

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Reserved on: 21.11.2022

Pronounced on: 23.12.2022

+ **W.P.(C) 6880/2010**

NATIONAL BOOK TRUST OF INDIA Petitioner

Through: Mr. Vikrant Narula, Ms. Priti
Datta, Mr. Rohit Vats and
Mr. Rohit Yadav, Advocates.

versus

DAYA CHAND Respondents

Through: Mr. Binod Kumar Singh,
Advocate.

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present Writ Petition emanates from the Award dated 05.05.2010 (“**Impugned Award**”) passed by the Court of Sh. T.S Kashyap, Presiding Officer, Labor Court- XIX, Karkardooma Courts: Delhi in LIR No. 472/08 (Old No. ID- 150/03) titled as *Sh. Daya Chand v. M/s National Book Trust of India*. Vide the Impugned Award, the learned Labour Court held that the Petitioner/Trust is an Industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 (“**I.D Act**”). Further, it also held that the termination of the services of the Respondent/Workman by the Petitioner/Trust is illegal and accordingly the Respondent/Workman is entitled to reinstatement in service with 50% backwages, continuity in service and consequential benefits. The

W.P.(C) 6880/2010

Page 1 of 29

Petitioner *vide* the present petition *is inter alia* praying to set aside the Impugned Award.

FACTS GERMANE FOR THE ADJUDICATION OF THE PRESENT WRIT PETITION ARE AS FOLLOWS:

2. It is the case of the Respondent/Workman that he was employed by the Petitioner/Management sometime during 1990-1992 and since March 1995, he continued to work as Chaprasi (Peon) with the Petitioner/Trust on daily wages without any complaint and was paid wages @ Rs. 119.20 per day. He claims that Sh. Tara Chandra, Sh. Anup Singh and Sh. Omveer Singh were also employed on daily wages subsequent to the employment of the Respondent/Sh. Daya Chand.
3. It is also his claim that on 13.10.2000, he made a demand to the Petitioner/Trust for regularization of his services and the Petitioner/director of the management had assured his regularization from February 2001. *Howbeit*, the Petitioner/Trust adopted a discriminatory attitude with the Respondent/Workman and regularized the services of the above three workmen who were junior to him, ignoring his claim.
4. It is further his case that on 26.11.2001, his services were illegally terminated. Further at the time of dismissal, neither any notice nor any enquiry was held by the Petitioner/Trust. Further, he also claims that the Respondent/Workman *vide* letters dated 28.11.2001 and 07.12.2001 had requested the Petitioner/Trust to regularize and to take him back to the services. However, there was no reply to those letters and subsequently, he again sent a demand notice dated 25.01.2002

through registered post to the Petitioner but there was no reply to the same.

5. The Secretary (Labour), Government of NCT of Delhi in exercise of the powers conferred by Section 10(1)(c) and 12 (5) of the I.D Act, read with Government of India, Ministry of Labour Notification dated 14.04.1975, referred the present dispute to the learned Labour Court for adjudication with the following terms of reference:

“Whether the services of Sh. Daya Chand S/o Sh. Bhojraj, C/o Sh. Jaswant Singh, H.No..431, Gali No.4, Amar Colony. East Gokulpuri, Delhi-94 have been terminated illegally and/or unjustifiably by the management and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/Government Notification and to what other relief is he entitled and what directions are necessary In this respect?”

6. Subsequently, on 18.02.2006 the learned Labour Court received the present case on transfer in pursuance to the order dated 03.01.2006 passed by this Court.
7. On service of notice of reference, the Respondent/Workman filed Statement of claims dated 23.05.2003 praying for a direction to the management to reinstate the Respondent/Workman back in service with continuity of service, back wages and consequential benefits.
8. Subsequently, the Petitioner/Trust contested the claim by filing written-statement taking preliminary objections that the claim was not maintainable as the Respondent/Workman was a daily wager and had not completed mandatory period of 240 days in current year. It was further the objection of the Petitioner/Trust that no right ever accrued

in his favour for regularization and the Respondent had never worked as Chaprasi during the period 1990-1992.

9. The Respondent also filed rejoinder and on pleadings of the parties, the learned Labour Court framed the issues on 16.12.2003 as under:

*“1. Whether the service of the workman Dayachand have been terminated illegally/unjustifiably by the management? OPW.
2. Relief as per reference.”*

10. In support of the claim, the Respondent/Workman examined himself as WW1 and tendered his affidavit as Ex. WW1/A relying on the documents Ex. WW1/1 to Ex. WW1/4. Whereas, the Petitioner/Trust examined, Sh. Raghunandan Prasad, MW1 tendered his affidavit as Ex. MW1/A and relied on documents Ex. MW1/1 to Ex. MW1/3, Sh. Anil Kumar MW2 tendered his affidavit as Ex. MW2/A who relied on documents Ex. MW1/1 to Ex. MW1/3, Sh. Dinesh Sharma MW3 who tendered his affidavit Ex. MW3/A and relied on documents Ex. MW3/1 to Ex. MW3/2, Sh. Surender Kumar MW4 who tendered his affidavit Ex. MW4/A.

11. Further, the Petitioner/Trust also preferred an application under Order VI Rule 17 CPC dated 05.05.2008 which was dismissed by the learned Labour Court *vide* its order dated 31.10.2004 as the Petitioner wanted to incorporate a legal objection by way of amendment. Accordingly, the learned Labour Court framed another issue:

“Whether the management Is an industry as defined u/s. 2(j) of the Industrial Disputes Act, 1947”

12. Learned Labour Court *vide* the Impugned Award held that the Petitioner/Trust is an ‘Industry’ within the meaning of Section 2(j) of the I.D Act. Further, it also held that the termination of the services of
- W.P.(C) 6880/2010*

the Respondent/Workman by the Petitioner/Trust is illegal and in violation of Section 25-F of the I.D Act. Accordingly, the Respondent/Workman is entitled to reinstatement in service with 50% backwages, continuity in service and consequential benefits.

13. Aggrieved by the same, the Petitioner *vide* the present petition *is inter alia* praying to set aside the Impugned Award. Pertinently, this Hon'ble *vide* its order dated 19.10.2010 issued notice to the Respondent/Workman and further stayed the operation of the Impugned Award. Relevant part of the order dated 19.10.2010 is reproduced hereunder:

“W.P. (C) No. 6880/2010

The challenge to the impugned award has been brought, inter alia, on the ground that the learned Tribunal erred in directing the reinstatement of a workman, who is admittedly, a daily wager and further directed that 50% of the back wages, along with interest, be paid to him.

It is contented by the counsel for the petitioner that such a direction, in fact, sanctifies an indirect method of recruitment even though the aforesaid workman did not qualify for direct recruitment.

It is the case of counsel for the petitioner that the impugned decisions runs counter to the decisions of the Supreme Court in the cases of Secretary, State of Karnataka & Ors. vs. Uma Devi & Ors. (2006) 4 SCC 1, Mahboob Deepak vs. Nagar Panchayat, Gajraula & Anr. (2008) 1 SCC 575 and Incharge Officer & Anr. vs. Shankar Shetty 2010 (8) SCALE 583.

It is submitted that, even if it were assumed that the Tribunal had arrived at the correct conclusions on facts, which are disputed, at best, only compensation could have been ordered.

Admit.

CM APPL. No. 13615/2010 in W.P. (C) No. 6880/2010

Issue notice to the respondent returnable on 18th March, 2011.

In the meanwhile, the impugned order shall remain stayed...”

SUBMISSIONS OF THE PETITIONER

- 14.Mr. Vikrant Narula, learned counsel for the Petitioner initiated its argument by submitting that the Petitioner is a Trust registered under the Societies Act and is an autonomous body under the Ministry of Human Resources Development and such does not fall under the definition of ‘Industry’ as provided in Section 2(j) of the I.D Act.
- 15.It was further his contention that the Respondent/Workman does not fall under the definition of ‘workman’ as defined under Section 2(s) of the I.D Act as the Petitioner/Trust does not fall under the definition of ‘Industry’. *Ergo*, there is no ‘Industrial Dispute’ between the parties and as such the provisions of the I.D Act would not be applicable to the present case.
- 16.Learned counsel for the Petitioner submitted that the claim of the Respondent that prior to the termination of the services of the Respondent/Workman, the mandatory provisions under Sections 25-F, 25-G, 25-H, 25-M and 25-N of the I.D. Act, has been violated is incorrect. He submitted that as the Petitioner/Trust do not fall under the category of ‘Industry’ under Section 2(j) of the I.D Act, hence the applicability of the I.D Act does not arise.
- 17.Mr. Narula submitted that the Petitioner/Trust used to engage daily wagers, as per the exigency of work and there was no prescribed procedure. The engagement of daily wager was purely as per the requirements of the Petitioner/Trust and no appointment orders were issued by the Petitioner/Trust to the daily wagers.

18. It is his case that the Sales department Sahibabad upon receipt of order used to send the requirement of daily wagers for the execution of order to the Head Office which is evident from one such requirement slip dated 14.07.1999 (Ex. MW1/1) wherein it was specifically mentioned that the work load for the month of July & August, 1999 is quite heavy in the Sales store, Sahibabad. Hence, to complete the jobs, the services of 4 daily wagers labourers for one month is required and accordingly approval/sanction may be granted for engaging 4 daily wage labourers for one month on government approved rates. After receipt of requirement slip from the Store Department, the Competent Authority used to grant the approval for engagement of the daily wagers as is evident from the approval order dated 17.02.2000 (Ex. MW2/1). The approval for engagement of 4 labourers and 1 sweeper were granted by the competent authority for a period of 59 days i.e., 23.12.1999-19.02.2000. It is pertinent to note that the daily wagers were engaged only if there arose any requirement/immediate need and if the approval for engagement was granted.

19. Learned counsel for the Petitioner/Trust submitted that the services of the Respondent/Workman were occasionally taken on daily wage basis for lifting and packaging of books when the orders in bulk for supply of books were received by the Petitioner/Trust at Sahibabad during the period 1995-2001. It is his submission that in no point of time the days worked by the Respondent/Workman exceeded 240 days in a year, as is also evident from the attendance sheets. He furthered his submissions by submitting that the Respondent was only engaged in the year 1995 and the contention of the Respondent that he was

engaged in the year 1990 and worked till 1992 is without any basis. He also submitted that the claim of the Respondent/Workman that he worked for 240 days in a year is unbelievable as he did not file any document to support his claim.

20.He further submitted that from the perusal of Ex. MW1/2, it is evident that at no point of time the Respondent/Workman was engaged for 240 days or more than 240 days in any financial year. He further submitted that in March 1996 to February 1997, the Respondent/ Sh. Daya Chand was engaged only for a period of 97 days. He then submitted the year wise break up of days for which the Respondent/Workman was engaged.

Year	Days for which engaged
March 1995 to February 1996	220
March 1996 to February 1997	97
March 1997 to February 1998	97
March 1998 to February 1999	146
March 1999 to February 2000	123
March 2000 to February 2001	159
March 2001 to October 2002	162

21.He further submitted that the Respondent from February 2001 to November 2001 has worked only for a total period of 198 days.

Month	Days worked
February	13
March	21
April	16
May	22
June	19
July	21
August	23
September	20
October	19
November	24
Total days	198

He argued that the days mentioned hereinabove are the days where the Respondent was engaged in respective months. It was further submitted that whenever the Respondent was called on holidays and worked after the daily hours due to exigencies of work or on Sundays, the Respondent was paid at the rates applicable at the relevant period.

22. Learned counsel for the Petitioner/Trust pointed out that the Respondent on 12.10.2002 addressed a letter to the Petitioner/Trust requesting for re-engagement as a daily wager, wherein it was specifically admitted by the Respondent that he was working as a daily wager in Sahibabad Store and it was also admitted that in 1997-1998, the then Director again engaged him as a daily wager and after working for 6 months in April, 2000, he was again removed from service.

- 23.He further navigated this Court through the evidence of Sh. Raghunandan Prasad/MW1, who is working as Assistant Director with the Petitioner/Trust and posted at Sahibabad who in his evidence (Ex. MW1/A) has deposed that “...*Daya Chand was being engaged from time to time on the basis of orders received by office for loading unloading of books and packing as a daily wager at Sahibabad Stores. The engagement of Daya Chand was based on the volume of work order available with the trust.*” He further submitted that MW1 in his cross examination has specifically denied the suggestion of the Respondent/Workman joining in Class IV as peon on 01.03.1995.
- 24.He further navigated this Court through the evidence of Sh. Anil Kumar Khanna (MW2) who was working as the superintendent has specifically in his cross-examination has deposed that “*The management used to engage the workman from time to time depending upon the workload. The workload used to fluctuate, depending upon the order received from distributors school etc., from time to time. For engaging a daily wager, the approval sanction was taken from the management. In such a note, the name of any particular daily wages was not mentioned generally.*”
- 25.He further navigated this Court through the evidence of Sh. Dinesh Sharma (MW3) who is working as Accounts Officer in the Finance Department of the Petitioner/Trust, who in his evidence (MW3/A) has deposed that “...*Daya Chand was engaged from time to time by the Trust in between 1995 and 2001 as a daily wager and the payment was made to him at the end of the month during which he had worked with the trust by calculating the number of days worked in a particular*

month multiplied by the wages payable as per rules at the relevant point of time.”

26. He furthered his case by submitting that the Respondent at the time of accepting the engagement was very much aware about his ‘status’ in the Petitioner/Trust. He was also aware of the fact that his engagement is only casual wage/daily wage and was only dependent on requirement/exigencies.
27. Learned counsel for the Petitioner further bolstered his submissions by relying on the judgment of the Hon’ble Supreme Court in the matter *of Mahboob Deepak v. Nagar Panchayat, Gajraula and Anr.* reported as 2008 (1) SCC 575, *State of Punjab & Ors. v. Surender Singh & Anr.* reported as 2007 (12) Scale 602, *M.P. Housing Board & Anr. v. Manoj Shrivastava* reported as 2006 (2) SCC 702, *Secretary State of Karnataka & Ors. v. Uma Devi and Ors.* reported as 2006 (4) SCC 1.’
28. With regard to the three workmen, Sh. Tara Chandra, Sh. Anup Singh and Sh. Omveer Singh, it was submitted by the learned counsel for the Petitioner that the three workmen were working as daily wagers and the witnesses in their cross-examination has admitted the engagement of the three workmen as daily wagers.
29. Lastly, Mr. Narula submitted that the learned Labour Court while granting 50% backwages failed to appreciate that the Respondent/Workman did not submit any affidavit proving that he didn’t work for gain after leaving the work with the Petitioner/Trust. It further submitted that the onus was on the Respondent to prove that during this period he did not work at any other place for gain for a continuous period of 9 years.

SUBMISSIONS OF THE RESPONDENT

30. *Per Contra*, learned counsel for the Respondent initiated his arguments by submitting that the Petitioner/Trust falls under the definition of 'Industry' as per Section 2(j) of the I.D Act. The same has also rightly been observed by the learned Labour Court *vide* the Impugned Award wherein it is clearly held that *"the clause (a, g, h and i) above clearly show that the management was performing commercial activities..."*
31. Mr. Binod Kumar Singh, learned counsel for the respondent while relying on the Impugned Award submitted that this Court under Articles 226/227 of the Constitution of India, cannot sit as an Appellate Court for reappraisal of evidence already appreciated by the learned Labour Court. He supported his contentions by relying on the judgment of the Hon'ble Supreme Court in the matter of ***State Bank of India v. K.S.Vishwanath*** in Civil Appeal No. 3490 of 2022 decided on 20.05.2022.
32. It is further the submission of the learned counsel for the Respondent that the Respondent/Workman was engaged in the year 1990 as a casual worker and he worked till 1992 but was not given any appointment letter. Thereafter the Petitioner/Trust engaged the services of the Respondent in the year 1995 till 26th November, 2001. He further submitted that on 26.11.2001, the services of the Respondent/Workman were terminated illegally without stating any reason and in violation of Section 25-F of the I.D. Act. Learned counsel for the respondent vehemently argued that prior to the termination of the services of Respondent, the mandatory provisions under Sections 25G, 25H, 25M 25N, of the I.D Act were not followed.

He submitted that MW1/Sh. Raghunandan Prasad has also been admitted that no retrenchment compensation was paid to Respondent/Workman, Sh. Daya Chand.

33.It is further his submission that even though the Respondent/Workman was engaged as a casual worker but on 09.02.2001, he was promoted from a daily wager to peon. The same is apparent from the Ex.MW1/2 filed by the Petitioner before the learned Labour Court.

34.Learned counsel for the Respondent submitted that the attendance register, exhibited as Ex.MW1/2 filed by the Petitioner before the learned Labour Court clearly shows that the Respondent/Workman continuously worked for more than 240 days and other holidays, Saturdays and Sundays has not been included and same has also rightly been observed by the learned Labour Court in the Impugned Award. He further also relied on the Management Witness, MW1/Sh. Rahgunandan Prasad, Assistant Director to contend that MW1 has also admitted during his cross examination that **“It is correct that work of mgt. is of permanent nature. It is correct that vide attendance register the workman has been in the employment of the management during the period of April, 2000 to November 2001 continuously”**

It was further his submission that Ex. MW1/2 clearly shows that the Respondent/Workman continuously worked for 245 days from February 2001 to November 2001.

Month	Days (Actually worked)
February 2001	16
March 2001	24

April 2001	29
May 2001	26
June 2001	23
July 2001	23
August 2001	27
September 2001	29
October 2001	23
November 2001	25
Total	245

35. Learned counsel for the Respondent submitted that admittedly, the Petitioner/Trust failed to maintain a seniority list in a particular category which is required under Rule 77 of I.D. Rule (Central) as the Respondent/Workman belongs to “unskilled category” and thereby violated the provisions of Section 25-G of the I.D. Act. It has further been argued by learned counsel for the Respondent that the Petitioner/Trust retained the services of juniors, namely Sh. Omveer, Sh. Tara Chand and Sh. Anoop Singh, and illegally terminated the services of the Respondent/Workman. It has also been submitted that during the cross-examination as well, the witnesses of the Petitioner/Trust adopted an evasive attitude while answering questions related to the above-mentioned workman.

36. Lastly, it is submitted by learned counsel for the Respondent that the I.D Act makes no distinction between permanent employees and temporary employees (whether a probationer, casual, daily wages or ad hoc employee as per Section 2(s) of the I.D Act).

37. Learned counsel for the Respondent further bolstered his submissions by relying on the judgment of the Hon'ble Supreme Court in *S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka* reported as AIR 2003 SC 3553 and *Samishta Dubey v. City Board Etawah*, reported as (1999) 3 SCC 14, .

LEGAL ANALYSIS

38. I have heard the rival arguments of both the parties and perused the documents on record.

39. Before dealing with any other issue, it is expedient to first decide whether the Petitioner/Trust falls under the category of 'Industry' as defined under Section 2 (j) of the I.D Act. Close attention shall be given to the aforesaid provision of the legislation.

"2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

[(j) "industry" means any systematic activity carried on by cooperation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,—

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes—

(a) any activity of the Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948);

(b) any activity relating to the promotion of sales or business or both carried on by an establishment,

but does not include—

- (1) *any agriculture operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.*

Explanation.—For the purposes of this sub-clause, “agricultural operation” does not include any activity carried on in a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951; or

- (2) *hospitals or dispensaries; or*
- (3) *educational, scientific, research or training institutions; or*
- (4) *institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or*
- (5) *khadi or village industries; or*
- (6) *any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or*
- (7) *any domestic service; or*
- (8) *any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individuals or body of individuals in relation to such profession is less than ten; or*
- (9) *any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten;]”*

40.To ascertain whether the Petitioner/Trust is an Industry, it is necessary to go through the objectives mentioned in the Memorandum of Association and Rules (“**MOA & R**”) of the Petitioner/Trust. Relevant part of the MOA & R is reproduced hereunder:

“1. The name of the Society is the "National Book Trust, India" (hereinafter referred to as the "Trust").

W.P.(C) 6880/2010

Page 16 of 29

2. The registered office of the Trust shall be situated for the time being in Delhi in such premises as the Executive Committee may decide from time to time.

3. The objects for which the Trust is established are:

a) to produce and to encourage the production of good literature, and to make such literature available at moderate prices to the public;

b) in furtherance of the above objectives to publish more particularly books of the following types in English, Hindi and other languages recognised in the Constitution of India:

i) the classical literature of India;

ii) outstanding works of Indian authors in Indian languages and their translation from one Indian language to another;

iii) translation of outstanding books from foreign languages;

iv) outstanding books of modern knowledge for popular diffusion;

c) to bring out book lists, arrange exhibitions and seminars and take all necessary steps to make the people book minded;

d) to establish or promote the formation of regional Book Trusts in different parts of the country with objectives similar to those of the Trust;

e) to take over or amalgamate with any other Society, Trust, Institute or Association, having objects wholly or in part similar to the objects of the Trust, and to aid any such existing institution in such manner as the Executive Committee of the Trust may think fit;

f) to acquire by gift, purchase, lease or otherwise any property, movable or immovable, which may be necessary convenient for the purposes of the Trust and to construct, alter and maintain any building or buildings for purposes of the Trust;

g) to draw, make, accept, endorse, discount and negotiate Government of India and other promissory notes, bills of exchange, cheques and other negotiable instruments;

h) to invest the funds of the Trust in such securities or in such manner as may, from time to time be determined by the Executive Committee and, from time to time, to sell or transfer such investments;

i) to sell, transfer, lease, or otherwise dispose of all or any

property of the Trust;

and

j) to do all such things as the Trust may consider necessary, incidental or conducive to the attainment of the above objects."

41. From the perusal of the objectives of the Petitioner/Trust, it is clear that the Trust was involved in activities of production of good literature and to make such literature available at *moderate prices* to the public. Further, one of its objective is to draw, make, accept, endorse, discount and negotiate Government of India and other promissory notes, bills of exchange, cheques and other negotiable instruments, it was also involved in investing the funds of the Trust in securities and further to also sell or transfer those investments, Furthermore, its objective is also to sell, transfer, lease or otherwise dispose of all or any property of the Trust.

42. The Constitution Bench of the Hon'ble Supreme Court in the matter of ***Bangalore Water Supply & Sewerage Board v. A. Rajappa***, reported as ***(1978) 2 SCC 213*** had given tests to determine an organization/institution as an 'Industry' within the meaning of Section 2(j) of the I.D Act:

"140. 'Industry', as defined in Section 2(j) and explained in Banerji, 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 prasada 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.”

II

141. *Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.*

“(a) ‘Undertaking’ must suffer a contextual and associational shrinkage as explained in Banerji and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I, although not trade or business, may still be ‘industry’ provided the nature of the activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold of ‘industry’ undertakings, callings and services, adventures ‘analogous to the carrying on the trade or business’. All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.”

III

142. *Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range off this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.*

“(a) The consequences are (i) professions, (ii) clubs, (iii) educational institutions, (iv) co-operatives, (v) research institutes, (vi) charitable projects, and (vii) other kindred adventures, if they fulfil the triple tests listed in I, cannot be exempted from the scope of Section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt — not other generosity, compassion, developmental passion or project.”

43.The Petitioner/Trust qualifies through the triple test as stated in ***Bangalore Water Supply & Sewerage Board (supra)***. Firstly, the Petitioner is involved in the production of books. There is no doubt that a production unit involves carrying out of a systematic activity. Secondly, the production of books is done with the co-operation between the Trust and the employees involved in the work of production of literature/books. Thirdly, merely because the printing and selling of books is done by a Trust in the name of National Book Trust, does not in any way mean that it can't be done by any private institution. Hence, the activity carried by the Petitioner/Trust qualifies as a business activity/commercial activity.

44.Further, the Hon'ble Apex Court in the matter of ***Workmen v. Indian Standards Institution***, reported as (1975) 2 SCC 847 held that:

“11. To summarise, an activity can be regarded as an ‘industry’ within the meaning of Section 2(j) only if there is relationship of employer and employees and the former is engaged in “business, trade, undertaking, manufacture or calling of employers” and the latter, “in any calling, service, employment, handicraft or industrial occupation or avocation”. Though “undertaking” is a word of large import and it means anything undertaken or any project or enterprise, in the context in which it occurs, it must be read as meaning an undertaking analogous to trade or business. In order that an activity may be regarded as an undertaking analogous to trade or business, it must be “organised or arranged in a manner in which trade or business is generally organised or arranged”. It must not be casual nor must it be for oneself nor for pleasure. And it must rest on cooperation between employer and employees who associate together with a view to production, sale or distribution of material goods or material services. It is entirely irrelevant whether or not there is profit motive or investment of capital in such activity. Even without these two features an activity can be an undertaking analogous to trade or business. It is also immaterial [SCC p. 60, para 31]

“that its objects are charitable or that it does not make profits or even where profits are made, they are not distributed among the members, [Management of F.I.C.C.I. v. Workmen, (1972) 1 SCC 40 : (1972) 2 SCR 353, 376] ”

or that its activity is subsidised by the Government. Again it is not necessary that

“the employer must always be a private individual.... The Act, in terms, contemplates cases of industrial disputes where the Government or a local authority or a public utility service may be the employer.... [Madras Gymkhana Club Employees Union v. Management, (1968) 1 SCR 742, 756] ”

It also makes no difference that the material services rendered by the undertaking are in public interest. The concept of public interest in a modern welfare State, where new social values are fast emerging and old dying out, is indeed so wide and so broad

and comprehensive is its spectrum and range that many activities which admittedly fall within the category of “industry” and clearly designed to subserve public interest. In fact, whenever any industry is carried on by the Government, it would be in public interest, for the Government can act only in public interest. Whether an activity is carried on in public interest or not can, therefore, never be a criterion for determining its character as an industry. Having thus examined the legal concept of industry as expounded in the decisions of this Court, we may now proceed to consider whether the activity of the institution can be characterised as an industry in the light of the broad test discussed by us.”

45. In view of the judgments of the Hon’ble Supreme Court in the matter of ***Bangalore Water Supply & Sewerage Board (supra)*** and ***Indian Standards Institution (supra)*** and also the facts and circumstances of the present case, this Court finds no hesitation in coming to the conclusion that the Petitioner/Trust is an ‘Industry’ within the meaning of Section 2(j) of the I.D. Act in as much it performs functions which are commercial in nature. In other words, production of good literature including making books available at moderate prices was one of the functions of the Petitioner/Trust. Further, the objectives of the Petitioner/Trust mentioned in (s.no. a, g, h, i) under the MOA & R are also commercial in nature. Hence, the submission of the Petitioner/Trust that it is not rendering any services for any material gain is immaterial. On the basis of the nature of activities carried on by it, it cannot be said that the Petitioner/Trust is not an ‘Industry’. *Ergo*, this Court is of the conclusion that the Petitioner is an ‘Industry’ under Section 2(j) of the I.D. Act.

46. Qua the second issue in which the Petitioner/Trust has aggressively pressed upon that the Respondent/Workman has not performed 240

days of continuous service with the Petitioner/Trust in any calendar year to be regularized.

47.Learned counsel for the Petitioner argued that at no point of time the Respondent/Workman was engaged for 240 days or more than 240 days in any financial year. He further argued that the Respondent/Workman from February 2001 to November 2001 has worked only for a total period of 198 days.

48.*Au contraire*, learned counsel for the Respondent argued that the Respondent/Workman was working as a casual labour for some time in 1992-1993 and thereafter he was regularly working since 01.03.1995. Further, from 01.03.1995 he worked with intermittent breaks sometime for a few days and sometime for few months and used to get his remuneration by filling up muster roll forms and then the payment used to be disbursed. He worked there till 26.11.2001. It is in the year 2000-2001, he worked continuously for a period of 240 days as a peon and was paid an amount of Rs.119 per day. He then contended that Ex. MW1/2 (attendance register) clearly shows that the Respondent/Workman continuously worked for 245 days from February 2001 to November 2001. He further also assertively argued that the Trust was working for 5 days a week and the Petitioner/Trust did not include the gazette holidays, Saturdays and Sundays. The Respondent/Workman was entitled for 52 Sundays besides 17 other holidays.

49.This Court had the opportunity to peruse the lower court record wherein the attendance register was exhibited as Ex. MW1/2. Ex.MW1/2 shows that from October 2000 to November 2001 the

workman worked with the Petitioner for 200 days. It is the case of the Respondent/Workman that he is entitled for the benefit of 69 holidays including Sundays. It is a settled law as laid down in ***Workmen v. American Express International Banking Corpn. reported as (1985) 4 SCC 71*** that Sundays and other paid holidays shall form a part of actual working days for purpose of determining ‘continuous service’.

“5. Section 25-F of the Industrial Disputes Act is plainly intended to give relief to retrenched workmen. The qualification for relief under Section 25-F is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in Section 25-B of the Industrial Disputes Act. In the present case, the provision which is of relevance is Section 25-B (2)(a)(ii) which to the extent that it concerns us, provides that a workman who is not in continuous service for a period of one year shall be deemed to be in continuous service for a period of one year if the workman, during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. The expression which we are required to construe is “actually worked under the employer”. This expression, according to us, cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The learned counsel for the Management would urge that only those days which are mentioned in the Explanation to Section 25-B(2) should be taken into account for the purpose of calculating the number of days on which the workmen had actually worked though he had not so worked and no other days. We do not think that we are entitled to so constrain the construction of the expression “actually worked under the employer”. The explanation is only clarificatory, as all explanations are, and cannot be used to

limit the expanse of the main provision. If the expression “actually worked under the employer” is capable of comprehending the days during which the workman was in employment and was paid wages — and we see no impediment to so construe the expression — there is no reason why the expression should be limited by the explanation. To give it any other meaning than what we have done would bring the object of Section 25-F very close to frustration. It is not necessary to give examples of how Section 25-F may be frustrated as they are too obvious to be stated.

50. At this juncture, it is also pertinent to note that the Petitioner/Trust's witness, MW1/Sh. Raghunandan Prasad also explicitly admitted in his cross-examination dated 09.12.2005 that the work of the Petitioner/Trust is of permanent nature and the attendance register shows that the Respondent/Workman had continuously worked for the period from April 2000 to November 2001. Relevant part of the cross-examination of MW1 dated 09.12.2005 is reproduced hereunder:

“MW1 Sh. Raghunandan Prasad, recalled for further cross-examination.

Xxxx by Sh. L.K. Pandey AR for the workman.

Clerk used to mark the attendance of the employees and the concerned clerk used to maintain the attendance record of the employees. Attendance register was kept with the Superintendent. Daya Chand being the daily wager used to sign on the attendance register as and when he used to work. It is correct that no letter was given to the workman to engage him for a short period. It is correct that the work of the mgt. is of permanent nature. It is correct that vide attendance register the workman has been in the employment of the management during the period April 2000 to November 2001 continuously. It is incorrect to suggest that the services of the workman were terminated w.e.f. 26.11.01. The workman was working on casual basis and as there was no sanctioned post of the peon so the services of the workman has to be terminated Sanctioned post

was for all the casual/daily wages employees. There were 3-4 casual workers employed by the mgt. The mgt. sometime used to employee and at the other hand used to remove them as per exigencies of the work. There was no seniority list of such employees as they were employed on casual basis. As the record is not available with me I cannot admit or deny the fact that the casual workers namely Tara Chand, Om vir and Anuj Singh were junior to the workman and their services were regularised. I have not brought the record of the three employees as stated above being not required and the record may be in the head office. It is correct that the workman was not given retrenchment benefits on the alleged date of termination i.e. 26.11.01. I did not receive the demand notice Ex.WW1/4 nor it was placed before me. It is correct that Director of the mgt. has its office at Green Park. And the same is the head office of the mgt. It is correct that address of the mgt. is A-5, Green Park, New Delhi. I do not know whether Ex.WW1/1 to Ex.WW1/3 were given by the workman to the Director of the mgt. I cannot identify the signature of the Director of the mgt. As on date the daily wager are employed on contract basis. Of course, there is work for daily wager in the mgt. as the exigencies arise. The mgt. is not ready to take the workman as casual or regular employee.

It is incorrect to suggest that I am deposing falsely.”

51. In these circumstances, it is crystal clear that the Respondent/Workman has been in continuous service for a period of 240 days immediately preceding the year from the date of termination of his services in terms of Section 25-B (2)(a)(ii) of the I.D Act. The Petitioner/Trust failed to comply with the mandatory provision of Section 25-F of the I.D Act and illegally terminated the services of the Respondent/Sh. Daya Chand. Hence, this Court is of the considered view that there is no perversity or illegality in the impugned Award on this aspect.

52. However, it is trite law that relief of reinstatement with backwages is not be granted mechanically. While granting reinstatement with backwages various factors are required to be considered. The Hon'ble Supreme Court in the matter of *M.P. Admn. v. Tribhuban*, reported as (2007) 9 SCC 748, had an occasion to examine the said legal principle. While substituting the order of reinstatement the order of 'reinstatement with full backwages' with Rs.75,000/- as consolidated compensation to the workman, the Hon'ble Apex Court, *inter-alia*, observed as follows:

“6. The question, however, which arises for consideration is as to whether in a situation of this nature, the learned Single Judge and consequently the Division Bench of the Delhi High Court should have directed reinstatement of the respondent with full back wages. Whereas at one point of time, such a relief used to be automatically granted, but keeping in view several other factors and in particular the doctrine of public employment and involvement of the public money, a change in the said trend is now found in the recent decisions of this Court. This Court in a large number of decisions in the matter of grant of relief of the kind distinguished between a daily wager who does not hold a post and a permanent employee. It may be that the definition of “workman” as contained in Section 2(s) of the Act is wide and takes within its embrace all categories of workmen specified therein, but the same would not mean that even for the purpose of grant of relief in an industrial dispute referred for adjudication, application of constitutional scheme of equality adumbrated under Articles 14 and 16 of the Constitution of India, in the light of a decision of a Constitution Bench of this Court in Secy., State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] and other relevant factors pointed out by the Court in a catena of decisions shall not be taken into consideration.”

53. In the present case, the Respondent/Workman was working as a daily wager and his services were terminated in the year 2001. Since considerable amount of time has already been passed since termination of his services, this Court is of the considered view that an order of reinstatement with back wages must be eschewed, being inequitable. It would be just, proper and reasonable to award a lump sum monetary compensation to the Respondent/Workman towards full and final satisfaction of his claim for reinstatement with 50% back wages and continuity of services. Therefore, this Court considers it just and reasonable to award a sum of Rs.75,000/- (Rupees Seventy-Five Thousand only) to the Respondent/Workman in lieu of his reinstatement. Continuity of service and 50% back wages as directed by the learned Labour Court vide the Impugned Award. The Impugned Award of the learned Labour Court is modified to that extent.
54. Considering the time elapsed while deciding the present dispute, this Court further directs the Petitioner/Trust to make this payment of Rs.75,000/- to the Respondent/Workman within a period of 4 weeks from the date of receipt of this order failing which the said amount will bear an interest of 9% p.a.
55. Further, this Court *vide* order dated 17.05.2012 allowed the Application of the Respondent/Workman under Section 17-B of the I.D Act and the workman is getting the payment under Section 17-B of the I.D Act. It is clarified that as per the above order since the Petitioner/Trust has not succeeded in the present petition, no refund of excess amount, if any, could be made from the Respondent/Workman.

56. Even otherwise, the Hon'ble Supreme Court in *Dilip Mani Dubey v. M/s SIEL Limited & Anr* reported as **2019 (4) SCC 534** the proceedings under Section 17-B of the Industrial Disputes Act, 1947 are independent proceedings in nature and not dependent upon the final order passed in the main proceedings. Therefore, in view of the aforesaid settled position of law, it is clarified that the payment already made by the Petitioner to the Respondent under Section 17-B of the I.D Act is neither recoverable nor adjustable.

57. With the aforesaid direction, the present petition is dismissed. No orders as to costs.

GAURANG KANTH, J.

DECEMBER 23, 2022

PS

