
(1996) 03 P&H CK 0043
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2522 of 1996

Kanhaiya Lal

APPELLANT

Vs

Satluj Club and Another

RESPONDENT

Date of Decision : 19-03-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 2

Citation : (1996) 114 PLR 212

Hon'ble Judges : S.S. Sudhalkar, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Govind Goel, for the Appellant; Anil Malhotra, for the Respondent

Judgement

G.S. Singhvi, J.—This petition is directed against the award dated 11.12.1995 passed by the Labour Court, Ludhiana, in reference no. 163 of 1991 made by the Government of Punjab u/s 10(1)(c) of the Industrial Disputes Act, 1947 (for short, the Act) on the issue of termination of the service of the workmen-petitioner (Kanhaiya Lal).

2. It is not necessary to give detailed facts and it is also not necessary to discuss the various points raised in the writ petition because we are of the considered opinion that the impugned award deserves to be quashed only on the ground that the findings recorded by the Labour Court, namely, that the "Club" is not an industry within the meaning of Section 2(j) of the Act is perverse and the Labour Court has failed to act in accordance with Section 11-A of the Act.

3. For the purpose of this order, it is sufficient to mention that the petitioner-workman was engaged in the service of the respondent-Club some time in the year 1968. Against the termination of his service, the workman raised an industrial dispute. The Government of Punjab made reference of the dispute to the Labour Court, Ludhiana, for adjudication.

4. One of the objections raised by the employer to the entertainability of the reference was that it did not fall within the meaning of the term "industry" as

envisaged u/s 2(j) of the Act. In support of this objection, the employer placed reliance on the decisions of the Supreme Court in *Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club*, and in *Cricket Club of India Vs. Bombay Labour Union and Another*, . Learned Labour Court placed also reliance on these two judgments and upheld the objection of the employer. The Labour Court held that the Club is not an industry. While recording this conclusion, the Labour Court observed that the representative of the workman has not shown him any authority taking a contrary view.

5. In *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, , a Constitution Bench of the Apex Court consisting of seven-Judges examined the ambit and scope of the definition of "industry" u/s 2(j) of the Act and held as under

"(1) Industry, as defined in Section 2(j) and explained in *D.N. Banerji Vs. P.R. Mukherjee and Others*, has a wide import:

(a) Where (i) systematic activity, (ii) organized 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 i.e. making, on a large scale prasada or food) prima facie, there is an industry in that enterprise, (b) Absence of profit motive or gainful objective is irrelevant, be the venture in "the public, joint private or other sector. (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. (d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

(II) xx xx xx

(III)

(a) The consequences are (i) professions, (ii) Clubs (iii) educational institutions, (iv) co-operatives, (v) research institutes, (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of Section 2(j).

(b) xx xx xx

(c) xx xx xx

(IV) xx xx xx

(V) We overrule *The Management of Safdarjung Hospital, New Delhi Vs. Kuldeep Singh Sethi*, , *The National Union of Commercial Employees and Another Vs. M.R. Meher*, *Industrial Tribunal, Bombay and Others*, , *Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club*, , *University of Delhi and Another Vs. Ram Nath*, , *The Dhanrajgirji Hospital Vs. The Workmen*, and other rulings whose ratio runs counter to the principles enunciated above

and The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, is hereby rehabilitated "

Their Lordships of the Supreme Court unequivocally overruled earlier judgments in Madras Gymkhana Club Employee's Union v. Gymkhana Club (supra) and in Cricket Club of India v. Bombay Labour Union (supra).

5. In view of the authoritative pronouncement of the Supreme Court, there can be no justification, legal or other, for holding that the Club does not fall within the I definition of "Industry". In our opinion, the finding recorded by the Labour Court is t exfacie perverse. We are really amazed that officer who has been posted as Presiding Officer of the Labour Court does not even bother to read a celebrated judgment of the Supreme Court on a point which must be coming up for consideration before him day in and day out. This lack of awareness as well as lack of aptitude to study the law on the subject by the Presiding Officer may lead to dangerous consequences qua the litigating public.

6. We, however, do not want to make any other comment in view of the fact that we have issued a separate notice to the Presiding Officer.

7. Even on the issue of punishment, we are of the opinion that the impugned order is wholly unsustainable. The Labour Court has altogether ignored Section 11-A of the Act and its interpretation made by the Supreme Court in The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, . The learned Presiding Officer did not take notice of the fact that the petitioner had joined service as early as in the year 1968 and by the year 1983 he had rendered almost 15 years of service. The Labour Court did not consider the past record of the workman and there is no finding that the punishment awarded to him was just and proper.

8. In view of the above conclusions, it must be held that the impugned award suffers from an error of law apparent on the face of record.

9. We therefore, allow the writ petition and set aside the impugned award dated 11.12.1995. Keeping in view the fact that we have made serious adverse observations in this order, it would be just and proper that the case is now dealt with by some other Labour Court. Both the learned counsel agree that the case be transferred to the Labour Court, Jalandhar which is nearest to Ludhiana. We, therefore, direct that the remanded case be dealt with by the Labour Court, Jalandhar and fresh award be passed after giving opportunity of hearing to both the parties. The Labour Court, Ludhiana is directed to sent the record immediately to the Labour Court, Jalandhar, for fresh adjudication in accordance with law.