

(1998) 02 SC CK 0042

In the Supreme Court Of India

Case No : C.A. No. 2423 of 1989 with C.A. No. 2135 of 1993 and C.A. No's. 775-776 of 1998 (Arising out of S.L.P. (C) No's. 7722-7722-A of 1993)

All India Radio

APPELLANT

Vs

Shri Santosh Kumar and Another

RESPONDENT

Date of Decision : 05-02-1998

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25

Citation : (1998) 1 AD 657 : AIR 1998 SC 941 : (1998) AIRSCW 701 : (1998) 1 JLJ 401 : (1998) 1 JT 662 : (1998) 2 MLJ 18 : (1998) 118 PLR 799 : (1998) 2 RLW 200 : (1998) 1 SCALE 538 : (1998) 3 SCC 237 : (1998) 1 SCR 702 : (1998) 1 Supreme 503 : (1998) 1 UJ 431

Hon'ble Judges : S. B. Majmudar, J; M. Jagannadha Rao, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Leave granted in the S.L.Ps.

2. In this group of appeals, the common question which arises for our consideration is to the effect whether the appellant-All India Radio and Doordarshan, as the case may be, are 'industries' within the meaning of the said term as defined by Section 2(j) of the Industrial Disputes Act, 1947 ('the Act' for short).

3. The respondent-employees were either clerks or linemen/watchmen and other casual workers working at the relevant time as employees of either All India Radio or Doordarshan kendras. In Civil Appeal No. 2423 of 1989 respondent No. 1 was Grade-II Clerk in Chattarpur Station of All India Radio. In Civil Appeal No. 2135 of 1993 respondent-workman was casual Fitter-cum-Watchman working at Doordarshan Kendra T.V. Relay center Dwarka, Gujarat, while the contesting respondents in civil appeals arising out of S.L.P.(C) Nos. 7722-7722A of 1993 were daily-rated workmen working at Doordarshan Kendra, Ranchi. They had challenged their orders of termination or non-regularization before the

authorities constituted under the Act. Their termination orders were set aside and regularisation was granted, as the case may be, to the concerned respondents with consequential benefits. The writ petitions filed before the High Court by All India Radio or Doordarshan Kendra, as the case may be, were dismissed and that is how they are before us in these appeals.

4. The solitary contention canvassed before us by the learned senior counsel for the appellants is to the effect that All India Radio and Doordarshan Kendra discharge sovereign functions of the State and they are not industries within the meaning of Section 2(j) of the Act. Now, it has to be kept in view that as held by a Constitution Bench of this Court consisting of seven learned Judges in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, , save and except the sovereign function, all other activities of employers would be covered within the sweep of term 'industry' as defined u/s 2(j) of the Act. The functions which are carried on by All India Radio and Doordarshan cannot be said to be confined to sovereign functions as they carry on commercial activity for profit by getting commercial advertisements telecast or broadcast through their various kendras and stations by charging fees. Looking to the functions of Doordarshan and its set up, as seen from Annexure-1 (annexed to SLP (C) Nos. 7722-7722A of 1993), being the extracts from Doordarshan Manual Vol. I, it cannot be said that the functions carried on by them are of purely sovereign nature. Day in and out advertisements are being telecast and even serials are being telecast on payment of appropriate charges and on which there cannot be any dispute. Same is the position with All India Radio. However, learned senior counsel for the appellants vehemently relied upon a decision of this Court in the case of Bombay Telephone Canteen Employees' Association, Prabhadevi Telephone Exchange Vs. Union of India and another, . It is true that in that case a Bench of two learned Judges took the view that the telephone exchanges run by the Central Government were discharging sovereign functions and, therefore, the employees working in the canteen run by such telephone exchanges cannot be said to be working in 'industry' as defined u/s 2(j) of the Act. However, the said decision has been expressly over-ruled by a judgment of a three Judge Bench of this Court in the case of General Manager, Telecom Vs. A. Srinivasa Rao and Others, . In that case, Chief Justice Verma speaking for the three Judge Bench in paragraph 7 of the Report has expressly over-ruled the said decision. In that decision other decision in Sub-Divisional Inspector of Post, Vaikam, and others Vs. Theyyam Joseph, etc.,, is also over-ruled. It has been held in the said decision that the ratio of the Constitution Bench judgment in Bangalore Water Supply (supra) holds the field and the amendment to the definition of Section 2(j) as made in 1982 is not still brought in force and so long as the amending definition does not come into force the decision in Bangalore Water Supply (supra) will hold the field. Consequently, it must be held that the appellant-All India Radio as well as Doordarshan are industries within the meaning of Section 2(j) of the Act and the said definition is operative being applicable at present and as existing on the Statute Book as on date.

5. We may mention that so far as the question of illegality of the orders of termination is concerned, on the facts found by the authorities below it is to be held that the termination orders were violative of Section 25-F of the Act and on which, in fairness to the learned senior counsel for the appellants, no submission was raised before us for consideration. Similarly regularisation of services was also not challenged on merits. As a result of this discussion the appeals are dismissed. Interim stay orders are vacated. The respondents concerned will be reinstated in service with all the benefits available to them under the impugned orders. The appellants shall reinstate the respondents concerned within six weeks from today and implement the orders passed by the authorities below within that time. It is obvious that the reinstatement will be on the same post in which the respondents were working prior to the impugned termination orders.