
(1988) 02 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1695 of 1982

Indian Red Cross Society

APPELLANT

Vs

Additional Labour Court and Others

RESPONDENT

Date of Decision : 09-02-1988

Acts Referred:

Industrial Disputes Act, 1947 — Section 2J

Citation : (1994) 3 LLJ 919

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : J.L. Gupta and Subhas Ahuja, for the Appellant; Sudarshan Goel, for R2 (Workman), for the Respondent

Final Decision : Dismissed

Judgement

J.V. Gupta, J.—This judgment will also dispose of Civil Writ Petitions Nos. 4446 of 1982 and 2580 of 1983, as the question involved, viz., whether the Indian Red Cross Society, Haryana (hereinafter called "the society"), falls within the definition of "industry", as defined u/s 2(j) of the Industrial Disputes Act, 1947 (hereinafter called "the Act") or not, is common in all these cases.

2. The facts giving rise to Civil Writ Petition No. 1695 of 1982, in brief, are that the workman, Kali Ram, one of the respondents in this writ petition, worked as a salesman, on daily wages, with the society, with effect from February 14, 1976. He continued to work as such till June 2, 1980, when he was not allowed to work and was relieved of his duties. On demand notice by the workman, reference was made to the Labour Court. The workman pleaded that the action of the society was violative of Section 25F of the Act, as he had already put in a service of more than 240 days continuously. He had been victimised since juniors to him were retained in the job by the society and that he wanted his reinstatement with full back wages. In the written statement filed on behalf of the society, it was pleaded that the workman was a daily wage earner; the society was not an "industry" and had its own statute to be governed by it; the services of the

workman were not required by the society and that the termination of his services amounted to discharge simpliciter. On the pleadings of the parties, the Labour Court framed the following issues:

1. Whether the services of the claimant have been terminated illegally ? If so, to what effect? On claimant.
2. Whether the Indian Red Cross Society is not an industry and is not covered under the Industrial Disputes Act ? On respondent.
3. Whether the claimant has not been in continuous service of the respondent ? On respondent.
4. Whether the conditions of service of the claimant were changed in violation of Section 9A, according to law ? On respondent.
5. Whether the discharge of the claimant amounts to discharge simpliciter and valid according to law ? On respondent.

3. Under Issue No. 2, the Labour Court found:

"The workman-claimant has also mentioned that the respondent side has several stores, i.e. Relief Store, Medical Store, Family Planning Store and a Cloth, Canvas Store and also has a lottery department. So looking to this fact, I am of the view that the respondent also worked for profits as well as have activities and the workmen are involved in that activity and the job of sale and purchase is conducted there and, therefore, I am of the considered view that the institution of the respondent amounts to an industry and is covered by the Industrial Disputes Act".

Under Issue No. 4, the Labour Court found that the workman had worked for more than one year and continuously for 240 days. Ultimately, the Labour Court concluded:

"So in this situation, I am of the considered view that the services of the workman-claimant had been illegally terminated and the phrase "discharge simpliciter" without compliance of Section 25F of the Industrial Disputes Act is of no avail to the respondent side".

Finally, the award was made to the effect that the services of the workman had been terminated illegally and that he was entitled to reinstatement with full wages. Copy of the award, dated February 3, 1982, is annexure P-1.

4. Learned counsel for the petitioner argued that the society is not an "industry" as it is a charitable institution. Even the business activities carried on by it are for the purposes of augmenting the funds of the society for doing charitable work. Thus, argued learned counsel, from the purposes of the society, it could not be held to be an "industry " as contemplated under the Act. In support of the contention, learned counsel relied upon the Full Bench Judgment of this Court in *Om Prakash v. Executive Engineer* 1984 65 FJR 236.

5. On the other hand, learned counsel for the workman-respondent cited Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, to contend that the absence of profit motive or gainful objective is irrelevant whether the venture is in the public, joint, private or other sector. The decisive test is the nature of the activity with special emphasis on the employer-employee relations. The Full Bench Judgment of this Court in Om Prakash case 1984 65 F.J.R. 236, has no applicability to the facts of the present case. In the said case, the matter dealt with was the State activities. It was in these circumstances that the Hon"ble Prem Chand Jain, Acting Chief Justice (as he then was), speaking for the Full Bench, in paragraph 8 of the judgment concluded (at page 240):

"I hold that the functions of the Irrigation Department are essentially Government functions and that these functions neither partake of the nature of trade and business, nor are even remotely analogous thereto and that this Department does not come within the ambit of "industry" as defined in Section 2(j) of the Act."

6. As already observed, the said case dealt with the State activities and not with the activities of the institutions which are statutory or companies. In the present case, the society is a corporate body like a registered company. In Bangalore Water Supply's case 1978 52 F.J.R.197, it has been held by the Supreme Court that the term "industry" as defined in Section 2(j) of the Act has a wide import. According to the Supreme Court in the said case, whether there is : (i) systematic activity, (ii) organised by co-operation 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. If the organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking. Applying the said tests, it was held that (i) professions, (ii) clubs, (iii) educational institutions, co-operatives, (iv) research institutes, (v) charitable projects, and (vi) other kindered adventures, if they fulfill the triple tests listed above, cannot be exempted from the scope of Section 2(j). In view of this authoritative pronouncement, it could not be successfully argued that the society is not an industry within the meaning of Section 2(j) of the Act.

7. Learned counsel for the petitioner further contended that no opportunity was given to the society to lead its evidence and, therefore, the award given by the Labour Court was liable to be set aside. In any case, argued learned counsel, the workman should not have been allowed full back wages as it would place an impossible burden on the society. In the return filed on behalf of the workman, respondent No. 2, it has been stated in reply to paragraph 3 of the writ petition that no evidence was led by the society in spite of adjournments and, therefore, its evidence was closed by the Labour Court. Therefore, it was not a case where the management was refused an adjournment to lead its evidence or no

opportunity was afforded to it in this behalf.

8. After hearing learned counsel for the parties on this point also, I do not find any force in the contention that no opportunity was given for leading evidence to the petitioner, rather, from the facts proved, it is evidence that it failed to lead evidence in i spite of adjournments.

9. The next contention urged by learned counsel for the petitioner is that the respondent workman was not entitled to the full back wages as the society is a charitable institution, and the payment of the full back wages to the workman will place an impossible burden on it. Surprisingly enough, no such averment has been made in the writ petition. In absence of any such averment it could not be successfully argued on behalf of the petitioner that the workman was not entitled to the full back wages which is the normal rule when the termination order of a workman is set aside and he is reinstated in service.

10. As a result of the above discussion, these writ petitions fail and are dismissed with no order as to costs.