgment throws some light and hence extracted below:

"175. That leads to the consideration whether charitable enterprises can at all be industries. Viewing the problem from the angle from which one must, according to me, view the State's inalienable functions, it seems to me to follow logically that a systematic activity which is organised or arranged in a manner in



which trade or business is generally organised or arranged would be an industry despite the fact that it proceeds from charitable motives. It is the nature of the activity that one has to consider and it is upon the application of that test that the State's inalienable functions fall within the definition of 'industry'. The very same principle must yield the result that just as the consideration as to who conducts an activity is irrelevant for determining whether the activity is an industry, so is the fact that the activity is charitable in nature or is undertaken with a charitable motive. The status or capacity, corporate or constitutional, of the employer would have, if at all, closer nexus, than his motive, with the question whether the activity is an industry. And yet that circumstance, according to me, cannot affect the decision of the question. The motive which propels an activity is yet another step removed and, *ex hypothesi*, can have no relevance on the question as to what is the nature of the activity. It is never true to say that the nature of an activity is charitable. The subjective motive force of an activity can be charity but for the purpose of deciding whether an activity is an industry, one has to look at the process involved in the activity, objectively. The argument that he who does charity is not doing trade or business is normally organised or arranged. If so, the activity would be an industry no matter whether the employer is actuated by charitable motives in undertaking it. The jural foundation of any attempt to except charitable enterprises from the scope of the definition can only be that such enterprises are not undertaken for profit. But then that, clearly, is to introduce the profit-concept by a side wind, a concept which, I suppose, has been rejected consistently over the years. If any principle can be said to be settled law in this vexed field it is this : the twin consideration of profit motive and capital investment is irrelevant for determining whether an activity is an industry. Therefore, activities which are dominated by charitable motives, either in the sense that they involve the rendering of free or near-free services or in the sense that the profits which they yield are diverted to charitable purposes, are not beyond the pale of the definition in Section 2(j). It is as much beside the point to inquire who is the employer as it is to inquire why is the activity undertaken and what the employer does with his profits, if any."



9.This Court is of the view that the question whether the fourth respondent fits into the definition of 'worker' should be considered with reference to the nature of his engagement. The temple may be a religious institution where several worshippers come and visit the temple on daily basis. Several persons are engaged for different purposes within the temple or outside the temple. In every temple there are two kinds of employees engaged in relation to religious or non-religious activities of the temple. This Court is fully convinced that the temple is an establishment that comes under the purview of the Industrial Disputes Act, insofar as employees engaged in relation to the non religious activities of the temple. Separate rules are framed for employees of temples under the control of HR&CE in relation to non religious activities. It is stated in the claim petition that the temple prasadam are sold in separate shops. The Hon'ble Supreme Court has also held in the case above referred to that industry does not include spiritual or religious services, but inclusive of material things or services geared to celestial bliss. It is stated that in madapalli varieties of eatables are prepared for selling them to devotees to make a little profit. Hence, this Court is unable to agree with the submission of the learned counsel for the petitioner and the writ petition is liable to be dismissed since no other issue on merits is raised. This Court is convinced that the dispute raised against the temple in question, is maintainable at the instance of the fourth respondent, who was engaged in Madappali. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.From the records, it is seen that at the time of admitting the writ petition, this Court granted an order of interim stay subject to a condition that the petitioner/Management herein pays a sum of Rs.1,31,445/- to the fourth respondent herein within a period of two weeks.

11.It is now submitted by the learned counsel for the petitioner that the amount as per the interim order of this Court had been deposited and the fourth respondent has received the amount and acknowledged that no other amount is due. However, the learned counsel for the petitioner has not produced any records to show that the fourth respondent has received the amount in full satisfaction of his claim. The submission of the learned counsel for the petitioner to delete the interest portion in the award of the first respondent cannot be accepted. However, this Court is in favour of reasonable interest being paid to the fourth respondent. The Labour Court has awarded interest at the rate of 7.5% per annum. However, this Court is of the view that 4.5% will be a reasonable interest.

12.Accordingly, the Writ Petition is partly allowed. The award of the Labour Court in C.P.No.05 of 2012 dated 07.09.2012 is confirmed except the interest portion, which is reduced to 4.5% per annum. The petitioner is liable to pay interest at 4.5% per annum.



instead of 7.5% as awarded by the Labour Court. With the slight modification with regard to interest, the award of the Labour Court is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Presiding Officer,
Labour Court,
District Court Complex,
Palayamkottai,
Tirunelveli District.
- 2.The Commissioner,
Hindu Religious & Charitable Endowments Department,
Chennai-600 034.
- 3.The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
Tirunelveli-2.

+1 CC to M/s.T.LAJAPATHY ROY, Advocate (SR-30419[F]
dated 28/09/2021)

W.P.(MD).No.4432 of 2014

and

M.P(MD)No.1 of 2014

23.09.2021

SRK(CO)

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