

**(2025) 12 J&K CK 1712**  
**In the Jammu And Kashmir High Court**  
**Case No : OWP No. 796 Of 2005**

Dharmarth Trust J&K

APPELLANT

Vs

Industrial Tribunal & Anr

RESPONDENT

**Date of Decision :** 19-12-2025

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Industrial Disputes Act, 1947 — Section 2, 25, 36

**Citation :** (2025) 12 J&K CK 1712

**Hon'ble Judges :** M A Chowdhary, J

**Bench :** Single Bench

**Advocate :** Ashwani Thakur

**Final Decision :** Disposed Of

## Judgement

M A Chowdhary, J

1. The petitioner, through the medium of this petition, under Article 226 of the Constitution of India, seeks quashment of order dated 09.09.2003 of the Industrial Tribunal, Jammu, whereby an award was passed in favour of the respondent No.2 namely Chand Ram, on a reference made to it by the Government of Jammu and Kashmir, vide SRO 13 dated 21.01.2003.

2. By virtue of the impugned order, the Tribunal held the termination of the services of the respondent no.2-Chand Ram illegal and quashed the termination order. The Tribunal also held the respondent no.2 to be in continuous service of the petitioner-Trust and entitled to receive back-wages to the extent of 50% from the date of his termination till the passing of the award, in favour of the respondent no.2.

3. Aggrieved of the impugned order, the petitioner has assailed the said award before this court on various grounds, inter alia, that the respondent no.2 was not a workman as defined under Section 2 of the Industrial Disputes Act as the provisions of the Act are not applicable to the petitioner Trust because it does not

fall within the definition of 'Industry' as contained in Section 2(j) of the Act.

4. Impugned award has been challenged on the grounds that the award of the Industrial Tribunal/Labour Court has been passed without jurisdiction and is based on misconception of law on the counts, firstly, that Dharmarath Trust is not an industry within the meaning of Section 2(j) of the Industrial Tribunal Act, 1947; secondly, Section 25-F of the Act has no application at all and thirdly, non-compliance of the principles of fundamental judicial procedure-misconception as to the provisions under Section 36 of the Act.

5. This court vide order dated 23.01.2006, while issuing notice to the respondents, stayed the impugned order.

6. Pursuant to notice, the respondent no.2 filed objections asserting therein that vide impugned order, the Industrial Tribunal-cum-Labour Court had answered the reference made by the Govt. of Jammu & Kashmir in terms of SRO 13 dated 20.01.2003. The award has been passed in ex parte as the respondent-petitioner herein had not contested the same; that it is settled that once a reference is made by the Govt then the same is required to be answered by the Industrial Tribunal/Labour Court and had the petitioner any grievance against the reference of the matter to the Industrial Tribunal, it was at liberty to challenge the reference order made in terms of SRO 13 in the year 2003 itself and this omission on their part impliedly admitted the legal position which is now disputed; that the writ petition is hit by doctrine of delay and laches as the impugned award passed in the year 2003 was challenged in the year 2005 after a delay of more than two years; that the petitioner-Trust is not a religious and charitable institution but it carried on multifarious activities and is also involved in the business and trade and comes within the definition of 'industry' as defined in the Industrial Disputes Act, 1947; that the trust-Petitioner owns business markets like Karan Market which has been carved out by cutting a part of Raghunath Temple and also has hotels like Ranbir Yatri Hotel at Indira Chowk which has been given to the private persons on contractual basis and was used as a business establishment of Dharmarath Trust. Similarly, the Trust owns so many shops, business establishment which have been given on rent basis and that the petitioner Trust earns profit out of it, thus leaving the Trust not only as religious and spiritual institution.

7. It has been further asserted by the respondent No.2 that the petitioner-Trust is an 'industry' as defined under Industrial Disputes Act as the petitioner Trust was involved in commercial and systemic activities, as such, the petitioner Trust and the respondent no.2 had a relationship of employer and employee.

8. The respondent No.2, who was the contesting party in this case, after filing of his response, initially, absented from the proceedings and despite issuance of notice to him through his counsel, he did not contest the matter. The respondent no.2 was finally proceeded ex parte vide interim order dated 22.04.2024. The matter is thus being considered in ex parte.

9. Learned counsel for the petitioner argued that unless there was finding recorded by the Tribunal that Trust was an industry and respondent no.2 a workman, as defined in Section 2(s), and there existed an industrial dispute, as defined in Section 2(k), the Tribunal could not have acquired the jurisdiction to adjudicate upon the said reference; that the Tribunal has observed in the impugned award that the services of respondent no.2 could not be terminated without following the provisions of law laid down under Section 25F of the Act; that the said Section provides for conditions precedent to retrenchment of workmen, for the fulfillment of which the necessary requirement is that the workman must be employed in an industry and once the petitioner-Trust is found not to be an industry within the meaning of Section 2(j), the question of applicability of Section 25F does not arise and that there is a difference between termination and retrenchment.

10. Mr. Thakur, would further argue that the representatives of the petitioner-Trust were not allowed to appear before the Tribunal, and the petitioner as such has gone unrepresented before it; that the representatives of the petitioner appeared before the Tribunal on 30.05.2003, but their presence was not recognized and recorded, again, the representatives attended the Tribunal on 02.07.2003 and 28.07.2003, but again their presence was not recorded and ex parte proceedings were initiated by the Tribunal against the petitioner; that the Trust made an application before the Tribunal on 06.08.2003 for setting aside the ex parte proceedings, detailing the name of persons who had attended the proceedings but the petitioner was not allowed to submit its reply and record as regards their status and that of respondent no.2 and that the findings of the Tribunal suffers from non application of mind. Lastly, it is submitted that the impugned order be set aside as the same is passed without jurisdiction.

11. Heard and considered.

12. The respondent No.2 admittedly had been engaged as Safaikaramchari vide order No.797-99 dated 23.05.1991 for a period of three months, with effect from 18.04.1991. The respondent No.2 allegedly absented from duty w.e.f. 22.10.2000 to 26.10.2000 and was issued a show cause notice by the petitioner-Trust. The respondent No.2 again absented himself w.e.f. 02.11.2000 to 07.11.2000 and the Administrator Shri Raghunath ji temple, recommended his disengagement not being satisfied after notice to him to explain his conduct. Respondent No.2 again absented himself w.e.f. 13.12.2000 to 16.12.2000 and was finally disengaged by the Administrator Shri Raghunath ji temple, vide No. DT/ADM-24/HB/2803-6 dated 01.01.2001.

13. The Govt. of Jammu & Kashmir vide SRO 13 dated 20.01.2003 made a reference to the J&K Industrial Tribunal-Labour Court, to adjudicate upon the dispute, who passed the ex parte award dated 09.09.2003 whereby the reference was replied holding that the order of termination of services of the petitioner as illegal and quashed the termination, holding the petitioner was held to be in continuous service of the respondent and entitled to backwages to the

extent of 50% as the petitioner had not actually worked for the respondent from the date of his termination till passing of the award.

14. To determine as to whether the Industrial Disputes Act can apply to the Dharmarth Trust, it has to be seen as to whether the activities of the Trust are commercial or analogous to trade or business or even if the surplus generated is used for charitable purposes. If the Trust operates factories, production units or any sustained commercial ventures, for example, manufacturing automobiles parts, running a commercial hospital wing, etc. These specific operations fall under the Act; and if the Trust hires employees for these activities in an organized manner with proper remuneration, they are considered workmen with statutory rights. It is also to be kept in view that this Act generally shall not apply to purely spiritual or religious activities conducted by the Trust. Whether the workers are motivated by passion for a cause rather than wages. Therefore, the applicability of the Industrial Disputes Act to the petitioner Dharmarth Trust has to be determined by the functional nature of its specific activities not just its overall charitable designations.

15. As is borne out on perusal of record of the Industrial Tribunal/Labour Court that one Girdhari Lal, Revenue Officer of the petitioner Trust had appeared before the Labour Court on 24.04.2003 but without any authority letter and had not filed objections who was given time to file authority letter as well as objections, however, thereafter nobody appeared for the petitioner Trust, as such, its right to file objections was closed on 02.07.2003; that the petitioner-Trust has thus intentionally and deliberately absented itself from the Court below and was rightly set ex parte.

16. The courts in India have consistently applied the Triple test and dominant nature test established as crystallized in the landmark case of Bangalore Water-Supply and Sewerage Board Vs. R. Rajappa & Ors., reported in (1978) 2 SCC 213 to determine if an entity is an 'industry' under Section 2(j) of the Act, firstly, as to whether the organization engages in a systemic and organized activity. Secondly, as to whether there is cooperation between the employer and the employees and, thirdly, whether the activity of the organization is for the production or distribution of goods or services, designed to satisfy human wants or wishes (excluding those that are merely spiritual or religious in nature).

17. It has been pleaded by the petitioner that the Dharmarth Trust was created by Maharaja Ghulab Singh based on donations for the maintenance, upkeep and welfare of the Hindu religious places, endowments, temples and places of worship; and that the Trust has been running and maintaining various institutions like Sanskrit Maha Vidyalaya at Birpur, Sanskrit Pathshalla at Shri Raghunath Ji Temple, Ranbir Research Institute Sanskrit Library, Ramayan Vidya Peeth at New Delhi, Karam Kand at Haridwar and Varanasi, Gaushalas, Scholarships, Bhawans for yatris.

18. In view of Triple Test as referred to hereinabove applied to the activities of

the Dharmarth Trust, it can safely be held that the petitioner Trust was having the activities in a systemic and organized manner, and the activities of the Trust were for the production and distribution of services, designed to satisfy human wants or wishes including spiritual or religious in nature, the Trust was also having commercial operations and given to the functional nature of its activities, it can be stated that the petitioner Dharmarth Trust was carrying out the activities, which were not purely religious/spiritual in a selfless and volunteer manner. In view of the functional nature of its specific activities, the petitioner-Trust can be described to be an 'industry' under the Industrial Disputes Act, 1947 so as to subject the same to the provisions of the Industrial Disputes Act.

19. The respondent No.2-Chand Ram as admitted by the petitioner Trust had been engaged as Safaikaramchari on daily wages @ Rs.10.75 per day and had never been regularized before his disengagement from the services of the Trust on the basis of misconduct due to absence. Since the activities of the Dharmarth Trust, fall within the definition of the 'industry' as defined under Section 2(j) of the Industrial Disputes Act, as such, the relationship between the respondent no.2 and the petitioner Trust can be stated to be that of employer and workman as contemplated under the Industrial Disputes Act.

20. The petitioner-Trust is stated to have been maintaining various institutions of education and research besides Goushalas and Bhawans at various places in the country and the staff required for their upkeep and maintenance cannot be stated to be a service purely of religious and spiritual nature. All the employees of the Trust are appointed to discharge various duties against remuneration/salaries. The respondent No.2-Chand Ram was working as a Safaikaramchari on wages. Therefore, the relationship between the petitioner-Trust and the respondent No.2 was that of an employer and a workman.

21. The petitioner-Trust on a reference of the dispute to the Industrial Disputes Tribunal by the Govt. of Jammu and Kashmir vide SRO 13 dated 21.01.2003 had neither challenged the validity of the notification of reference before this court nor filed any pleading before the Tribunal so as to take a defense that the relationship between the parties was not that of an employer and the workman as has been contended in this petition. The petitioner Trust could have led the evidence before the Tribunal below so as substantiate that it was not an Industry, which is not possible before this Court under the writ jurisdiction but it had chosen not to avail that remedy. The petitioner Trust in view of both these inactions can be stated to have not assailed the reference or its validity till this petition was filed in 2005 after filing of the impugned award in ex parte.

22. The contention of the learned counsel for the petitioner-Trust that this court in OWP No. 60/2003 in a case titled J & K Dharmarth Trust Council V. State of J&K & Ors. had held that the Trust does not fall within the definition of establishment or employer so as to consider the claim of gratuity of its employees, which has entirely different facts and that finding cannot be ipso facto applied to the dispute on hand.

23. Having regard to the aforesaid discussion and reasons assigned hereinabove, this Court is of the considered opinion that the impugned award does not call for any interference by this Court under its writ jurisdiction. The petition is thus, found to be misconceived and is liable to be dismissed. As a result, the petition is dismissed alongwith the interim applications. The impugned award is upheld.

24. Disposed of along with connected application(s).