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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 27.03.2023***Pronounced on: 02.06.2023***

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W.P.(C) 5016/2003**NATIONAL INSTITUTE OF IMMUNOLOGY Petitioner**

Through: Ms. Rachna Sharma and Mr. G.D. Sharma, Advocates with Mr. Madan Mohan, Admn. Officer and Mr. Ranjiv Mahajan, Senior Technical Officer, National Institute of Immunology.

versus

VINOD KUMAR GUPTA**..... Respondent**

Through: Mr. N.S. Dalal, Mr. Alok Kumar, Ms. Rachana Dala & Ms. Sweta Kadyan, Advocates.

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W.P.(C) 16023/2004**VINOD KUMAR GUPTA****..... Petitioner**

Through: Mr. N.S. Dalal, Mr. Alok Kumar, Ms. Rachana Dala & Ms. Sweta Kadyan, Advocates.

versus

NATIONAL INSTITUTE OF IMMUNOLOGY Respondent

Through: Ms. Rachna Sharma and Mr. G.D. Sharma, Advocates with Mr. Madan Mohan, Admn. Officer and Mr. Ranjiv Mahajan, Senior Technical Officer, National Institute of Immunology.

CORAM:**HON'BLE MR. JUSTICE GAURANG KANTH****J U D G M E N T****GAURANG KANTH, J.**

1. Vide this common judgment, this court intends to dispose of the following two writ petitions preferred under the Article 226 of the Constitution of India:

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(i) **W.P.(C) No. 5016 of 2003** titled as **National Institute of Immunology Vs. Vinod Kumar Gupta**, filed by the Petitioner Management assailing the validity of the award dated 09.12.2002 (“*impugned award*”) passed by the Labour Court no. VII, Delhi in I.D. No. 301 of 1993.

(ii) **W.P.(C) No. 16023 of 2004** titled as **Vinod Kumar Gupta Vs. National Institute of Immunology**, filed by the Respondent Workman challenging the aforesaid impugned award passed by the learned Labour Court in I.D. No. 301 of 1993.

2. The Learned Labour Court, *vide* the impugned award, adjudicated the terms of reference in favour of the workman holding that the National Institute of Immunology (“*management*”) illegally terminated the service of the workman, thereby granting a lumpsum compensation of Rs.50,000/- to meet the ends of justice.

FACTS RELEVANT FOR ADJUDICATION OF THE WRIT PETITIONS

3. It is the case of the workman that he was engaged on 05.07.1990 on daily wage basis to work in the Store Department of the management for handling miscellaneous work.
4. On 09.08.1991, the workman applied to the management for regularization of his services. Allegedly, on 26.11.1991, the workman was refused duty by Mr. B. Bose, Senior Manager from the next day i.e. 27.11.1991. Aggrieved by the said verbal termination from service, the workman sent a demand notice on 08.05.1992 against the illegal termination for demanding the reinstatement in service.



5. An industrial dispute was raised by the workman against the management, which was subsequently referred by the Secretary (Labour), Govt. of the National Capital Territory of Delhi to the learned Labour court in exercise of the power conferred by the Section 10(1)(c) and Section 12(5) of the Industrial Disputes Act, 1947 (“**I.D. Act**”). The dispute was referred for adjudication with the following terms of reference:

“Whether the termination of Shri Vinod Kumar Gupta have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect?”

6. Statement of claim was filed on behalf of the workman wherein it was averred that the workman was working with the management w.e.f. 05.07.1990 with the designation of Store Assistant, performing duties such as maintaining of challan register, helping in bill payments, stock entries etc. Apart from this, he was also assigned Hindi typing work. Workman contended that his services were terminated illegally w.e.f. 26.11.1991 without assigning any reason, while his junior named as Sh. Dalip Kumar was retained in service. It was alleged that the services were terminated in violation of the Section 25-F of the I.D. Act, and therefore, an award be passed in favour of the workman awarding reinstatement along with full back wages and continuity of service.
7. On the other hand, management in its written statement outrightly denied that the Management is an industry within the meaning of Section 2(j) of the I.D. Act., hence averred that the claim of workman is not maintainable and is liable to be dismissed. It was stated that



workman's duty was being utilized in the Embryo Transfer Technology (ETT) project of Department of Biotechnology, wherein he willfully absented himself from the work. Further, since the ETT project titled as 'Cattle herd improvement' for which workman was hired as a daily wage worker came to an end w.e.f. 31.03.1992, therefore services of workman were dispensed with. There exists no violation of Section 25-F of the I.D. Act since the workman stopped attending the work on his own and therefore no question of payment of one month's salary to workman arises. Management also denied the allegation with respect to retaining of the junior and appointment of new workman after termination of the workman. Therefore, management prayed before the learned Labour Court that the workman is not entitled for reinstatement, and claims made by workman are liable to be dismissed. Rejoinder was filed by the workman denying the averments made by the management in their written statement.

8. On basis of the pleadings, the learned Labour Court framed the following issues which needs to be adjudicated:

- "1. Whether the management is an industry as defined in Sec. 2(j) of the I.D. Act?*
- 2. Whether the workman himself stopped attending his duty as stated in the written statement?*
- 3. As per terms of reference."*

9. In support of his case, the workman examined himself as WW1, and filed his affidavit as WW1/A while relying upon the documents Ex. WW1/1 to WW1/10. The management, for buttressing their averments, examined Sh. P.L. Dahra as MW1, who tendered his affidavit as MW1/A and relied upon the documents Ex. MW1/1 to MW1/7.



10. Upon hearing both the sides, the learned Labour Court while relying upon judgement passed in ***Bangalore Water Supply and Sewerage Board etc. Vs. R.Rajappa & Ors*** reported as **1978 (3) SCR 207**, reached the conclusion that the management qualifies as an ‘industry’ under the I.D. Act. Learned Labour Court further held that in the absence of any charge and enquiry conducted by the management against the workman, it cannot be presumed that workman abandoned duty on his own accord. Issue no. 3 i.e., term of reference was decided in favour of the workman, thereby holding that workman was never appointed for the specific Project ETT and therefore the services were illegally terminated by the management under the garb of completion of the aforesaid project. With such observations, *vide* award dated 09.12.2002, learned Labour Court awarded a lumpsum compensation of Rs. 50,000/- in lieu of reinstatement and backwages in favour of the workman.

11. The aforesaid award dated 09.12.2002 became enforceable w.e.f. 30.07.2003 as per Section 17-A of the I.D. Act.

12. Aggrieved by the impugned award, the management preferred the **W.P. (C) No. 5016/2003** challenging the validity of the same. While on the other hand, the workman is aggrieved by the fact that learned Labour Court erred in not awarding reinstatement, hence has filed **W.P.(C) No. 16023/2004** for appropriate modification in the impugned award.

SUBMISSIONS MADE ON BEHALF OF THE WORKMAN

13. Mr. N.S. Dalal, learned counsel appearing for the workman has submitted that the learned Labour Court while passing the impugned

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award erred in not awarding reinstatement to the workman, even when it is proved that the management acted in violation of the Section 25 of the I.D. Act. The learned Labour Court has overlooked the established principle of law that in circumstances where it is amply established that the management illegally terminated the services of a workman, the order of reinstatement with full back wages is a natural consequence of such illegal termination.

14. Moreover, learned counsel submitted that the workman was performing the duty of a typist in the Hindi department and such work was of perennial nature. In such a case, the management indulged themselves in unfair labour practice by denying the right of regularization of the services to the workman. It is stated that the learned Labour Court possessed wide power under Section 11-A of the I.D. Act to give appropriate relief to the workman in case of illegal termination, but it failed to exercise such a power and erroneously denied the relief of reinstatement to the workman.

15. It is averred that the contentions of the management that the workman's service was dispensed with due to the closure of the project ETT for which he was appointed is prima facie false and misleading. The learned Labour Court rightly concluded that the management nowhere proved that the workman was appointed against the post in the said project. In absence of any evidence that suggests that the workman was initially appointed in the said project, the management's plea that workman's tenure was co-terminus with that of the project is not sustainable. With these submissions, the counsel for workman



prayed for relief of reinstatement along with the payment of full back wages, and continuity of service with all consequential benefits.

SUBMISSIONS MADE ON BEHALF OF THE MANAGEMENT

16.Mr. G.D. Sharma, learned counsel appearing on behalf of the management, has impugned the validity of the impugned award by submitting that the learned Labour Court erroneously placed the management under the definition of ‘industry’ as provided under Section 2(j) of the I.D. Act. The learned Labour Court committed a gross error by omitting to appreciate that the management is an autonomous research institution working under the aegis of the Department of Biotechnology, Ministry of Science and Technology. It is engaged purely in research work in applied immunology and disseminates scientific research to the public at large. The institute during the pandemic has worked alongside the ICMR to develop vaccine for the COVID-19. There exists no element of an industry, as envisaged under the I.D. Act, as the scientific result of the high calibre research is not commercially exploited for gaining profits out of it. The management functions on basis of the grant-in-aid received from the Government of India and other organisations, therefore it does not operate itself on basis of the commercial motives and is not involved in production of goods and services to satisfy human wants.

17.With regard to the question whether the management falls under the ambit of ‘industry’, the learned counsel placed reliance upon ***Physical Research Laboratory v. K.G. Sharma***, reported as (1997) 4 SCC 257. Learned counsel submitted that the Hon’ble Supreme Court in the



aforesaid matter held that the Physical Research Laboratory (PSL), which works under Department of Space of Government of India, is not an industry under Section 2(j) of the I.D. Act. It is submitted that similar to PSL, the management is also involved in conducting research without any commercial motive, hence it also does not qualify to be termed as an 'industry'.

18.Mr. Sharma, for bolstering his arguments, drawn attention of this court towards the judgement delivered in *Union of India v. Vartak Labour Union (2)*, reported as (2011) 4 SCC 200 wherein the apex court relied upon *State of Karnataka v. Umadevi (3)*, reported as (2006) 4 SCC 1 with respect to the regularisation of the casual/daily wage workers. They have further relied upon *Haryana State F.C.C.W. Store Ltd. v. Ram Niwas*, reported as (2002) 5 SCC 654 in support of their case.

COUNTER ARGUMENTS MADE ON BEHALF OF THE WORKMAN

19.Learned counsel for the workman vehemently argued that the judgement relied upon by the management, delivered in *Physical Research Laboratory (Supra)* has no applicability in the present matter. While distinguishing between the factual matrix of both the cases, the counsel has averred that in *Physical Research Laboratory (Supra)* the issue revolved around the retirement age of the permanent workman, however no such issue exists in the present matter. Moreover, the PSL, as observed by the Apex Court, was engaged in sovereign functions i.e. space research. However, in the present matter,



by no stretch of imagination, it can be said that the management was performing a sovereign function of the state.

LEGAL ANALYSIS BASED ON THE FACTS OF THE MATTER

20. This Court had heard the arguments advanced by both the parties and perused the record and Judgments relied upon by the parties.

21. Before expressing any opinion with respect to the alleged illegal termination of the workman and subsequent relief, it is crucial to determine the maintainability of the present writ petition filed by the workman. It has fallen before us to examine whether the management falls under the definition of an ‘industry’ under Section 2(j) of the I.D. Act.

22. A careful reading of the Section 2(j) of I.D. Act which defines an ‘industry’ is required for examining the aforesaid issue:

“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;]”

23. It has been a constant submission of the management that it is involved in undertaking pure research work related to the immunology and related discipline cluster in four main themes, namely, infection and immunity, molecular design, gene regulation and reproduction and development. It is contended that the management is not a commercial institute, but a domestic organisation working towards scientific



research in basic and applied immunology. Apart from this, the result of the research conducted by the management are not at all commercial in nature, i.e. result is not marketable for extracting profit out of them. On the other hand, the workman has fervently argued that the management qualifies as an 'industry' under the legislation since it is involved in a systematic activity of research work and renders services to 'satisfy the human wants and needs'.

24. Examination of the fact whether the management is an industry under the Section 2(j) of the I.D. Act warrants a perusal of the Memorandum of Association (MoA), wherein the objectives and functions of the management is elucidated. The relevant clause of the MoA has been reproduced herein below:

"3. The objects for which the National Institute of Immunology is established, are : —

fa) To, undertake, aid, promote, guide and coordinate research of a high calibre in basic and applied immunology ;

(h) To provide and promote effective linkages on a continuing basis between various scientific and research agencies laboratories and other organisations working in the country in the field of immunology, vaccine development and related areas:

(c) To organise post-graduate courses, workshops, seminars, symposia and training programmes of a specialised nature in the field of immunology, vaccine development and related areas;

(d) To organise training programmes for technicians in immunological methods and related techniques;

(e) To serve as a National Reference Centre for Immunology and to provide consultancy services to medical and veterinary institutions, public health agencies and industry in the country;

(f) To carry out research for development of new vaccines and immunological reagents for communicable diseases;- as also



for, improvement of the currently available vaccines with deficient immunological properties;

(g) *To develop immunological approaches for control and promotion of male and female fertility;*

(h) *To interact with industry for manufacture of vaccines and immunological reagents;*

(i) *To establish, maintain and manage laboratories, workshops, stores and other facilities for the efficient prosecution of scientific and technological research in immunology, vaccine development and related areas;*

(j) *To collaborate with foreign research institutions and laboratories and other international organisations in fields relevant to the objectives of the Institute;*

(k) *To publish and disseminate information relating to results of research;*

(l) *To institute professorships, other faculty positions, fellowships, research cadre positions and scholarships etc., for realising the objectives of the Institute;*

(m) *To establish affiliation with recognised universities and institutions of higher learning for the purpose of enabling research scholars to register for post-graduate degrees;*

(n) *To receive grants-in-aid in cash or in other forms from the Government of India, State Governments, Charitable Institutions Trusts, individuals and industry within the country;*

(o) *To receive, with the prior approval of the Central Government, monetary assistance from foreign sources including international organisations for training programme, scientific research and other activities;*

(p) *To acquire by gift, purchase, exchange, lease, hire or otherwise howsoever any properly moveable and/or immovable and to construct, improve, alter, demolish or repair buildings and structures as may be necessary or convenient for carrying on the activities of the Institute;*

(q) *For the purpose of the Institute, to draw and accept and make and endorse, discount, and negotiate Government of India and other. Promissory Notes, Bill of Exchange, Cheques or other negotiable instruments.*

(r) *For investing the funds of or money entrusted to the Institute to open such securities or in such manner as may from time to*



time be determined by the Governing body and to sell or transpose such investment;

(s) To do all other such things as may be necessary, incidental, or conducive to the attainment of all or any of the above objectives, and

(t) To take over the present ICMR-WHO Research and training centre in immunology located at the All India Institute of Medical Sciences together with its present scientific and research activities, ancillary project grants and related research facilities.”

25. Test laid down in ***Bangalore Water Supply case*** (Supra) acts as a North star for the courts to reach the conclusion regarding applicability of the I.D. Act to an organization by laying down elaborate guidelines with respect to the definition of ‘industry’ under 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 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.”

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.”

IV

143. The dominant nature test:



“(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not ‘workmen’ as in the University of Delhi case [University of Delhi v. Ramfath, (1964) 2 SCR 703 : AIR 1963 SC 1873 : (1963) 2 Lab LJ 335] or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur will be the true test. The whole undertaking will be ‘industry’ although those who are not ‘workmen’ by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.”

26. The Apex Court, further in the aforesaid case, specifically dealt with the issue whether research institutions are ‘industry’ for the purpose of the I.D. Act. Court’s observation are reproduced as herein below:

“113. Does research involve collaboration between employer and employee? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it munificently on this gratified and grateful



earth, thanks to conversion of his inventions into money aplenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an organisation, propelled by systematic activity, modelled on cooperation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries.”

27. The Hon'ble Supreme Court in the judgement delivered in **Workmen v. Indian Standards Institution**, reported as (1975) 2 SCC 847 discussed about element of co-operation between employer and employees which is essential for qualifying as an 'industry'.

“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.

28. In the **Bangalore Water supply case** (Supra), the Apex Court propounded a ‘triple test’, under which any activity will be considered an industry if it fulfils the three-pronged test, as under:

- i. Systematic and organized activity has been carried out;
- ii. With the cooperation between Employers and employees;



- iii. For the production and distribution of good and services irrespective of the fact whether the capital has been invested for this activity.

29. Further, Co-ordinate Bench of this Hon'ble Court in ***Indian Medical Association v. PO Labour Court-I***, reported as ***2012 SCC OnLine Del 4852***, presented some insights regarding 'industry' under the I.D. Act. Relevant extract of the judgement has been provided herein below:

"8. A perusal of the judgment and the Objects and Memorandum of Association of the Petitioner would show that though profit making is not the main object of the Petitioner, however, certainly it is an incidental object for which purpose the Petitioner has built up number of properties from which rental/license fee are being received. Thus the dominant purpose test as has been contended by the learned counsel for the Petitioner would have no application. Their Lordships held that even co-operative societies, research institutions and other kind of establishments cannot be exempted from Section 2(j) of the ID Act if they fulfill the triple test. It may be noted that absence of profit motive or gainful objective is irrelevant. One of the authorized activity of the Petitioner is to purchase properties and maintain them. Thus, the staff which would be employed for the purposes of maintaining the said buildings which earns profit as well cannot be said to be exempted from the ambit of being employed in an industry. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between the employer and the workmen, the range of this statutory ideology must inform the reach of statutory definition and be taken to the logical conclusion without any pre-conceived notions. Even professions, clubs, educational institutions, co-operatives, research institutes, charitable projects etc., if they fulfill the triple test cannot be exempted from the scope of Section 2(j)(ii) of the ID Act. Only restricted category of professions, clubs, co-operatives and even gurukulas and little research labs may qualify such exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained. Where there are a



number of complex activities and some of which qualify for exemption and the others do not, even then the predominant nature of services and the integrated nature of the departments will have to be looked into. This activity run by the Petitioner is certainly capable of entering into the world of 'Res-commercium' as contended by the learned counsel for the Respondent. It may be noted that the Petitioner has framed its staff services rules for employing various staff. One of the objectives of the Association is to promote improvement of public health and medical education in India. Thus in view of the fact that one of the objectives is improvement of public health and medical education and the Petitioner having staff service rules, I find no infirmity in the learned Trial Court coming to the conclusion that the Petitioner is an industry."

30. On conjoint reading of the objectives of the management and the law laid down in **Bangalore Water supply case** (Supra), **Indian Standards Institution** (Supra) and **Indian Medical Association** (Supra), this Court is of the opinion that the management is indeed engaged in a systematic activity of conducting advanced research and educational training. It is not solely undertaking scientific research as contended by the management, but is also proactively engaged in other activities. It is clear that the management for the purpose of achieving their objectives have been involved in organising advanced research by establishing labs and stores, providing consultation services to the public health institutions and veterinary institutes, conducting educational courses by instituting professorship and offering Ph.D. programmes. The management is also operating different laboratories by the name of Immuno-Chemistry, Small Animal facility, Immuno-Endocrinology, Embryo Biotechnology etc. All these activities require a synchronization between all the departments and the employees for



smooth functioning of the organisation's machinery. There exists not only systematic activity being carried out by the management, but also an element of cooperation between the employee and the employer. The consultative services and the research publication offered by the management can be classified as production of services, intended to satisfy human needs and wishes i.e. development and improvement of the immunology research for developing effective immune response.

31. *Ergo*, on the anvil of test laid down by the Apex Court, this court is of the view that the management is an industry under Section 2(j) of the I.D. Act and provisions of the said legislation is applicable to the present case.
32. This Court would also like to take this opportunity to distinguish the facts of ***Physical Research Laboratory case*** (Supra) from that of the present case. Before that, it is pertinent to refer to the Hon'ble Supreme Court's observations with respect to functioning of P.R.L in the aforesaid judgement.

“12. PRL is an institution under the Government of India's Department of Space. It is engaged in pure research in space science. What is the nature of its research work is already stated earlier. The purpose of the research is to acquire knowledge about the formation and evolution of the universe but the knowledge thus acquired is not intended for sale. The Labour Court has recorded a categorical finding that the research work carried on by PRL is not connected with production, supply or distribution of material goods or services. The material on record further discloses that PRL is conducting research not for the benefit or use of others. Though the results of the research work done by it are occasionally published they have never been sold. There is no material to show that the knowledge so acquired by PRL is marketable or has any commercial value. It has not been pointed out how the knowledge acquired by PRL or the results of the research occasionally published by it will be useful to persons other than those engaged



in such type of study. The material discloses that the object with which the research activity is undertaken by PRL is to obtain knowledge for the benefit of the Department of Space. Its object is not to render services to others nor in fact it does so except in an indirect manner.

13. It is nobody's case that PRL is engaged in an activity which can be called business trade or manufacture. Neither from the nature of its organisation nor from the nature and character of the activity carried on by it, can it be said to be an "undertaking" analogous to business or trade. It is not engaged in a commercial industrial activity and it cannot be described as an economic venture or a commercial enterprise as it is not its object to produce and distribute services which would satisfy wants and needs of the consumer community. It is more an institution discharging governmental functions and a domestic enterprise than a commercial enterprise. We are, therefore, of the opinion that PRL is not an industry even though it is carrying on the activity of research in a systematic manner with the help of its employees as it lacks that element which would make it an organisation carrying on an activity which can be said to be analogous to the carrying on of a trade or business because it is not producing and distributing services which are intended or meant for satisfying human wants and needs, as ordinarily understood."

33. In the above stated judgement, the Hon'ble Apex Court was of the opinion that P.R.L. being a body under the Department of Space, was carrying out the research which is not marketable in nature i.e. it was not intended to be sold to the outside world. The Court was also of the view that the research work being carried out by P.R.L. was not meant for rendering services to the others and result of their research work cannot be utilised by anyone except the organisation conducting it. However, in the present case, the management is actively involved in establishing linkage with the industries in same field, which is aimed at serving larger public by sharing information for development of vaccines. Therefore, the research outcome of the management has some element of commerciality and such outcomes can be converted



into massive profits by the biopharmaceutical companies, hence the facts of the present case differ from that of ***Physical Research Laboratory*** (Supra). Furthermore, the research related to Space is essentially a sovereign function of the state, which is controlled majorly by the state in exclusion of the private parties. However, the same cannot be said regarding the research in biotechnology, specifically with respect to development of vaccines and other immunological shields. Therefore, ruling given in ***Physical Research Laboratory case*** (Supra), is not applicable to the present case and lends no assistance to the case of the management.

34. Now, since the issue of applicability of the I.D. Act to the present case has been settled, this Court shall proceed to examine whether the workman was illegally terminated by the management in violation of Section 25 of the I.D. Act. It is contended by the management that workman was appointed specifically for the ETT project on a daily wages basis. It is further contended that the ETT project was concluded w.e.f. 31.3.1992, and hence the services of the workman was not required anymore by the management. Moreover, it is averred that the workman absented himself from the duty on his own accord. On the other hand, workman has claimed that he was appointed as a store assistant on a daily wage basis, and not for the ETT project. It is pertinent to examine whether the workman was indeed engaged for ETT project. The testimony of Sh. P.L. Dahra/MW1 is relevant in this regard, which is stated as under:

“It is correct that no appointment letter was issued to the workman at the time of appointment. It is correct that the workman was not



informed that he is appointed against the particular project Embryo Bio-Technology/Transfer Technology..”

35. It is an admitted fact that the workman was not informed at the very time of his appointment that his services will be utilised for the specific project, and his service tenure will be co-terminus with that of the project. In such scenario, it cannot be presumed on its own that the workman signed up for a limited term employment with his full consent. It is observed in ***S.M. Nilajkar v. Telecom District Manager***, reported as **(2003) 4 SCC 27**

“14. The engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or up to the occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complain that by the act of the employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the abovesaid ingredients so as to attract the applicability of sub-clause (bb) abovesaid. In the case at hand, the respondent employer has failed in alleging and proving the ingredients of sub-clause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or daily-wagers in a project. For want of proof attracting applicability of sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment.”

36. The Hon’ble Apex Court has categorically stated in the aforesaid judgement that a termination may not amount to retrenchment if workman was employed for a temporary project, one of the conditions



being “*the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.*” Moreover, Ex. WW1/3 dated 08.08.1991 which is titled as ‘proposal for engagement of daily wage clerk/typist’ states that the workman is assigned duty in ‘Store Section’ for Hindi typing and maintaining Challan Register. There is no mention in the said document that the workman is being engaged in the ETT project. Hence, it is not proved that the workman was engaged specifically for ETT project for a fixed duration and he was duly made cognizant about his fixed term employment with the management.

37. Over and above, the contention made by the management that the workman wilfully absented himself from 26.11.1991 from the duty is not at all sustainable. The management has failed to bring on record any evidence to prove that they made efforts towards directing workman to join back the services. This Court is in agreement with the learned Labour Court with respect to the plea of absenteeism taken by the management. Relevant portion of the impugned award is reproduced herein below:

“I have considered the rival submissions. Perusal of the record reveals that contention of the management is not supported by any evidence on record. If the workman was not appearing for work, the management was supposed to issue him a show cause notice for his non appearance. It was also supposed to issue a charge Sheet and to conduct a fair and proper enquiry to prove the charges of absentism. In the absence of these measures, it could not be presumed that workman had abandoned the job on his own. Our own Hon'ble Delhi High Court in MCD Vs. Sukhvir Singh & Ors. reported as 1994 LLR 332 has held that enquiry is must even to prove the allegation of abandonment of service by the workman. The issue is, therefore, decided in favour of the workman and against the management.”



38. In view of the foregoing discussion, this Court is of the considered opinion that the workman was illegally and arbitrarily terminated by the management in violation of the provisions of the I.D. Act.
39. As far as prayer of reinstatement with full back wages is concerned, it is a settled principle of law that if termination is held illegal, the relief of reinstatement would not automatically follow. In the present case, the workman worked with the Management as a daily wager for a period of approximately 1 year 4 months in the year 1991. The termination of the workman is held to be illegal as there was violation of Section 25 F of the I.D. Act. Hence, considering the facts of the present case, this Court is of the considered view that the learned Labour Court was right in eschewing an order of reinstatement, being inequitable. This Court has been informed that the workman has already attained the age of 56 years. However, in the interest of justice, in order to put quietus to this dispute, the compensation in lieu of reinstatement granted to the workman is enhanced from Rs. 50,000/- to Rs. 1,50,000/-.
40. Accordingly, the award dated 09.12.2002 passed by the learned Labour Court no. VII, Delhi in I.D. No. 301 of 1993 stands modified. The management is directed to pay the said compensation amount to the workman within 4 weeks from today.
41. **W.P.(C) No. 5016 of 2003** stands dismissed, while **W.P.(C) No. 16023 of 2004** is partly allowed. No order as to the cost.

GAURANG KANTH, J.

JUNE 02, 2023

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