
(2004) 04 JH CK 0035

In the Jharkhand High Court

Case No : CWJC No. 2104 of 1995 (R)

Employees in relation to the Management of the Central
Horticultural Experiment Station

APPELLANT

Vs

Presiding Officer, Central Government Industrial Tribunal No.
2 and Another

RESPONDENT

Date of Decision : 05-04-2004

Acts Referred:

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

Citation : (2004) 102 FLR 357 : (2004) 1 JCR 409

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : M.M. Prasad, for the Appellant; Ashwin Kumar and R.N. Singh, for the Respondent

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—The award passed by the Central Government Industrial Tribunal No. II, at Dhanbad in Ref. Case No. 20 of 1990, is under challenge in this writ application by the Management of Central Horticultural Experiment Station, Ranchi, whereby, in answer to the reference, the Presiding Officer, held that the Central Horticulture Experiment Station is an "Industry" and the concerned workmen are the workman within the meaning of the Industrial Disputes Act and they deserved their regularization and payment of Group-D pay scales and accordingly the management was directed to regularize the services of all the concerned workmen and to pay them Group-D pay scale which was the lowest pay scale of the institute.

2. According to the case of the petitioner, the Central Horticultural Experiment Station (Hereinafter referred to as "CHES" in short) is one of several Regional Research Stations of the Indian Institute of Horticultural Research (IIHR), Bangalore, which itself is one of about 50 Research Institute of the Indian

Council of Agricultural Research (ICAR) New Delhi, located throughout the country.

3. Main objectives of CHES are to develop better varieties of important fruits and vegetable crops, control of important diseases and pests of these crops, find out efficacy of various pesticides, chemicals, to find out the best results through research for the benefit of growers so that they can raise higher yield. The workers are engaged not to carry on any trade or business.

4. The ICAR is engaged in research, teaching, training, transfer of technology to farmers through its various Research Institute, National Research Centres, Project Directorates, All India Co-ordinated Research Projects, Krishi Vigyan Kendras, Transfer of Technology Centres etc. on various agricultural aspects, including Horticulture, Animal Husbandry, Fish, Poultry etc. ICAR gives financial supports to all the State Agricultural Universities. Indian Institute of Horticultural Research (IIHR), Bangalore undertake research, teaching, training on various Horticultural crops, such as fruits, vegetables, flowers etc. and its allied supporting disciplines like control of disease, pests, physiological work, biochemical work, developing or identifying new improved varieties, standardizing various seeds and plant propagation methods, crop utilization etc. The results are popularized through, radio and TV. talks, publishing research and popular articles as well as technical bulletins and leaflets, which are supplied free of cost for the benefit of growers, extension workers, teachers, fellow research workers etc.

It is further stated that all these workers are done to find out the best results through research for the benefit of growers so that they can raise higher yield.

It is further stated that the CHES is therefore, not an "Industry" as defined u/s 2(j) of the Industrial Disputes Act, 1947 and therefore, the provisions of the Industrial Disputes Act are not applicable to it.

It is further stated that the CHES has a research farm and not commercial farm, hence the saleable produce which are left over after taking the scientific data are very limited and the same are sold through the sales counter of the Research Station. The articles namely Mango, Litchi, Guava, Banana etc. and the vegetable namely Cauliflower, cabbage, peas beans etc. are grown on the experimental basis and not for commercial purpose or for profit making.

The casual workers are engaged for seasonal work only and not for the whole of the year for similar activity of CHES. All the casual labourers are not performing the same kind of work as are being performed by the permanent employees of Group-D.

It is further stated that the Management is already paying the minimum wages to the casual workers as fixed by the Government of Bihar or the Central Government whichever is higher. The engagement of these casual workers is purely on casual basis depending upon seasonal needs and varied agricultural

field operation like preparation of seed bed, channels, spraying of fungicides and pesticides, watering of seed beds and plants weeding, cultural, works, application of fertilizers and harvesting etc.

5. On the other hand, the case of the respondents No. 2 is that the CHES has been established at Ranchi for the purpose of meeting the quality and quantity of fruits as well by developing Horticulture within the country at large. In 600 acres of land the CHES has planted a large of trees of different varieties of fruits in the major portion of the land. The fruits are grown with the co-operation of labour. Fruits are sold in the market and therefore, CHES is an Industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The CHES has employed a large number of labourers, out of which 127 workmen have been denied regularization and they have also been denied their right of receiving the minimum wages fixed under the Minimum Wages Act 1948. The work of CHES is perennial in nature for which all the 127 workmen have been engaged. They were engaged in between 21.3.1979 to 28.3.1984 but inspite of their long service they have been kept wrongfully as casual workers.

6. Mr. M.M. Prasad, learned counsel for the petitioner has submitted that only that portion of the award, whereby the tribunal has ordered for regularization of the causal workers, is being challenged in the present writ application, on the ground that the CHES is not an "Industry" as envisaged u/s 2(j) of the Industrial Disputes Act. He further submits that so far as the wages are concerned, the management is already paying the wages to the casual workers which are being paid to Group-D employee.

7. Mr. Prasad further submitted that the sister concern of the petitioner i.e. Central Rainfed Upland Rice Research Station has also been held to be not an "Industry" by this Court in the case of Central Rainfed Upland Rice Research Station, Hazaribagh v. Union of India and Ors. reported in 2002 (1) JCR 129. Therefore, the present petitioner, which is also a Research Station only, should also be held to be not an "Industry".

8. From perusal of the impugned award it appears that the tribunal has held that the CHES is an "Industry" and the provisions of the Industrial Disputes Act are fully applicable on the basis of the judgment in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, .

9. The learned counsel for the respondent No. 2 submitted that the findings of the Tribunal that the CHES is an "Industrial" is not required to be disturbed by this Court in its writ jurisdiction as the said findings is based on the facts and materials on record.

10. The main objective of the CHES has not been disputed by the workmen. The tribunal has not held that the main object of CHES is not the research in agriculture or that the CHES is carrying on trade or business in any manner. The tribunal after discussing the case law in the case of Bangalore Water Works has abruptly held in para 24 of his award as follows :--

"I think the classical judgment of Bangalore case which still holds field had set the controversies at rest. Thus the contention of the management that CHES is not an "Industry" has got no force and I am to hold that it is an "Industry" and the provision of the Industrial Disputes Act are fully applicable."

This finding of the tribunal is without discussing the facts of the case in the Bangalore Water Works and the facts of the present case of CHES, CHES can be held to be an Industry only on the basis of its objective and its activities but what I find that the tribunal, without giving any finding on the objectives and activities of the CHES has declared it to be an Industry, which in my view is not correct. On the contrary from the facts of the case, I find that objectives and activities of CHES is not as such from which it can be said to be an Industry within the meaning of Section 2(j) of the Industrial Disputes Act.

11. I find that the tribunal has not given any finding on the basis of any fact so as to come to the conclusion that CHES is an "Industry" within the meaning of Section 2(j) of the Industrial Disputes Act rather I find that the said finding has been arrived at only on the basis of the judgment in the case of Bangalore Water Supply and Sewerage Board (supra). Nothing has been stated in the award as to how and under what circumstances the case of the Bangalore Water Supply and Sewerage Board applies in the facts and circumstances of the present case of CHES. Even there is no finding in the award, to the effect that the CHES is engaged in any business of commercial activity or that the product i.e. vegetables or fruits etc. are grown and sold in the market for any commercial transaction.

12. In this regard it is relevant to notice the decision of the Supreme Court in the case of Physical Research Laboratory Vs. K.G. Sharma, wherein the Supreme Court has held as follows :--

"Neither from the nature of its organization nor from the nature and character of activity carried on by it, can it be said to be an "undertaking" analogous to business or trade. It is not engaged in a commercial industrial activity and it cannot be described as an economic venture or a commercial enterprise as it is not is object to produce and distribute service which would satisfy wants and needs of the consumer community. It is more an Institution discharging governmental functions and a domestic enterprise than a commercial enterprise. PRL, therefore, is not an "Industry" even though it is carrying on the activity of research in a systematic manner with the help of its employees as to lacks that element which would made it an organization carrying on an activity which can be said to be analogous to the carrying on of a trade or business because it is not producing distributing services which are Intended or meant for satisfying human wants and needs, as ordinarily understood."

13. In the case Central Rainfed Upland Rice Research Station, Hazaribhag (supra) this Court relying on the said decision in the case of Bangalore Water Supply and Sewerage Board (supra) has held that there is nothing on the record to suggest

that the Central Rainfed Upland Rice Research Station, Hazaribagh, was engaged in commercial or industrial activity and therefore, it was not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947.

14. Relying on the aforesaid two decisions of the Supreme Court i.e., in the case of Physical Research Laboratory v. K.G. Sharama and in the case of Bangalore Water Supply and Sewerage Board v. A. Rajappa. I hold that in the present case also there is nothing on record to suggest that the petitioner is engaged in any commercial or industrial activity rather the petitioner is merely carrying on activity of research in systematic manner with the help of its employees. It lacks the element which would make it an organization carrying on any business activity concerning any trade or business to bring it within the purview of an Industry defined u/s 2(j) of the Industrial Disputes Act and therefore, the findings of the tribunal is that the petitioner is an industry within the meaning of Section 2(j) of the Industrial Dispute Act is wholly illegal and perverse.

15. Accordingly this application is allowed and the award so far as the it directs the petitioner for regularization of the services of the casual workers is hereby set aside. In the facts and circumstances of the case, there shall be no order as to costs.