
(2012) 02 OHC CK 0026

In the Orissa High Court

Case No : O.C.J. No. 395 of 2000 and W.P. (C) No. 10081 of 2003

Jayanti Pathagar

APPELLANT

Vs

Government of Orissa and Others

RESPONDENT

Date of Decision : 10-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 17B, 2, 2(j), 25F, 33

Citation : (2012) 133 FLR 902

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Advocate : N.K. Mishra, D.N. Mishra, S.N. Dwibedy and S. Mishra in W.P. C No. 10081 of 2003 and O.J.C No. 395 of 2000, S.K. Mishra, S. Kr. Mishra in O.J.C No. 395 of 2000 and D.K. Rout in W.P. C No. 10081 of 2003, for the Appellant; K.N. Jea, D.K. Mohapatra, M. Ganguly, A.K. Sahu and B.P. Bal for the Opposite Parties No. 2 in W.P. (C) No. 10081 of 2003, D.K. Mohapatra and M. Ganguly for the Opposite Parties No. 3 in O.J.C No. 395 of 2000, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mishra, J.—In these writ petitions, the petitioner seeks to set aside the award dated 25.06.1999 passed by the Presiding Officer, Labour Court, Jeypore, Koraput in Industrial Dispute Case No. 19 of 1995, wherein the Labour Court directed reinstatement of the opposite party No. 3 in O.J.C. No. 395 of 2000 along with payment of all back wages. In W.P. (C) No. 10081 of 2003, the petitioner-Management namely, Jayanti Pathagar prays that the order passed by the aforesaid Labour Court in I.D. Case No. 28 of 2002 on 19.5.2003 u/s 33C (2) of the Industrial Disputes Act, 1947, hereinafter referred to as the "Act", for brevity, directing the petitioner to pay a sum of Rs. 2,76,000/- in compliance to section 17B of the Act as per the interim orders passed by this Court in the aforesaid O.J.C. is to be set aside. Opposite party No. 3 claimed that he was appointed as an Office Assistant by the Management and he worked as such from 1.4.1988 till 30.6.1989 without any break, after which he was removed from

employment without complying with section 25F of the Act.

2. A written statement of the claim has been filed by the first party management, wherein it is pleaded that the Jayanti Pathagar is a voluntary organization having no profit motive. It is not an "industry" as defined under the Act. In the year 1988, it received grant-in-aid from the Government of India to implement the Non-Formal-Education project and to give effect to the said project the second party was appointed as an Office Assistant on monthly honorarium of Rs. 1200/-, Initially, it is pleaded that he was appointed for a specific term which was due to expire on 31.8.1988, but subsequently it was extended upto 31.5.1989. The project was scheduled to be completed by 31.5.1989. The workman continued there beyond 31.5.1989. On 10.6.1989 he was arrested by the police in connection with participation in a demonstration against a religious procession. Following the arrest, he was directed by the Management to explain his conduct vide its letter dated 23.6.1989. He did not accept the letter. Under such circumstances, his services were terminated with effect from 30.6.1989. There was a police case against the workman for the said demonstration. In the year 1992 he was acquitted by the Court. Thereafter, he approached the Management for his reinstatement, but the Management declined to appoint him as the scheme was already completed.

3. On these pleadings, the learned Presiding Officer cast the following issues:

(i) Whether the reference is maintainable?

(ii) Whether the Jayanti Pathagar is an industry?

(iii) Whether termination of the second party i.e. the opposite party No. 3 amounts to retrenchment?

(iv) Whether the termination of the service is legal and/or justified?

(v) What relief can be granted to the workman?

4. Both the parties examined one witness each and led some documents in proof of their claim.

5. The most important issue in this case being whether the Jayanti Pathagar is an industry; was taken up first and the Labour Court, after relying on the ratio of the decision of the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, came to the conclusion that the Jayanthi Pathagar is an industry. Therefore, it held the reference to be maintainable. It further held that the termination of service of the workman amounts to retrenchment and it was without any justification. In view of the non-compliance of section 25F of the Act, the Labour Court awarded reinstatement of the workman in service with 25% back wages.

6. The matter was carried to the High Court by filing O.J.C. No. 395 of 2005, wherein this Court on 20.8.2000 stayed operation of the impugned order subject to compliance of section 17B of the Act. It is alleged by the workman that he was

not paid the dues as required u/s 17B of the Act. He filed an application u/s 33 of the Act before the Labour Court, who allowed the claim and directed the petitioner to pay a sum of Rs. 2,76,000/- only. That order has been challenged in W.P. (C) No. 10081 of 2003.

7. The most important aspect of these two cases are whether the Jayanti Pathagar is an industry as defined u/s 2 (j) of the Act and in assailing the finding of the Labour Court, the learned Counsel for the petitioner very emphatically submitted that the said organization being a charitable one, it does not come within the definition of section 2 (j) of the Act. Learned Counsel for the opposite parties, on the other hand, placed emphasis on the ratio decided in the Constitution Bench decision of the Supreme Court in Bangalore Water Supply and Sewerage Board v. A. Rajappa and others (supra) and contended that the award passed by the Labour Court does not suffer from any illegality.

8. Sub-section (j) of section 2 of the Act defines "industry". It reads as follows:

(j) "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;

It is urged before this Court that the organization in question, the Jayanti Pathagar being a charitable institution, is not coming within the definition of industry. The inclusion of charitable institution as industries or to be more precise, which category of charitable institution should be treated as industry has been discussed by the Constitution Bench of the Supreme Court in the aforesaid case. At paragraph 125, the Supreme Court answering the rhetoric "Can charity be industry?" ruled that the paradox can only be unlocked by examining the nature of the activity of the charity. The Supreme Court further held that grammar of labour law in a pluralist society tells us that the worker is concerned with wages and conditions of service, the employer with output and economies and the community with peace, production and stream of supply. This complex of work, wealth and happiness, firmly grasped, will dissolve the dilemma of the law bearing on charitable enterprises. Charity is free; industry is business. Then at paragraphs 125-A and 126, the Supreme Court has laid down the test to Judge which charity can be called industry and which should not be. It is profitable to quote these two paragraphs, which read as follows:

125-A. If we mull over the major decisions, we get a hang of the basic structure of "industry" in its legal anatomy. Bedrocked on the groundnorms, we must analyse the elements of charitable economic enterprises, established and maintained for satisfying human wants, Easily, three broad categories emerge; more may exist. The charitable element enlivens the operations at different levels in these patterns and the legal consequences are different, viewed from the angle of "industry". For income tax purposes, Trusts Act or company law or registration law or penal code requirements the examination will be different. We are concerned with a benignant disposition towards workmen and a trichotomy of

charitable enterprises run for producing and/or supplying goods and services, organized systematically and employing workmen, is scientific.

126. The first is one where the enterprise, like any other, yields profits but they are siphoned off for altruistic objects. The second is one where the institution makes no profit but hires the services of employees as in other like businesses but the goods and services, which are the output, are made available, at low or no cost, to the indigent needy who are priced out of the market. The third is where the establishment is oriented on a humane mission fulfilled by men who work not because they are paid wages but because they share the passion for the cause and derive job satisfaction from their contribution. The first two are industries, the third not. What is the test of identity whereby these institutions with eleemosynary inspiration fall or do not fall under the definition of industry?

(Emphasis supplied)

Taking into consideration, the observation of the Supreme Court in the aforesaid case, the learned Presiding Officer, Labour Court came to the following conclusion:

8. In the case at hand it is not known that the human mission carried on by the organization is fulfilled by men who work not for wages but for their passion, for the cause and derive job satisfaction from their contribution. It might be true that the members of the organization and the donors who contribute to the fund of the organization are doing so not for any gain other than the satisfaction they derive out of charity. The volunteers like the present workman who carry out the project work undertaken by the organization might be working for their wages which the organisation describes as honorarium. About 150 volunteers are engaged for the project "Nonformal Education". The organization also takes up multifarious work like pisciculture, brick manufacturing, agriculture, horticulture, etc. all these may be for demonstration purpose. But it gets income from these projects though the income is utilized in its other charitable programme. Such an organization can be brought within the second category of charitable economic enterprises as has been categorized by the Hon'ble Supreme Court in Bangalore Water Supply case (supra). In the present case the first party contends that the workman was engaged in "Non-formal-Education" project which is funded by the Central Government. A number of volunteers have been engaged to execute the project work. One office has been created headed by the project director who has employed the workmen in that office. This project work cannot be equated with charitable and philanthropic work. With the co-operation between the first party organization and the volunteers and other office staff employed by the organization a systematic activity has been organized for the production and/or distribution of service like imparting education to the local people and it amounts to satisfying human wants and wishes. Therefore, the first part is an "Industry" as defined under the Act.

9. Assailing such finding, learned Counsel for the petitioner took the Court to the

evidence led on behalf of the petitioner and the opposite parties. It is admitted by the workman in his examination that the organization is charitable one. He receives honorarium for the same. Therefore, it is contended that the findings recorded by the learned Presiding Officer, Labour Court was erroneous factually. The scope and ambit of a writ application in assailing the order or award passed by a Labour Court came up for consideration before the Supreme Court in *Devinder Singh Vs. Municipal Council, Sanaur*, wherein the Supreme Court relied upon its earlier decision in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, wherein it has been held that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals, these are cases where orders are passed by inferior Courts or Tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction, A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The inadequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points can not be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

10. In applying the principles enunciated above to the case in hand, this Court comes to the conclusion that there is no jurisdictional error in this case. Learned Counsel for the petitioner, in course of argument, in effect prayed for reappraisal of evidence led on behalf of the parties. That being the case, this Court is not inclined to interfere with the findings of fact that the organization, the Jayanti Pathagar is an industry. Accordingly, once the issue is decided in

favour of the workman, the other issues not assailed in this writ application need not be answered. In the writ application bearing W.P. (C) No. 10081 of 2003, the petitioner assails the order passed by the Labour Court u/s 33 of the Act. No justification has been shown to interfere in the findings of the Court below. Therefore, there is no merit in this writ application also. Thus on the basis of the aforesaid discussion, this Court comes to the conclusion that both the writ petitions devoid of merit and are dismissed, but without cost.