

CWP-18334-2014 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-18334-2014 (O&M)

Decided on : 23.04.2024

Director, Central Scientific Instruments Organization

. . . Petitioner(s)

Versus

Presiding Officer, Central Government,
Industrial Tribunal-cum-Labour Court-II,
Chandigarh and another

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. I.S. Sidhu, Advocate
for the petitioner(s).

Mr. Atul Arya, Advocate
for respondent No.2.

SANJAY VASHISTH, J. (Oral)

1. Petitioner – Director, Central Scientific Instruments Organization, Chandigarh (being Management), has filed the present writ petition for quashing the notification dated 28.02.2014, vide which, the award dated 03.02.2014 (Annexure P-9) in I.D. No.624/2KS (Annexure P-9), has been published by the Central Government and received by the petitioner, vide communication No.CGIT/2014-15/51, dated 25.04.2014.

As per the award impugned herein, Ref. No.- L42012/208/2002/IR(CM-II), dated 05.03.2003, under Section 10(1)(d) and (2-A), of the Industrial Disputes Act, 1947 (for brevity, 'ID Act'), has been answered in favour of respondent No.2 – Kushaldeep Singh (workman). Learned Industrial Tribunal-cum-Labour Court-II, Chandigarh (in short, 'learned Tribunal') has observed that the services of the workman have been terminated in violation of the principle of law i.e. Section 25-F of the ID

Act. Therefore, the workman was held to be entitled for reinstatement in service with 50% back-wages.

2. Pleaded case of the workman before the learned Tribunal is that he was an Ex-Serviceman, and was appointed a Security Guard at the Management's campus, vide appointment letter dated 23.03.2000, against the monthly salary of Rs.2408/- per month. He worked up-till January 2001. Also pleaded that he served for more than 240 days in preceding one year from the date of termination. Thus, his termination is in violation of Section 25-F of the ID Act, and he is entitled to reinstatement with full back-wages.

On the other hand, Management pleaded that the workman was appointed as 'security guard' w.e.f. 01.03.2000 vide appointment letter dated 23.03.2000, by reserving a right that the Director, CSIO, will have the right to relieve anyone from security arrangement without assigning any reason. Thus, while defending the termination of the services of the workman, Management submitted that the case is covered under Section 2(oo)(bb) of the ID Act, and workman cannot claim that he has been retrenched in violation of Section 25-F of the ID Act.

3. Learned counsel for the Management submits before this Court that petitioner – Management does not fall within the definition of 'industry', therefore, the provisions of the ID Act would not be applicable and relationship of 'employer & employee' also does not exist.

While submitting so, counsel for the Management (petitioner herein) relies upon the judgment of the Hon'ble Apex Court rendered in **State of Gujarat vs. Pratamsing Narsinh Parmar, 2001(9) SCC 713 : Law Finder Doc Id # 11213** and submits that there being no material brought on record by the workman (respondent No.2 herein) to call the Management as

‘industry’, no protection can be extended to him under the ID Act. Counsel reads out paragraph Nos. 5 & 6 of the aforesaid judgment, which are reproduced here-under also:-

“5. If a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes "an industry". Ordinarily, a Department of the Government cannot be held to be an industry and rather it is a part of the sovereign function. To find out whether the respondent in the writ petition had made any assertion that with regard to the duty which he was discharging and with regard to the activities of the organization where he had been recruited, we find that there has not been an iota of assertion to that effect though, no doubt, it has been contended that the order of dismissal is vitiated for non-compliance of Section 25F of the Act. The State in its counter affidavit, on the other hand, refuted the assertion of the respondent in the writ petition and took the positive stand that the Forest Department cannot be held to be an industry so that the provisions of Section 25F of the Act cannot have any application. In the absence of any assertion by the petitioner in the writ petition indicating the nature of duty discharged by the petitioner as well as the job of the establishment where he had been recruited, the High Court wholly erred in law in applying the principles enunciated in the judgment of this Court in Jagannath Maruti Kondhare (supra) to hold that the Forest Department could be held to be "an industry".

6. The learned single Judge as well as the Division Bench of the High Court have failed to carefully examine the ratio of this Court's judgment in the Jagannath Maruti Kondhare's case (supra), in as much as in para 15 of the said judgment, the Court has quoted the assertions made in the affidavit of the Chief Conservator of Forests and then in para 17, the Court held that the scheme undertaken cannot be regarded as a part of the

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sovereign function of the State. We are afraid that the aforesaid decision cannot have any application to the facts of the present case where there has not been any assertion of fact by the petitioner in establishing that the establishment to which he had been appointed is "an industry". In this view of the matter, we have no hesitation to come to the conclusion that the learned single Judge as well as the Division Bench committed serious error of law in holding that to the appointment in question, the provisions of the Act apply. We would accordingly set aside the judgment of the Division Bench as well as that of the learned single Judge and hold that the writ petition would stand dismissed."

4. On the other hand, counsel for respondent No.2 (workman) while defending the award submits that there being no definite period of service, any arbitrary clause in the appointment letter cannot be a valid ground for discontinuation from service of any workman. Just by mentioning that 'on sole discretion of the Director of the Management, workman can be removed from service any time', the defense taken under Section 2(oo)(bb) of the ID Act, cannot come to the rescue of the Management. Even otherwise also, services of the workman have been dispensed with without any disciplinary action which amounts to punishment, and thus, falls within the definition of 'retrenchment'.

5. This Court agrees with the contention of the workman, and therefore, is of the opinion that defense of Section 2(oo)(bb) of the ID Act, would not come to the rescue of the Management in the case at hand.

6. While answering the second argument that the Management does not fall within the definition of 'industry', as defined under Section 2(j) of the ID Act, counsel reads out the definition of Section 2(j) of the ID Act, which is as under:-

“2(j) “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen; ”

7. For real description of the industry, counsel representing respondent No.2 – workman, relies upon the Single Bench judgment of the Hon’ble Madhya Pradesh High Court, rendered in **State Forest Research institute, Jabalpur vs. Shashi bai and others, 2006 M.P.L.S.R. 25**, and buttress his argument by reading out paragraph Nos. 7, 8, 9 & 10 of the same, which are reproduced as under:-

“7. The aforesaid definition has received consideration by the series of judgment passed by the Apex Court. The landmark judgment of the Larger Bench of the Apex Court is reported in AIR 1978 SC 548 [Bangalore Water Supply case] has dealt with this aspect as to what activities would be covered within the ambit of the definition of the word 'industry'. The numerous activities of the said judgment have been considered by the Apex Court in the said judgment holding to be an activity as 'industry' and not holding to be an activity as an 'industry'. Subsequently, in all cases the controversy has arisen whether which activities would be within the ambit of word 'industry' as defined in Section 2 (j) of the I.D. Act, 1947. The subsequent judgment as reported in AIR 1997 SC 1855 /Physical Research Laboratory v. K.G. Sharma] would be a relevant judgment keeping in view the controversy as involved in the present case.

8. Mr. Sanjay Yadav, learned Counsel for the petitioners, submitted that the judgment of Physical Research Laboratory case (supra) is a judgment which will have full application to the activities of the petitioner and, therefore, since the activities of the petitioner are of research in nature therefore, a research institute can not be held to be an 'industry' as held by the Apex Court therefore the conclusion so arrived at by the Labour Court being contrary to the said judgment, the award is

liable to be set aside.

9. *I have gone through the judgment in Physical Research Laboratory case (supra) and on a careful consideration of the said judgment I have come to the conclusion that the said judgment in the instant case is distinguishable. In case of Physical Research Laboratory, the Apex Court specifically recorded a finding that the research activity carried out by the Physical Research Laboratory were carried out not for the use of others but the said research activity was only for the purpose of submitting it to the Government. There was no material shown to the Court that the knowledge on research so acquired by the Physical Research Laboratory is marketable or has any commercial value. Paragraph 12 of the aforesaid judgment is important which is reproduced as under:-*

"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."

10. *On the basis of the aforesaid judgment, it is thus clear that the Apex Court on 4 aspects concluded that the research activities carried out by Physical, Research Laboratory do not come within the ambit of word 'industry' as defined under Section 2 (j) of the I.D. Act, 1947. The 4 factors which*

persuaded the Apex Court in Paragraph 12 of the judgment are as under :-

- (1) The purpose of research was found to acquire knowledge about the formation and evolution of the universe but the knowledge acquired was not intended for sale.*
- (2) There was no material on record which discloses that Physical Research Laboratory is conducting research not for the benefit or use of others. This was the finding recorded by the Labour Court of which the award was under challenge.*
- (3) Nothing was pointed out how the knowledge acquired by the Physical Research Laboratory or the results of such research occasionally published by it will be useful to persons other than those engaged in such type of study.*
- (4) The material of the case further disclosed that the object with which the research activity is undertaken by Physical Research Laboratory is to obtain knowledge for the benefit of the Department of Space. The object of such research was not found to render service to others nor in fact it does so except in an indirect manner.*

On the basis of the aforesaid discussion, it reveals that there are two sets of research institutes (i) absolutely involved in the research work without giving any benefit of such research work to others and such research work is carried out for the Government. The another set of research institute which are carrying out the activity of research for the use of public and other institution to satisfy the human wants and wishes. Now it is to be decided that the activities of research work carried out by the petitioner belongs to which category.

The judgment cited by the Counsel for the petitioners, i.e., AIR 1997 SC 1855 (Physical Research Laboratory v. G. Sharma), Paragraph 11 of the said judgment wherein paragraph of Bangalore Water Supply is reproduced itself makes a distinction between the two sets of research work. The said paragraph ends with the sentence "It follows that research institutes, albeit run without profit-motive, are industries.""

8. Further submits that in the aforesaid judgment Hon'ble Single Bench of the Madhya Pradesh High Court relied upon the judgment of the

Hon'ble Apex Court i.e. **Physical Research Laboratory vs. K.G. Sharma**, **AIR 1997 SC 1855**, and by applying the principle laid down therein in the case at hand, the petitioner – institution/establishment/management would definitely be covered under the definition of 'industry'.

9. To strengthen his submissions, he reads out the cross-examination of the witness of the Management i.e. A.K. Mukherjee (MW-1), which is also appended with the writ petition. Cross-examination of the said witness is reproduced here-under:-

“ When cross examined by counsel for workman stated “I had joined service with the management in the year 2004 as Administrative Officer CSIO and served upto 31.03.2008. the workman was already out of job when I joined my service at Chandigarh. I have sworn the affidavit on the basis of the record. I have no personal knowledge of the engagement of the workman. It is true that in the requisition of the management the name of the workman was recommended by the Zila Sainik Board (Welfare Officer) U.T., Chandigarh. The Management had not given notice to the workman telling him that the management shall disengage him from service from a particular date. He was also not paid retrenchment compensation before disengagement. The workman had served the management continuously from 01.03.2000 to January, 2001. the management is engaged in the Research Work and Development. It does not manufacture any instrument an only provides technical no how. The management mainly works for the Government and does not provide no how to private person. The management gives no how about mechanical Instruments, Defence related Instruments such as electronics. The management provides no how even to Private Hospital regarding hospital Instruments. The management does entertain the request of individuals for no how. It is wrong to say that the management is engaged in the manufacturing and sale of instruments. The functions of the management are certified and the documents can be

produced in the court.”

10. While reading out the aforementioned cross-examination, counsel for the workman argues that to the facts admitted by the management witness in the present case, judgment relied upon by the Management i.e. **State of Gujarat vs. Pratamsing Narsinh Parmar** (*supra*), would not be applicable. Rather, same can be made applicable in favour of the workman (respondent No.2) by observing that the material required to be adduced/brought on record by the workman, as per the cited judgment, has already been admitted by the Management witness itself in his cross-examination.

11. Undoubtedly, the said part of the evidence admits that the Management is engaged in the research work and development. Management has been providing the know how even to private hospitals regarding the hospital instruments. Otherwise also, material is expected to be under the control of the Management and for reaching to the correct conclusion, Management itself was bound to produce the material on record, to substantiate its pleadings. Undoubtedly, the workman, who is an ex-serviceman and a security guard is not expected to have any control or say over the functioning of the Management.

12. This Court does not agree with the submissions addressed by the Management (petitioner herein), and **thus, findings regarding the violation of Section 25-F of the ID Act, are hereby maintained.**

13. However, considering the aspect that the reference is of the year 2005, and workman is out of service since January 2001 i.e. for more than 23 years and in view of the judgment of the Hon'ble Apex Court **Management, Hindustan Machine Tools Ltd. vs. Ghanshyam Sharma,**

2018 AIR (Supreme Court) 5280 : Law Finder Doc Id # 1273657, it would not be appropriate to force the Management to re-employ the workman.

For convenience, the relevant part of the aforesaid judgment is reproduced as under:-

“14. In a case of this nature, and having regard to the fact that many decades had passed in between with no evidence adduced by the respondent that whether he was gainfully employed from 1977 onwards or not, the Labour Court should have awarded lump sum money compensation to the respondent in lieu of the relief of reinstatement along with payment of back wages and continuity of service by taking recourse to the powers under Section 11–A of the Act, rather than to direct his reinstatement with all consequential benefits.

15. In other words, having regard to the peculiar nature of the respondent's appointment and rendering of services by him for a very short duration (just 240 days only) and with no evidence as to whether he worked for gains or not after his services came to an end in 1977, this was a fit case where the Labour Court should have awarded lump sum compensation to the respondent instead of directing his reinstatement in service with consequential benefits. The Labour Court was empowered to pass such order by taking recourse to the powers under Section 11–A of the Act. This has also been the view of this Court in such type of cases. (See— **Senior Superintendent Telegraph (Traffic) Bhopal vs. Santosh Kumar Seal Assistant Engineer Rajasthan Development Corporation vs Gitam Singh 2010(2) S.C.t. 609 : (2010) 6 SCC 733 and Assistant Engineer,**

Rajasthan Development Corporation & Ors. vs. Gitam Singh, 201392) S.C.T. 30 : (2013) 5 SCC 136).

16. *In view of the foregoing discussion, we allow this appeal in part and while modifying the impugned order and the award of the Labour Court, direct the appellant to pay a sum of Rs. 50,000/- in lump sum to the respondent (employee) by way of compensation in lieu of respondent's right to claim reinstatement in service.*

17. *The amount of compensation is fixed by this Court after taking into account all facts and circumstances of the case including the fact of making payment to the respondent by way of monthly salary during pendency of the writ petition/intra court appeal by the appellant under Section 17-B of the Act. In our view, it is a reasonable compensation in the facts of this case.*

18. *Let the amount of Rs.50,000/- be paid to the respondent by the appellant within three months from the date of this order."*

14. Even otherwise also, workman being an ex-serviceman, has reached to the advance stage of his life. Therefore, the grouse of the workman can be taken care of by awarding one time lump-sum amount of compensation of Rs.2.00 lakhs (Rupees Two Lakhs only), considering the circumstances, as discussed by the learned Tribunal as well as this Court.

Therefore, while maintaining the award with regard to the violation of Section 25-F of the ID Act, other findings are modified, and the workman is held to be entitled for lump-sum amount of Rs.2.00 lakhs (Rupees Two Lakhs only), as compensation, because, he has been forced to

be out job for the last more than 23 years.

Besides, considering the agony and pain of the workman, the total amount of compensation of Rs.2.00 lakhs (Rupees Two Lakhs only), as awarded by this Court, towards all the claims as granted under the impugned award, would be paid by the Management (petitioner herein) within a period of three months from today i.e. on or before 24.07.2024, failing which, petitioner – Management would be liable to pay the lump-sum amount of compensation of Rs.2.00 lakhs (Rupees Two Lakhs only) along with interest @ 6% per annum, from 25.07.2024 onwards.

**Accordingly, writ petition stands disposed of with
aforementioned modifications.**

Misc. application(s), if any, also stands disposed of.

**(SANJAY VASHISTH)
JUDGE**

April 23, 2024

J.Ram

Whether speaking/reasoned: ✓ Yes/~~No~~

Whether Reportable: ✓ Yes/~~No~~