

**(2009) 02 OHC CK 0010**  
**In the Orissa High Court**

Dr. Elizabeth Jean Marsh

APPELLANT

Vs

Presiding Officer, Labour Court and Others

RESPONDENT

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**Date of Decision :** 10-02-2009

**Acts Referred:**

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

**Citation :** (2009) 107 CLT 455 : (2009) 3 LLJ 472 : (2009) 2 OLR 708 Supp

**Hon'ble Judges :** S.C. Parija, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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**Judgement**

S.C. Parija, J.—The management of Christian Hospital for Women and Children, Berhampur, has filed, this writ application challenging the award dated 29.07.1993, passed by the Presiding Officer, Labour Court, Jeypore in I.D. Case No. 64 of 1991, modifying the punishment of dismissal from the service of the workmen, Opposite Parties 2 and 3 and awarding lesser punishment, like stoppage of annual increment and directing reinstatement without back wages.

2. The workmen, Opposite Parties 2 and 3, having been dismissed from service by the Petitioner-management, raised industrial dispute, which was taken up for conciliation and the same having ended in failure, the State Government in the Labour and Employment Department referred the dispute to the Labour Court, Jeypore, for adjudication. The terms of the dispute were as follows:

Whether the dismissal of services of Sri Murali Dakua, Driver and Sri S.B. Amarnath, Maintenance Workers with effect from 05.12.90 by the management of Christian Hospital for women and children, Berhampur is legal and/or justified? If not, to what relief they are entitled?

3. The case of the workmen before the Labour Court was that Sri Murali Dakua and Sri S.B. Amarnath, Opposite Parties 2 and 3 were working as driver and watcher, respectively, under the management and their services was permanent

in nature. They have been dismissed from service by the management with effect from 05.12.1990, without any rhyme or reason and no domestic enquiry has been conducted and adequate opportunity has not been given to them to prove their innocence. Therefore, the action of the management was vindictive. The further case of the workmen was that although good number of persons were working under the management, there was no workers Union in the establishment and the two workmen, Opposite Parties 2 and 3, took initiatives and created a Union of the employees. Sri Dakua, Opposite Party No. 2, became the General Secretary and Sri Amarnath, Opposite Party No. 3, became the Joint Secretary of the said Union. They raised certain legal demands before the management, on behalf of the employees, for which, the management became aggrieved and ultimately both the workmen have been illegally dismissed from service. The workmen further claimed that they have not been issued with any charge sheet or show cause notice to explain their conduct and no opportunity has been given to them to defend themselves in the domestic enquiry, which was conducted ex parte and behind their back. It was their further case that they were not served with copy of the enquiry report prior to their dismissal from service and no prior notice or any notice pay or compensation have been paid to them, before termination of their services. Accordingly, it was pleaded by the workmen that the action of the management in dismissing them from service with effect from 05.12.1990 was not legal and justified and they were entitled to Reinstatement in service, with full back wages.

4. The case of the management before the Labour Court was that the order of dismissal was passed on the basis of proved misconduct of the workmen. The management pleaded that they received allegation against the workmen, Sr A.B. Amarnath, from staff nurse Miss Susmita Das that while she was dusting the chappel verandah on 26.09. 1990 morning at about 6 A. M., in the hospital premises, the workman Sri Amarnath outraged her modesty by putting his hand on her buttock. On receipt of such complaint, the workman Sri Amarnath was issued with notice to show cause why disciplinary action shall not be initiated against him for such misconduct. The workman submitted his explanation on the same day, which was found to be unsatisfactory. The management decided to hold enquiry and appointed Sri R.C. Patro, Advocate, as the Enquiring Officer, to enquire into the allegation. The delinquent workman was duly intimated about the appointment of the Enquiry Officer and to attend the enquiry on 22.11.1990. In spite of notice, as the workman did not attend the enquiry on the date fixed, the Enquiry Officer was forced to hold the enquiry ex parte. The management produced witnesses in support of the charges and on conclusion of the enquiry, the Enquiring Officer submitted the enquiry report, holding the delinquent-workman guilty of the charges. The management on consideration of the enquiry report dismissed the workman from service.

5. As regard the other workman Sri Dakua, it was the case of the management that he was deputed on 16.11.1990 with the hospital vehicle to go to Sorada with the medical aid team to give medical aid to the flood affected people. The

team was headed by Dr. M.K. Nanda. The workman, Sri Dakua, in the return journey picked up some passengers on the way and collected money from them, in spite of objection of Dr. Nanda. Further, the workman, Sri Dakua, also did not obey the instruction of Dr. Nanda and drove the vehicle in a rash and negligent manner and at one place, he applied sudden break, as a result of which, the occupants of the vehicle fell down inside the vehicle and the staff nurse Miss Subala Jyoti sustained injury on her face and one of her tooth was broken. Sri Dakua also stopped the vehicle on the way for half an hour, without any instruction. On receipt of such complaint, the management issued show cause notice to Sri Dakua. The workman submitted his explanation, denying all the charges. The explanation having been found to be unsatisfactory, the management decided to hold an enquiry into the charges and appointed Sri R.C. Patro, Advocate, as the Enquiring Officer. The delinquent workman was duly intimated about the appointment of the Enquiry Officer and the date of enquiry. In spite of such notice, as the workman did not attend the enquiry on the date fixed i.e. 22.11.1990, the Enquiry Officer was forced to hold the enquiry ex parte. The management produced witnesses in support of the charges and on conclusion of the enquiry, the Enquiry Officer submitted his report to the management, holding the workman guilty of the charges. On receipt of the enquiry report, the management found the charges to be established and accordingly dismissed the workmen from services.

6. The Petitioner-management also took the plea that as they are a charitable hospital run by the Christian Missionary for providing medical assistance to the women and the children, they are not an "industry", as defined u/s 2(j)(2) of the Industrial Disputes Act ("I.D. Act" for short).

The Labour Court on the basis of the pleadings of the parties, framed the following issues:

- (i) Whether the reference is maintainable?
- (ii) Whether the workmen have been victimized by the management for forming a union and they became the office bearer of the union?
- (iii) Whether the principle of natural justice had been followed before dismissing the workmen from the service?
- (iv) Whether the management is justified in holding the domestic enquiry ex parte against the workmen?
- (v) Whether the findings of the enquiring officer of proved misconduct is binding on the workmen?
- (vi) Whether the punishment like dismissal from the service for such proved misconduct was proportionate to the gravity, of the misconduct?
- (vii) Whether the Section 25-F of the I.D. Act, was required to follow at the time of termination of the service of the workmen?

(viii) To what relief the workmen are entitled?

7. The Labour Court keeping in view the definition of an "industry" as given in Section 2(j) of the I.D. Act and considering the activities of the Petitioner-management, which runs a private hospital, providing medical service to women and children, on payment of money, came to hold that the Petitioner establishment is an "industry" within the meaning of Section 2(j) of the I.D. Act. With regard to the charges of misconduct made against the delinquent workmen and the domestic enquiry conducted to enquire into such charges, the Labour Court, on the basis of materials on record, came to find that as the workmen in spite of notice, did not attend the domestic enquiry, the Enquiring Officer had no other alternative than to proceed with the enquiry ex parte. The Labour Court accordingly rejected the plea of the workmen that no enquiry has been held or that the ex parte enquiry held and the enquiry report submitted by the Enquiring Officer is not binding on them.

8. Coming to the punishment of dismissal from service imposed by the Management, the Labour Court came to find as under:

So in view of the above settled position of law, I am of the opinion that this Court has got power to sit over the punishment awarded by the management in appropriate case where the punishment is considered to be shockingly disproportionate against the gravity of the misconduct charged. This is a fit case in which I can opine that the punishment of the dismissal from the service to the workmen on the above charges was excessive and harsh. Hence in my opinion the punishment now suggested to the respective workmen would meet the ends of justice. Sri Dakua is to be awarded punishment like stoppage of two annual increments in the time scale of pay without cumulative effect and he be reinstated in the job without any back wages. But his service is to be counted for all other benefits. Similarly, Sri Amarnath be reinstated in the job without back wages and his one annual increment in the time scale of pay be stopped with cumulative effect. His service continuity be maintained for all other service benefit.

9. The main contention raised by the Learned Counsel for the Petitioner is that in view of the definition as provided in Section 2(j)(2) of the I.D. Act, as amended by Act 46 of 1982, hospitals or dispensaries cannot be said to be an "industry". Moreover, as the Petitioner-management run a charitable hospital with the financial aid and assistance of the Christian Missionary, for providing medical services to workmen and children, the establishment cannot be treated as an "industry". Accordingly it is submitted that the impugned award passed by the Labour Court cannot be sustained.

10. This contention of the Learned Counsel for the Petitioner, on the face of it is fallacious and misconceived, inasmuch as, though an elaborate amendment has been made to the provisions of the I.D. Act, by the Amendment Act of 1982, which introduced amendments in various other provisions of the I.D. Act, which

have been brought into force by issuance of a Notification, but the said Amendment Act to the extent of its substituted definition of "industry" which specified categories of industries taken out of its purview, has not been brought into force till date, as has been observed by a Constitutional Bench of the Supreme Court in the case of *The Commissioner, Trade Tax, U.P. Vs. National Cereal Product etc. etc.*, .

11. Definition of "industry" provided in Section 2(j) of the I.D. Act, as it stands today, reads as under:

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.

12. The definition of industry was dealt with by a Constitutional Bench of the Supreme Court in the case of *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, , wherein the criteria for determining the activity of an establishment as an "industry" was laid down which are as follows:

Where there is (i) systematic activity, (ii) organized by cooperation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale, Prasad or food), *prima facie*, there is an "industry" in that enterprise.

Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

The consequences are (i) professions, (ii) clubs (iii) educational institutions, co-operatives, (iv) research institutes, (v) charitable projects and (vi) other kindred adventures, if they fulfill the triple tests listed above, cannot be exempted from the scope of 8.20).

13. In view of the expanded interpretation given to an "industry" as defined in Section 2(j) of the I.D. Act, the charitable hospital run by the Petitioner-management for providing medical service to women and children does come within the meaning of an "industry" and therefore the findings of the Labour Court, in that regard, cannot be faulted.

14. The other contention raised by the Learned Counsel for the Petitioner is that the impugned award has been passed *ex parte* and the Petitioner-management has not been provided with opportunity of hearing by the Labour Court. On a perusal of the impugned award it is seen that on the date of hearing, the management remained absent and did not take any steps. The Labour Court further found that the management had remained absent and did not attend the

hearing continuously for two dates. As the parties were from Berhampur, the Labour Court posted the matter for hearing in his Berhampur camp once every month but the management did not attend the camp Court. Ultimately the Labour Court, on the basis of the pleading of the parties and the documents filed by them, passed the award.

15. In view of the above findings of the Labour Court, it cannot be said that the management was not provided with reasonable opportunity of hearing or that there has been any violation of the principles of natural justice and fair play. As the management consistently avoided to participate in the hearing of the matter, in spite of opportunity, in order to drag and delay the proceeding, as has been found by the Labour Court in the impugned award, the plea of the Petitioner in that regard cannot be sustained.

16. As there is no pleadir is in the writ application nor any submissions have been advanced by the Learned Counsel for the Petitioner with regard to the merits of the impugned award, no opinion is expressed in that regard.

17. Applying the principles of law as detailed above to the facts of the present case, no impropriety or illegality can be said to have been committed by the Labour Court in holding the establishment of the Petitioner-management to be an "industry" within the meaning of Section 2(j) of the I.D. Act, so as to warrant any interference by the Court, in exercise of its writ jurisdiction under Article 226 of the Constitution.

18. The writ application is therefore devoid of any merit and the same is accordingly dismissed.