

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Writ Petition (M/S) No. 3033 of 2024

Sri Digamber Jain Panchayati Mandir Evam Jain
Bhawan ... Petitioner

Versus

District Magistrate/Collector, Dehradun
And Others ... Respondents

With

Writ Petition (M/S) No. 3034 of 2024

Writ Petition (M/S) No. 3035 of 2024

Writ Petition (M/S) No. 3036 of 2024

Mr. Amar Murti Shukla, Advocate, for the
petitioner.

Mr. K.S. Mehta, Additional CSC, with Mr. Yogesh
Chandra Tiwari, Standing Counsel, for the State.

13.12.2024

Hon'ble Manoj Kumar Tiwari, A.C.J.

These writ petitions have been filed by Sri Digamber Jain Panchayati Mandir Evam Jain Bhawan, Dehradun challenging the award dated 27.3.2023, passed by learned Labour Court, Dehradun in different adjudication cases. Impugned award was published in the notice board on 15.4.2023. Since common questions of law and fact are involved in these petitions, therefore, these are being heard and decided together. However, for brevity, facts of Writ Petition (M/S) No. 3033 of 2024 alone are being considered and discussed here.

2. Respondent no. 3 was appointed as sweeper in the Dharmshala run by petitioner in the year 1999 and after serving for 15 years,

his services were orally terminated w.e.f. 1.3.2014. Respondent no. 3 raised industrial dispute against his termination, which was referred for adjudication to learned Labour Court, Dehradun vide reference dated 21.6.2016 and was registered as Adjudication Case No. 19 of 2016. The question, which was referred reads as under:

“Whether termination of services of the workman Naresh S/o Laxman, Sweeper, w.e.f. 1.3.2014, is just and/or legal? If not, to what relief/ benefits the concerned workman is entitled to and with which other particulars?”

3. Both parties filed written statement, however, evidence was led by respondent no. 3 alone and petitioner did not produce any evidence. Learned Labour Court after considering the material on record, passed the award in favour of workman on 27.3.2023 and held that termination of respondent no. 3 was unjust and illegal and directed for his reinstatement, with 50 per cent back wages.

4. Impugned award is on record as Annexure-5 to the writ petition. Learned Labour Court has noted the case set up by petitioner in para no. 3 of the award. Perusal of the award reveals that petitioner had contended that in the Jain Bhwan, there are some rooms, which are meant for lodging / boarding of guests and small amount is charged from the guests for using these rooms and respondent no. 3 was appointed as Class-

IV employee for cleaning these rooms; respondent no. 3 was not sincere towards his duty and he used to remain absent without any prior notice, which adversely affected the maintenance and upkeep of Jain Bhwan, including the guest house. It was further contended by petitioner that respondent no. 3 on his own stopped coming for duty w.e.f. 01.03.2014, thus, it is a case of voluntary abandonment of service.

5. On the other hand, respondent no. 3 contended before learned Labour Court that he was orally removed from service w.e.f. 01.03.2014, without holding any disciplinary enquiry or without giving any notice to him. Respondent no. 3 further contended that against oral termination of his services, he made a representation to District Magistrate, Dehradun on 05.03.2014 and the District Magistrate forwarded the representation to Labour Department. It was further contended that all persons, who were removed from employment by petitioner, jointly made an application dated 12.03.2014 to the Labour Department and Labour Conciliation Officer fixed 19.04.2014 for conciliation, however, the employer did not appear for conciliation. It was further stated that respondent no. 3 served continuously since 1999 till termination of his services and further that he was not employed anywhere else after 01.03.2014.

6. Regarding the defence that petitioner is a Charitable Institution, respondent no. 3 had stated before learned Labour Court that petitioner is engaged in commercial activities, as it is running a guest house for night stay of guests on payment basis. It was further stated that, although, petitioner's name indicates that it is a Religious Institution, however, its activities are commercial in nature. It was further stated by respondent no. 3 that he was made member of Employees State Insurance by petitioner and he was getting medical facility from Employees State Insurance Corporation, and further that he had served for more than 240 days in a calander year.

7. It transpires that after filing of written statement, petitioner did not appear before learned Labour Court, consequently, the case proceeded *ex parte* against the petitioner. Respondent no. 3 produced the application, made by persons who were removed from service to District Magistrate on 05.03.2014, before learned Labour Court and also the letter issued by Labour Enforcement Officer on 08.04.2014.

8. After considering the entire material on record, learned Labour Court returned a finding that it is not a case of abandonment of service, as alleged by the employer, but, services of respondent no. 3 were terminated by employer (petitioner herein). Regarding the

defence taken by petitioner that it is a Charitable Institution, therefore, it cannot be termed as 'Industry', learned Labour Court referred to the judgment rendered by Hon'ble Supreme Court in the case of *Bangalore Water Supply & Sewerage Board v. A. Rajappa*, (1978) 2 SCC 213 and held that petitioner-institution comes within the definition of 'Industry'.

9. On the point of violation of Principles of Natural Justice, learned Labour Court relied upon a judgment rendered by Hon'ble Supreme Court in the case of *K. Ragupathi v. State of U.P.*, (2022) 6 SCC 346. Learned Labour Court, after referring the provisions contained in Section 6(N) of U.P. Industrial Disputes Act, 1947 and Section 25 (F) of Industrial Disputes Act, 1947 held that the mandatory procedure laid down in the aforesaid provisions was not followed, therefore, the termination of service of respondent no. 3 w.e.f. 01.03.2014 is unjust and illegal and respondent no. 3 is entitled to reinstatement with continuity of service, however, on the question of back wages, it was provided that only 50% back wages would be payable to him.

10. Learned counsel for petitioner submits that, although, petitioner had engaged a counsel before learned Labour Court and written statement was also filed by him, however, petitioner could not appear on a

particular date and learned Labour Court ordered for proceeding *ex parte* against the petitioner and on the next date reference was answered against petitioner; however, para no. 5 of the award does not support this contention made by learned counsel for petitioner.

11. Even otherwise also, service of notice, issued by learned Labour Court upon petitioner, is not denied; in fact, petitioner had engaged a counsel, therefore, petitioner himself is to be blamed for not appearing before learned Labour Court. Steps taken by petitioner to recall the order, whereby Labour Court had directed for proceeding *ex parte*, have not been indicated in the writ petition.

12. Learned counsel for petitioner then contended that petitioner is a Charitable Institution, registered under Societies Registration Act, therefore, it cannot be termed as 'Industry' and the Labour Court erred in answering the reference against petitioner and in favour of respondent no. 3.

13. This Court is not impressed by the submission advanced by learned Counsel for the petitioner. Merely because part of the activity of the trust is religious and spiritual, would not be sufficient to hold that the petitioner trust does not fall within the definition of 'industry'. Bombay High Court in case of *Shri Devadeveshwar Sansthan Parvati*

and *Kothrud vs Sushila Raghu Kadu*, reported in 2002 SCC Online Bom 84, held that merely because part of activity of the trust was religious and spiritual, would not be sufficient to hold that trust is not an 'industry'. Para 7 and 8 of the said judgment are reproduced below:-

"7. Evidence before the Labour Court amply indicates that the petitioner is an "industry" and, therefore, covered by the definition contained in S. 2(j) of the Act. The petitioner trust maintains not only the temples but also a museum and gallery. An entrance fee is charged by the petitioner for the museum and the gallery. The poojas and Abhisheks are conducted on collection of charges from the devotees. Huge properties are being maintained by the petitioner trust. 40 employees are working with the petitioner trust on regular salary with fixed conditions of service. The offerings made in the temples are auctioned and the petitioner trust also runs a sugarcane juice stall at the Parvati Deoasthan. Mrutunjay Mandir which is maintained by the petitioner is let out on hire for the purpose of marriage ceremonies. The petitioner collects this amount as also the hire charges for utensils used for such functions. Therefore, I do not find any error committed by the Labour Court much less an error on the face of the record.

8. In the case of Sri Cutchi Visa Oswal case [1986 (2) L.L.N. 904] (vide supra), this Court considered whether the religious trust owning extensive properties and doing service at such properties by engaging large number of persons could be termed as an "industry". This Court came to the conclusion

that merely because part of the activity of the trust is religious and spiritual, it should not be said that the trust was not an “industry”. In Sri Gajanan Maharaj Sanstan case [1997 (2) L.L.N. 124] (vide supra), this Court on the basis of the Bangalore Water Supply case [1978 (1) L.L.N. 376 and 657] (vide supra), of the Apex Court, has held that the systematic activity wherein 157 workmen were involved could by no stretch of imagination be considered not an “industry”. Applying the ration in these cases to the facts and circumstances in the present case, the inescapable conclusion is that the petitioner is an “industry.””

14. Learned Labour Court has also considered the aforesaid aspect in great detail and has observed that the employer (petitioner herein) was running a guest house, in which guests were offered rooms for night stay, on payment basis. The said observation is based on the admission made by petitioner in his written statement that it is offering rooms for night stay to guests on payment basis. Learned Labour Court has relied upon the judgment rendered by Hon’ble Supreme Court in the case of *Bangalore Water Supply & Sewerage Board (supra)*, for holding that petitioner comes within the definition of ‘Industry’. Even otherwise also, respondent no. 3 has proved his case by leading evidence, however, petitioner failed to participate in the proceedings after filing written statement and he did not lead any evidence in support of his contentions. Thus, the finding returned by

learned Labour Court cannot be said to be erroneous or perverse.

15. Hon'ble Supreme Court in the case of *Workmen v. Indian Standards Institution*, (1975) 2 SCC 847 has held that Industrial Disputes Act, 1947 is a legislation intended to bring about peace and harmony between management and labour in an 'industry' so that production does not suffer and at the same time, labour is not exploited and discontented and, therefore, the tests must be so applied as to give the widest possible connotation to the term 'industry'. It was further held whenever a question arises whether a particular concern is an 'industry', the approach must be broad and liberal and not rigid or doctrinaire. Paragraph no. 11 of the said judgment is extracted below:-

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."

16. Learned Counsel for the petitioner then submitted that since respondent no. 3 did not plead before the Labour Court that he was not gainfully employed elsewhere after termination of his service, therefore, Labour Court erred in awarding 50 per cent back wages to him. Perusal of para 11 of the impugned award, however, reveals that respondent no. 3 filed an affidavit before the Labour Court that he was not employed anywhere and said statement made on oath was not rebutted by petitioner. Thus the contention raised by petitioner that direction to pay 50 per cent back wages is unsustainable can also not be accepted.

17. It is thus apparent that learned Labour Court has considered every aspect of the matter and has held that it is not a case of voluntary abandonment of service by respondent no. 3, as contended by petitioner, but it is a case of termination of service, without following the procedure prescribed in

Industrial Disputes Act. It is further held that since no domestic enquiry was held before terminating services of respondent no. 3 for charge of lack of sincerity towards work, therefore, on this ground also, the impugned order is unsustainable. The findings returned by learned Labour Court are findings of fact, which cannot be re-appreciated by this Court in its supervisory jurisdiction under Article 227 of the Constitution.

18. The scope of powers available to this Court under Article 227 of the Constitution of India was considered and discussed by Hon'ble Supreme Court in the case of *Madurantakam Coop. Sugar Mills Ltd. v. S. Viswanathan*, reported in (2005) 3 SCC 193. Para 12 of the said judgment is extracted below:-

"12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these types of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere has he come to the conclusion that the

finding of the Labour Court was either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court.”

19. Thus, there is no scope for interference in the matter. Consequently, writ petitions fail and are dismissed.

(Manoj Kumar Tiwari, A.C.J.)

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