

(2010) 11 MAD CK 0173

In the Madras High Court

Case No : Writ Petition No's. 11348 and 11349 of 2002

Management/Executive Officer

APPELLANT

Vs

C. Perachi, Deputy Commissioner of Labour and Assistant
Commissioner of Labour

RESPONDENT

Date of Decision : 29-11-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Tamil Nadu Payment of Subsistence Allowance Act, 1981 — Section 2

Citation : (2010) 11 MAD CK 0173

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : A.R. Nixon, for the Appellant; V. Ajoy Khose, for Respondent-1 and P. Muthukumar, for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—In view of the common issues raised in both the writ petitions and also in view of the fact that the Petitioner and the Respondents are one and the same, they have been taken up together for disposal and a common order is passed.

2. The first Respondent was appointed as night Watchman to an Endowment by name Pillaiyankattalai, on 20.10.1993. The Endowment has been created for the purpose of doing religious performance. The said Endowment also involves in collection of rent from the building constructed by it as well as the sale of Paddy in the public auction.

3. The first Respondent was suspended on 31.03.1999. Admittedly, at the time of passing the suspension order and thereafter, the subsistence allowance due to the first Respondent was not paid to him. Therefore, he filed application before the third Respondent for payment of subsistence allowance. An objection was raised by the Petitioner stating that the Petitioner will not come under the purview of the "Establishment" and "Industry" as defined under the Tamil Nadu

Payment of Subsistence Allowance Act and the Industrial Disputes Act, 1947. However, the contention of the Petitioner was rejected by the third Respondent and the further appeal filed by the Petitioner was also dismissed by the second Respondent. Challenging the said orders, the Petitioner has filed the present writ petitions.

4. Mr. A.R. Nixon, learned Counsel for the Petitioner submitted that the first Respondent was appointed as night Watchman for maintaining the properties of the Endowment. Inasmuch as the activities of the Endowment, being religious in nature, the provisions contained in the Tamil Nadu Payment of Subsistence Allowance Act, particularly Section 2(c) and (e) are not applicable to the case of the Petitioner. The learned Counsel for the Petitioner further submitted that the provisions of the Industrial Disputes Act, insofar as it defines Industry, will not cover the Petitioner and that therefore, these writ petitions will have to be allowed. In support of his contention, the learned Counsel for the Petitioner relied upon the Division Bench judgment of the High Court of Himachal Pradesh rendered in *Balwinder Singh v. State of Himachal Pradesh and Ors.* (1999) (II) LLJ 172.

5. Per contra, Mr. Ajoy Khose, learned Counsel for the first Respondent submitted that Section 2(c) and (e) of the Tamil Nadu Payment of Subsistence Allowance Act clearly defines an "Establishment". Until and unless the Petitioner comes within the exclusion of the categories of the undertakings mentioned therein, the contention of the Petitioner cannot be accepted. The learned Counsel further submitted that the definition of "Industry" as defined in Section 2(j) of the Industrial Disputes Act is very exhaustive and inasmuch a factual finding has been given by the Respondents 2 and 3 that there is an activity of service involved, coupled with the further fact that there is a cooperation between the employer and the workmen, resulting in distribution of goods, with a view to satisfy the human wants, the writ petitions will have to be dismissed. It is the specific contention of the learned Counsel for the first Respondent that except in a case where the action of the first Respondent by itself involves a spiritual or religious activity, it cannot be said that the provisions of the said two enactments have no application. The learned Counsel further submitted that the issue involved in these writ petitions has already been considered by the judgment of the Honourable Apex Court in *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, . Hence, the learned Counsel for the first Respondent prayed for dismissal of the writ petitions.

6. It is not in dispute that the Endowment was carrying on with the work of renting out the properties and the sale of Paddy in public auction. A factual finding has been given by the Respondents to that effect. Therefore, the said facts would exemplify the fact that there has been a systematic activity carried on by the cooperation between the employer and the first Respondent for the distribution of goods and services, which satisfy the general public.

7. It is also to be seen that the word "establishment" has been defined under the

Tamil Nadu Payment of Subsistence Allowance Act, which is extracted hereunder:

2(c) establishment" means any place where any industry, trade, business, undertaking, manufacture, occupation or service is carried on, and with respect to which the executive power of the State extends, but does not include

(i) any office or department of the Central or the State Government; or

(ii) a railway administration; or

(iii) any mine or oil field; or

(iv) any major port; or

(v) any public sector undertaking of the Central Government.

(e) industry" means an industry as defined in Section 2(j) of the Industrial Disputes Act, 1947 (Central Act XIX of 1947)

8. A perusal of the above said definition would show that the word "establishment" is exhaustive in nature. It also provides for an exception. A provision which speaks about the exception will have to be strictly construed in a social welfare legislation. Admittedly, neither the Petitioner, nor the Endowment, come within the purview for exception. In order to understand the said position, it is also useful to refer the definition of "Industry" as defined under the Industrial Disputes Act, 1947, which has been borrowed by the Tamil Nadu Payment of Subsistence Allowance Act. Section 2(j) of the Industrial Disputes Act defines "Industry" and the same is extracted as under:

2(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.

9. A reading of the above said definition would make it clear that it includes any calling service, employment, handicraft or industrial occupation or avocation of workmen. The definition of the above said word, industrial dispute is very exhaustive in nature and that is the reason why it has been specifically stated that it includes any calling or service etc.

10. The Honourable Apex Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, has held that noble objectives, pious purposes, spiritual foundations and developmental projects can never be the reasons to go out of the purview of the definition of "industry". The Honourable Apex Court has also formulated the test for defining an institution as "industry". Applying the ratio laid down therein, inasmuch as there is a systematic activity carried on by the cooperation between the employer and the first Respondent, coupled with the fact that there is a supply and distribution of goods and services to the general public, in which the first Respondent is involved, it cannot be said that the Petitioner is not an "industry". Hence, this Court is of the opinion that the orders passed by the Respondents 2 and 3 cannot be interfered with.

11. Mr. A.R. Nixon, learned Counsel for the Petitioner has made reliance upon the judgment of the High Court of Himachal Pradesh rendered in Balwinder Singh v. State of Himachal Pradesh and Ors. (1999) (II) LLJ 172. The facts involved in the said case are totally different. There was no material placed before the Division Bench of the Himachal Pradesh High Court to show that the establishment concerned is an industry or not. In fact, the Division Bench, in the said judgment, has observed that the question as to whether an undertaking is an industry or not has to be dealt with on the facts situation pertaining to a particular case. Further, the Division Bench has not considered the ratio laid down by the Honourable Apex Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . Moreover, the applicability of the provisions of Tamil Nadu Payment of Subsistence Allowance Act or the pari materia enactment has not been considered in the said judgment. Further, it is seen from the orders impugned that the Petitioner has not produced the scheme for the Endowment.

12. Hence, for the reasons stated above, this Court is of the opinion that the orders impugned cannot be interfered with and accordingly, the writ petitions are dismissed. The Petitioner is directed to pay the remaining amount to the first Respondent, after deducting the amount already paid in pursuance of the orders of this Court, within a period of eight weeks from the date of receipt of a copy of this order. No costs.