

(2005) 11 DEL CK 0142

In the Delhi High Court

Case No : Writ Petition (C) No. 667/92 and 3276/95

Madhya Pradesh Bhawan

APPELLANT

Vs

Sh. Shiv Kumar Tiwari and Another
 Sh. Shiv Kumar
Tiwari Vs Madhya Pradesh Bhawan

RESPONDENT

Date of Decision : 25-11-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F, 25G

Citation : (2005) 125 DLT 395 : (2005) 85 DRJ 538 : (2006) 108 FLR 291 :
(2006) 1 LLJ 932

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Krishna Kumar and Sangeet Bakshi, for the Appellant; Naveen Sharma, for the Respondent

Judgement

A.K. Sikri, J.—These two writ petitions are between the same parties and have hearing on each other. Therefore, these were taken up for arguments together and are being disposed of by this common judgment.

2. Writ Petition (C) No. 667/2002 arises out of award dated 20th August 1991 passed by Labour Court No. 2 in I.D. No. 233/89. By means of this award termination of services of Sh. Shiv Kumar Tiwari (hereinafter referred to as the "workman") is held to be illegal and unjustified and the Labour Court has granted relief of reinstatement, continuity of service and back wages. Madhya Pradesh Bhawan (hereinafter referred to as the "management") where the workman was employed, has filed this petition impugning this award. Writ Petition (C) No. 3276/95 is filed by the workman for regularisation of his services against the post of Air-conditioning Plant Operator on the ground that he has been working on this post for the last number of years.

3. It would be appropriate the first deal with WP (C) No. 667/92 challenging award of the Labour Court. Madhya Pradesh Government is maintaining its building in Delhi known as Madhya Pradesh Bhawan. This Bhawan was

established to provide free lodging and boarding facilities essentially to VIPs, Ministers, Officers/Officials of the Government of Madhya Pradesh visiting Delhi or New Delhi for official work. To provide lodging and boarding facilities, various categories of employees are deployed therein. The employees working in this Bhawan are employees of Government of Madhya Pradesh. However, the workman was employed by this Bhawan on November 9, 1985 as Air-conditioning Plant Operator on daily rate basis. His services were, however, terminated on 8th April 1988. Workman raised industrial dispute which was referred for adjudication by the Labour Court No. 2. In the impugned award the Labour Court found the termination to be void ab initio being in violation of mandatory provision contained in Section 25F of the Industrial Disputes Act (in short the "Act") as neither any notice was served or notice pay given in lieu thereof nor retrenchment compensation paid. It was also found that this termination was in violation of Section 25G of the Act since principle of "first come last go" was not followed. During arguments, learned counsel for the Bhawan challenged the impugned award primary on the ground that Madhya Pradesh Bhawan was not an "industry" within the meaning of Section 2(j) of the Act and, Therefore, Labour Court had no jurisdiction to deal with the matter. It is this aspect which needs determination in this writ petition.

4. According to the Management, the staff employed by the Bhawan are the State Government employees which are governed by the State Government Service Conduct Rules and the activities of the Bhawan are neither industrial nor commercial. Bhawan is meant to provide free lodging and boarding to VIPs, Ministers, Officers etc., who visit Delhi for official work. It would be completely a Government organisation and is essentially functioning on Circuit House pattern and not as a lodge or hotel. The Labour Court had framed specific issue as to whether management was an industry or not. This issue is answered against the management after recording the following discussions on this issue:-

"6. ISSUE No. 1 & 2: Shri S.K. Tiwari has sworn in his affidavit that he was appointed as Air-conditioning Operator on 9.11.1985. He was qualified for the post of Air-conditioning Operator. From 9.11.85 to 8.4.88, he was never given any extension to extend his service. He rendered his service continuously up to 8th April, 1988, the date when his services were terminated. A new building was constructed by the management. Air-conditioning work was also available at new building. He was neither given one month notice or notice pay. The management charge room rent, fooding, clothing and 10% service charges from the people of Madhya Pradesh who visit Delhi and stay in M.P. Bhawan. The M.P. Bhawan have been functioning as a regular and permanent nature Hotel or Lodge under the control and supervision of M.P. Government. On this count Shri M.K. Tyagi has sworn in his affidavit that M.P. Bhawan is Department of M.P. Government. It has been established to provide free boarding and lodging facilities to VIPs, Ministers, Officers/Officials of the Govt. of M.P. who visit Delhi and New Delhi for official work. The M.P. Bhawan is entirely functioning on Circuit house pattern and not lodge/hotel. He claimed that M.P. Bhawan is not an undertaking or Industry

within the meaning of Industrial Disputes Act.

7. Affidavit of Sh. S.K. Tiwari and Mr. M.K. Tyagi brings the facts in narrow compass to the effect that M.P. Bhawan was established by the Govt. of M.P. to provide free lodging and boarding to the VIPs, Ministers and officers/officials of M.P. Govt. who happen to be at Delhi/New Delhi for official duties. Pleading of the parties make it clear that accommodation/service to some of the visitors are provided after having service charges from them. So apparently the M.P. Bhawan is acknowledging service charges for boarding and lodging facilities provided to some of the guests. The management claims that this activity is not an undertaking within the meaning of Industrial Disputes Act. The workman claims it otherwise.

8. The management argues that the activities in the M.P. Bhawan are sovereign functions of the State of M.P. There attempt is that functions of the management are beyond the bale of an industry as defined under s. 2(j) of the Industrial Disputes Act. It appreciate the facts and the contention raised on behalf of the management, the core question is to be decided whether the activities run by the M.P. Govt. at M.P. Bhawan, New Delhi is an industry? The tests to determine as to what constitute the industry within the meaning of the I.D. Act, was laid down by the Hon"ble Supreme Court in Secretary, Madras Gymkhana Club Employees" Union Vs. Management of the Gymkhana Club, wherein it was held as follows:-

"The important test for deciding whether any business, trade or calling of an employer constitutes an industry, is not only the character of the activities indicated by the words included in the definition, but there from an organisation in relation to the employer, labour force as an active and creative agent for act...the fruits of activities. It should be an activity which is predominantly carried on by employment of organized labour force for the production or the distribution of the goods or for rendering the material resources to the community at large or a part of such a community. An activity pertaining to a private or personal employment has to be excluded from the definition of the industry. It excludes the case of a hawker or a pan shop-keeper employing a labourer,...form of employment does not make the trade or business of an employer industry."

9. The definition of "Industry" is not confined to an activity of commercial character, nor does it import necessary a profit motive or employment of capital. Industry is not only any business or trade or manufacture, but it is also an undertaking or calling of employers and the expressions "undertaking" is an expression of very wide import and connotations. Undertaking is nothing more than any work or project which a person might engage in. Work or project might not be for commercial implications. It might not be engaged in with the object of making profit. It might be from motives of philanthropy.

10. The management relied on State of Punjab vrs. Kuldeep Singh (1983) Lab. I.C. 83 wherein it was held that a governmental activity to be within the ambit of

"Industry" as defined in s. 2(j) must at least be analogous to trade and business though both the work "analogous" and the phrase "trade and business" may be construed with large liberality. It calls for highlighting that there must be an element of an economic venture in governmental activity before it can be brought within the four corners of an industry. If even by remote analogy, the character of the activity is neither that of trade or business nor partakes of any economic venture, then it necessarily is out of the ambit of industrial activity. In the above case the Hon'ble High Court of Punjab and Haryana concluded that the establishment, construction and maintenance of national and State Highways is an essential governmental functions. It is in no way even remotely analogous to trade or an "industry" as defined under the Industrial Disputes Act. The management also laid reliance on State of Punjab Vs. Daljit Singh 1986 (1) SLR 420 wherein it was held that sovereign or legal functions of the State which are the primary and inalienable rights of a constitutional Government. Relying on the judgment of Kuldip Singh's case (referred above), the Punjab Government is not an industry. The trust of the representative of the management was that the management was not an industry. Since the activities in the M.P. Bhawan were sovereign activities.

11. Admittedly some of the guests were charged service charges for lodging and boarding facilities provided to them by M.P. Bhawan. The management of M.P. Bhawan rendered services to some of the guests for payment. The activities of M.P. Bhawan is a systematic activities organized by co-operation between the employer and employee for rendering service to the guests. The criteria laid down in Dr. M.C. Bindal and Others Vs. R.C. Singh and Others, were fulfilled .It was laid down in the said case that where there is (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.g. making on a large scale, prasad or food), prima facie, there is an "industry" in that enterprise. Activities of rendering lodging and boarding services to some of the guests on payment falls within the criteria laid down by the Hon'ble Supreme Court of the land in Bangalore Water Supply case.

12. Today a Govt. is judged by considering to what extent it governs, and the more it governs, the better it is considered to be. It is Therefore, difficult to accept the contention that every Governmental activity must be ruled out from the expression "industry" in the Industrial Disputes Act. The correct test to determine whether a particular activity undertaken by the Govt. is "industry" within the meaning of Section 2(k) of the Act would be to determine whether if that activity had been undertaken by a private agency it would have been an industry in which the Act would apply. The correct approach would be to decide what activities are essential to the authority of Govt. as such, what are the functions which only the Govt. could discharge and which it would not be competent for any private individual to discharge. If there is an activity which

can be undertaken by a private agency and the same activity is carried on by Govt. then such activity must be held to be "industry" within the meaning of Industrial Disputes Act.

13. The function of the M.P. Govt. in the activities and day to day administration of M.P. Bhawan cannot be held to be sovereign function, since some of the guests were charged with service charges towards boarding and lodging facilities rendered to them. These functions if carried by a private agency/person would have been an industry within the meaning of the I.D. Act. Element of trade and business can be traced in the activities of M.P. Bhawan. So I am constrained to hold that the activities of the M.P. Bhawan were an industry within the meaning of I.D. Act and judgment relied by the management cannot come to their rescue."

5. I do not find any infirmity with the aforesaid approach adopted by the Labour Court which is valid and legal, having regard to the various judgments of the Supreme Court as quoted in the aforesaid discussion. It is trite law that all the functions of the Government are not necessarily of sovereign nature. The function of maintaining a Guest House/Bhawan, maybe for its employees/officers/Ministers etc., by no stretch of imagination, be called a sovereign function.

6. Even if the services of the workman were engaged on temporary/daily-wage basis, he admittedly worked for much more than 240 days. Therefore, before dispensing with his services, it is necessary for the management to follow the procedure contained in Section 25F of the Act. The non-observance of this mandatory provision would render the retrenchment void ab initio. Holding such a termination as illegal by the Labour Court is, Therefore, perfectly justified.

7. I may mention that it was also argued that after the creation of Chattisgarh State, this Madhya Pradesh Bhawan has gone to the share of Chattisgarh Government and, Therefore, services of the workman were not required. However, that may be a valid consideration while considering WP (C) No. 3276/95. It will have no bearing on the award rendered by the Labour Court. Reference may be made to the latest judgment of the Kerala High Court in the case of Tourism Department, and Anr. v. Industrial Tribunal, Kollam and Anr., 2005 Lab IC 1808 wherein the Division Bench of the said High Court held that government guest house run by Tourist Department would be an "industry".

8. This petition is thus devoid of any merit and is accordingly dismissed.

9. Coming to WP (C) No. 3276/95 filed by the workman, the regularisation of services is claimed because of continuous and long service rendered by the workman. He was appointed in November 1985. No doubt, his services were terminated in 1988, the Labour Court held the termination to be invalid vide award dated 20th August 1991 and continuity of service was directed to be maintained. Thereafter management complied with the order dated 31st October 1992 reinstating the workman in service in term of the aforesaid award. Since then he is continuously working as Air-conditioning Plant Operator, albeit on daily rate basis. He made representations for regularisation which has not been done

presumably because of the writ petition (WP (C) No. 667/92) filed by the management which was pending in this Court. That writ petition has now been dismissed.

10. As far as regularisation is concerned, no positive direction can be given by this Court. It is further explained that the Bhawan is having two types of air-conditioning systems. One through central air-conditioning plant having compact unit and chiller unit and the other is window type air-conditioners. The centrally air-conditioning plant was installed in the year 1985 by M/s. Blue Star under one year guarantee. Bhawan wanted annual maintenance agreement with M/s. Blue Star for which, matter was referred to the Government of Madhya Pradesh for sanction in the year 1985. This sanction was, however, received only in the year 1988 and since then Bhawan is having annual maintenance contract (AMC) with M/s. Blue Star. As far as window type air-conditioners are concerned, Government is always entering into agreement with the reputed firms. It is further stated that since sanction of the Government was sought in 1985 for awarding the AMC which came only in March 1985, in the interregnum, the workman was engaged on temporary and daily-wage basis initially for 89 days on 7th November 1985 as Air-conditioning Plant Operator. This was extended from time to time. There was no sanctioned post of A/C Plant Operator in Madhya Pradesh Bhawan and, Therefore, the appointment was purely temporary. After the accord of sanction by the Government, in March 1988, to the proposal of entering into agreement with M/s. Blue Star, services of workman were disengaged.

11. According to the management, appointment of the workman was stop-gap arrangement pending sanction of the Madhya Pradesh Government for giving AMC to M/s. Blue Star and, Therefore, there is no need to continue with the services of the petitioner. It is also stated that there is no sanction post either. It is also stated in the counter affidavit that although in the year 1994 certain temporary posts for A/C Plant Operator were sanctioned in the pay scale of Rs. 750-945, however, these posts were never filled, as these posts were redundant in view of the contract given to M/s. Blue Star or other companies for maintenance of A/C plant as stated above. Therefore, for all these reasons it is not for this Court to issue any direction for regularisation. However, keeping in view the fact that workman has put in almost 20 years of service, the only direction which can be passed in this petition is to direct the Government of Madhya Pradesh to consider the case of the petitioner as to whether he is entitled to regularisation or not. Such a consideration should be done within a period of 8 weeks from the date of this order and decision in writing be communicated to the workman.

12. This petition is disposed of in the aforesaid terms.