
(2001) 06 BOM CK 0070
In the Bombay High Court
Case No : Writ Petition No. 554 of 1995

All Saints Home

APPELLANT

Vs

Smt. Chhaya P. Pardeshi and Another

RESPONDENT

Date of Decision : 07-06-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 25B

Citation : (2002) 104 BOMLR 93

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.Y. Chandrachud, J.—In these proceedings the challenge is to an Award dated 26th September, 1994 passed by the Presiding Officer of the 9th Labour Court at Bombay in a reference (I.D.A. No. 752/1995) u/s 10(1) of the Industrial Disputes Act, 1947. The reference arose out of a demand for the reinstatement of the First Respondent with full back wages and continuity of service with effect from 1st February, 1985. By the impugned Award the Industrial Court has set aside the order of termination issued to the First Respondent from the service of the petitioner. The Industrial Court has granted the relief which was sought and has directed that the First Respondent be reinstated in service with full back wages and continuity of service with effect from 1st February, 1985.

2. The Petitioner before the Court is a Society registered under the Societies Registration Act, 1860 and under the Bombay Public Trusts Act, 1950. The Petitioner is controlled by a Society known as "The Womens Welfare Society of the Diocese of Bombay" and claims to be a Charitable Institution. The main objects for which the Petitioner has been founded have been set out thus in the Written Statement filed before the Industrial Court:

(a) To promote education, social welfare and health among women and children within the State of Maharashtra or elsewhere in India.

(b) To acquire, take over, manage, conduct, control, carry on, improve, alter and develop the institution known as "Girls Diocesan Hostel" Bombay, with or without all or any of its assets, properties, rights, engagements, obligations and liabilities.

(c) To establish, maintain and carry on, or assist in establishing, maintaining and carrying on, within the State of Maharashtra or elsewhere in India. One or more hostels, or homes for children, female students, working women or retired, disabled and old women.

(d) To provide, for any of the purposes aforesaid, boarding, accommodation, recreation grounds libraries, swimming baths and other amenities, accommodation and privileges usually provided in connection with hostels or homes, or which in the opinion of the Society may conveniently be provided.

(e) To engage, managers, secretaries, housekeepers, superintendents, instructors, teachers, matrons, employees, servants, lawyers, doctors, contractors, accountants, and others for any of the purposes of the society on such terms as the Committee of the Society shall deem fit, and suspend any remove any of them.

(f) To accept, hold or administer any gift, donation or contribution in kind or money and whether upon trust which may be deemed conducive to any of the objects of the society.

(g) To open and operate accounts of any description with any Bank or Banks and to invest the money of the Society not immediately required for any of its purposes, in securities sanctioned by the Trust Act for the time being in force and to vary or transpose any investment of the Society in such manner as the Committee of the Society shall from time to time deem fit.

(h) To borrow or raise money in such manner and on such terms as to security as the Committee of the Society shall deem necessary or expedient for the purposes of the Society.

(i) To draw, make, accept, endorse, discount and execute and issue promissory notes, bills of exchange and other negotiable or transferable instruments as the Committee of the Society shall deem necessary.

(j) To collect and receive subscriptions and donations in furtherance of the above objects either from members, or from other persons and to hold and apply the same and any other funds and property for any specified objects for which these have been received and in absence of any such specified objects, for the general purpose of the Society.

3. The Petitioner is conducting four Institutions, wherein residential accommodation is provided for women who are destitute, those who are and unable to look after themselves and for working women. These Institutions are : (1) St. Elizabeth's Home; (2) St. Faith's Home; (3) A Hostel for women from the low income group; and (4) A Hostel for women belonging to the higher Income

Group.

4. One Daulat Pardeshi was employed by the Petitioner as a Washerman in one of these institutions. Daulat Pardeshi retired on 1st January, 1985. A one room tenement belonging to the Petitioner was allotted to the workman in which he together with the members of his family resided. On the request of the aforesaid workman, the Petitioner gave employment to the First Respondent, who is the daughter-in-law of Pardeshi. The First Respondent was employed for carrying out the job of cleaning one floor in the new Hostel Building belonging to the Petitioner. The last drawn salary of the First Respondent was about Rs. 65/- per month. Now, it is common ground that the First Respondent was working as a part time Sweeper in the premises of the First Respondent on the aforesaid salary of Rs. 65/- per month. Apart from carrying out the sweeping and cleaning work for which she was employed by the Petitioner, the First Respondent attended to inmates of the Hostel and carried out small jobs for those inmates. Again, it is common ground that at the material time, the First Respondent was paid an amount of Rs. 15/- per month by each of the inmates for whom the First Respondent ran errands. The First Respondent was pregnant and absented herself from duty commencing some time in December, 1984 for a period of two months. The First Respondent, it is an admitted position did not apply for any maternity leave. After the First Respondent presented herself for duty, she was informed by the Petitioner that her services have been dispensed with and another employee had been employed in her absence. In the meantime on 1st January, 1985, Daulat Pardeshi also retired from service. The service accommodation which was provided to them not having been vacated by Pardeshi or by the First Respondent, the Petitioner has filed a Suit for eviction in the Small Causes Court which is pending. The services of the First Respondent thus came to be dispensed with without holding any enquiry and without following any procedure known to the Law.

5. By the Award of the Industrial Court, the termination of the service of the First Respondent was held to be illegal and contrary to Law and consequently, the First Respondent was granted the relief of reinstatement, back wages and continuity of service with effect from 1st February, 1985. The Award of the Industrial Court is sought to be impugned in these proceedings. The Industrial Court held that the First Respondent was a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, that the Petitioner was an Industry within the meaning of Section 2(j), and that the services of the First Respondent were terminated in violation of law. The First Respondent was consequently granted the relief as claimed.

6. In impugning the Award of the Industrial Tribunal the learned Counsel appearing on behalf of the Petitioner has submitted this:

(i) The Petitioner is not an Industry within the meaning of Industrial Disputes Act, 1947, since it is a Charitable Institution which does not meet the requirement of Section 2(j) and the tests as formulated by the Supreme Court in

(ii) The First Respondent was not a workman within the meaning of Section 2(s) since there was no exclusivity of employment with the Petitioner and the First Respondent was an independent contractor the bulk of whose remuneration was paid by the inmates.

(iii) That in any event, having regard to the facts and circumstances of the case, and in view of the charitable nature of the activities of the Petitioner an order of reinstatement with back wages was not called for.

7. These submissions may now be considered. At the outset, in determining whether the Petitioner is an "Industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947, a brief reference may be made to the well settled principles which have been laid down by the Supreme Court in, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . The principle attributes of an Industry within the meaning of Section 2(j) of the Act, is (i) the existence of systematic activity; (ii) organized by co-operation between employer and employee; and (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes. The absence of profit motive is not a relevant consideration. The test is functional, having regard to the nature of the activity and the nature of the relationship between the employer and the employee. In the course of the Judgment of the Supreme Court the position of a charitable institution has been considered. Charitable institutions have been divided into three heads or classifications : (i) those where an enterprise yields profits, which are, however, siphoned off for altruistic objects; (ii) those where the institution does not make any profit but hires the services of employees as in other like business, but the goods or services which are made available are provided at low or no cost to the indigent or needy; and (iii) where the establishment is oriented on a humane mission fulfilled by men who work not because they are paid wages but out of a commitment to their job. The first two classes of charitable institutions would according to the Judgment of the Supreme Court, fall for classification as an industry whereas the third cannot be regarded as falling within the meaning of that expression in Section 2(j) of the Industrial Disputes Act. Insofar as the second category of Charitable Institutions referred to above is concerned, the Supreme Court held that an organisation or institution does not cease to be industry within the meaning of Section 2(j) merely because it has been set up with the object of providing free or low cost services to the indigent or poor. The reason for this was indicated by the Supreme Court in para 129 of its Judgment as follows:

But then, so far as the workmen are concerned, it boots little whether he makes available the products free to the poor. They contribute labour in return for wages and conditions of service. For them the charitable employer is exactly like a commercial-minded employer. Both exact hard work, both pay similar wages, both treat them as human machine cogs and nothing more. The material difference between the commercial and the compassionate employers is not with

reference to the workmen but with reference to the recipients of goods and services. Charity operates not vis-a-vis the workmen in which case they will be paying a liberal wages and generous extras with no prospects of strike. The beneficiaries of the employer's charity are the indigent consumers. Industrial law does not take note of such extraneous factors but regulates industrial relations between employers and employees, employers and workmen and workmen and workmen. From the point of view of the workmen there is no charity. From him charity must begin at home. From these strands of thought flows the conclusion that the second group may legitimately and legally be described as industry. The fallacy in the contrary contention lies in shifting the focus from the worker and the industrial activity to the disposal of the end product. This law has nothing to do with that.

8. As already noticed earlier, the third category of institutions has been exempted by the Supreme Court from the definition of the expression "Industry". u/s 2(j). The third category deals with a case where a group of individuals who join together in a pious or altruistic mission employ themselves free or for a small honorarium. In such a case the bulk of the work is carried out by such persons, who have associated themselves together for the purpose of discharging the functions and duties of the Charitable organisation. In this context the Supreme Court has held that if such an institution, engages a few stray employees then they will not bring the institution within the fold of the expression industry u/s 2(j). The following observations in para 132 of the Judgment would make the position abundantly clear.

If the substantial number of participants in making available goods and services, if the substantive nature of the work, as distinguished from trivial items, is rendered by voluntary wageless sishyas, it is impossible to designate the institution as an industry, notwithstanding the marginal few who are employed on a regular basis for hire. The reason is that in the crucial, substantial and substantive aspects of institutional life the nature of the relations between the participants is non-industrial.

9. Similarly, in proposition III(c) the principle was formulated thus:

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 ash amities working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal costs 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 along are exempted not other generosity, compassion, development passion or project.

10. In the present case, the objects of the Petitioner have already been adverted

to. These objects include the taking over the maintenance of hostels for working women and for women who are disabled and destitute. The provisions of facilities including boarding and lodging in relation to such hostels; the engagement of Managers, Secretaries, house-keepers, matrons and employees for the purpose of running the hostel; the acceptance of donations, raising or borrowing of money and the receipt of subscriptions for the purposes of carrying out of the objects of the society are all contemplated by the objects of the society. The society is admittedly running four institutions for the aged and for destitute women as also for working women in the low and high income groups, respectively. For the purposes of carrying on the running and maintenance of these hostels the Petitioner has employed a body of workmen who perform duties and functions in regard to the conduct and management of these hostels. In the evidence of the Petitioner it has come on record that the hostel in which the petitioner was working was a building consisting of ground and three floors in which there were as many as 33 rooms. There were two working girls in each room of the hostel, having regard to the objects of the Petitioner the nature of the hostels which are conducted and managed by it, and the material circumstances which have come on the record of the case, it would be abundantly clear that the petitioner has satisfied the tests which have been laid down in the Bangalore Water Supply case. There is in this case a systematic organised activity; one in which there is co-operation between the employer and the employees in the provision and distribution of a service, namely, the provision of residential accommodation to a certain segment of the society. The decision in the Bangalore Water Supply case would make it abundantly clear that absence of profit motive by itself would not take the activity outside the fold of industry u/s 2(j). The activity which is being carried out by the Petitioner is clearly one which falls within the second classification of Charitable Institutions laid down by the Supreme Court in para 126 of its Judgment. The Petitioner may make little or for that matter, no profit from its activity and its object may be to provide low cost residential hostel accommodation to the indigent and needy. That however, does not detract from the fact that the Petitioner is an industry because insofar as the employees are concerned, there is a systematic activity involving co-operation between them and the employer in the course of which a service is provided to the inmates of the hostel. There is nothing charitable about the relationship between the employer and employee. For the employee it is a matter pure and simple of discharging his duties, of offering labour in return for wages which constitute the source of livelihood. The first submission must therefore be rejected by holding that the Petitioner does fulfil the requirement of the expression "Industry" u/s 2(j) of the Industrial Disputes Act, 1947.

11. The next limb of the argument was that the First Respondent is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. The expression workman is defined in Section 2(s), inter alia, to mean any person employed in any industry to do manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. For the purpose of

any proceedings under the Act in relation to an industrial dispute, the expression includes any person, who has been dismissed, discharged or retrenched in connection with the Industrial Dispute. Amongst the category of persons, who have been excepted from the defined are those who perform duties mainly of a managerial, administrative and supervisory nature. There can be no dispute about the proposition that even a part time employee is a workman within the meaning of Section 2(s). On behalf of the Petitioner what was sought to be submitted was that exclusivity of employment is a necessary requirement of the definition u/s 2(s) and though the First Respondent was engaged by the Petitioner she was not employed by the Petitioner within the meaning of that expression in the said Sub-section. Reliance was sought to be placed on the fact that the First Respondent received a minimum salary of Rs. 65/- per month while the bulk of her earning consisted of a payment of Rs. 15/- per month which was made available to her by each inmate of the hostel where the First Respondent was working. This contention lacks substance and has to be rejected. The admitted position in the present case is that the First Respondent was engaged and employed by the Petitioner, The First Respondent was employed for the purpose of carrying on the work of sweeping and cleaning. In the evidence of the First Respondent it has also emerged that the First Respondent use to sweep the first floor of the new hostel building. This First Respondent has stated that she was a part time sweeper who, besides her salary of Rs. 65/- per month received Rs. 15/- per month from each inmate, who was residing in the hostel. On behalf of the Petitioner it was sought to be submitted that the First Respondent, in fact, worked only for two hours since it was only one floor of the hostel that she was supposed to clean. This suggestion was denied by the First Respondent, who stated in her cross-examination that she was, in fact, working from 7:00 a.m. to 7:00 p.m.. The case that the First Respondent was working for only two hours every day was sought to be advanced on behalf of the Petitioner by Shri Charakamanni, who deposed on behalf of the employer. The witness who deposed on behalf of the employer has, however, admitted that he has no direct personal knowledge of the employment of the First Respondent in the Institution. The witness has, however, admitted in his cross-examination that the First Respondent was a part time employer whose name was maintained on the Muster Roll by the Petitioner. The witness admitted that there was a total of 158 lady inmates in the hostel of the Petitioner and while those belonging to the low income group were charged Rs. 580/- per month, those belonging to the higher income group were charged Rs. 780/- per month.

12. In the facts and the circumstances as they have emerged on the record there is no infirmity in the findings which have been arrived at by the Industrial Court to the effect that the First Respondent was a workman employed and engaged by the Petitioner. The First Respondent was engaged to carry out the activity of sweeping, may be, in respect of one floor. The fact is that the First Respondent in addition to her salary earned a certain amount from the inmates of the hostel for whom she ran errands and performed odd jobs. Even if the work which was

carried out by the First Respondent was in the nature of part time work she was still a workman within the meaning of Section 2(s). The First Respondent was a workman employed to perform manual labour. She was engaged by the Petitioner. She was paid a salary, however meager, by the Petitioner. She was subject to the control and supervision of the Petitioner. Indeed it was the Petitioner who exercised disciplinary control over her. In many an avocation a workman while providing service may receive a tip or gratuity which would be in addition to the salary which he or she earns. That however, does not dilute the position of the employee as a workman.

13. The view which has been taken by the Labour Court also accords with the decision of a learned Single Judge of this Court, Honourable Mr. Justice B.N. Srikrishna in *The President, Anatha Mahila Ashram Kolhapur v. J.G. Ajagaonkar* 1996 (2) C.L.R. 320 : 1997 (III) L.L.J.342. The Judgment of the learned Single Judge of the Allahabad High Court in *Radha Swami Satsang Sabha v. Rashtriya Mazdoor Congress* 1998 (1) C.L.R. 169, is clearly distinguishable. The matter there was remanded back to the Labour Court to consider whether a farm which was managed by the Sabha and its disciples was an industry. Similarly, the Judgment of the Punjab and Haryana High Court in *Ram Lakhan v. Presiding Officer* 1989 (2) C.L.R. 801, deals with the question of continuous service with reference to Section 25B and has no application to the present case.

14. Admittedly, the services of the First Respondent were dispensed with without following any safeguard and without conducting any enquiry. The First Respondent had absented herself from work, though without applying for maternity leave. No enquiry was held and the services of the First Respondent were sought to be dispensed with without observing any of the procedural requirements which are now part of the Industrial Law. In these circumstances, the termination of service was wholly improper and contrary to the law.

15. In determining what is that appropriate relief that should be granted in of the present case. I do not find any reason to interfere with the order of reinstatement. The First Respondent is a sweeper belonging to the lowest strata of society. Once the termination has been found to be improper an order of reinstatement must, in my view, follow in the facts of the present case. However, insofar as the issue of back wages is concerned, it would be necessary in this case to bear in mind the fact that though the Petitioner had dispensed with the services of the First Respondent in February, 1985, she has continued to provide services to the inmates of the hostel which is conducted by the Petitioner. The learned Counsel appearing on behalf of the First Respondent fairly stated that though the services of the First Respondent were dispensed with she has continued to render services to the inmates till date. The First Respondent has also continued to be in occupation of the service accommodation which was provided to her late father-in-law. Besides this, regard must be had to the fact that the Petitioner is not a commercial organisation but is engaged in providing low cost accommodation inter alia to the destitute, aged and needy. The Learned

Counsel appearing on behalf of the First Respondent has fairly left the determination of an appropriate payment of back wages to the Court, Having regard to the facts and circumstances in the present case. I am of the view that the ends of justice would be met if the Petitioner is directed to pay to the First Respondent an amount quantified at Rs. 40,000/- towards back wages. The Learned Counsel for the Petitioner stated that this would be fair and reasonable and would broadly accord with the offer which was made to the 1st Respondent by the Petitioner. The direction in regard to reinstatement with continuity of service is accordingly confirmed. In the circumstances, the writ petition fails, save and except, with the modification that in substitution of the order for the payment of full back wages the First Respondent would be entitled to back wages quantified at Rs. 40,000/-. The writ petition is accordingly disposed of. There shall be no order as to costs.