

(2013) 07 JH CK 0164

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1788 of 2004

Md. Israil Ansari

APPELLANT

Vs

Management, M/s. Phooleen Swain Seva Sanstha Mahila
Chetana Vikas Kendra

RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2(j)
Minimum Wages Act, 1948 — Section 3

Citation : (2013) 3 AJR 646 : (2013) 139 FLR 605 : (2013) 4 JLJR 402 : (2013) 4 LLJ 215 : (2013) 3 LLN 649

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Ram Lakhan Yadav, for the Appellant;

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the petitioner. Though the respondents have been noticed and have appeared, but today no one has appeared on their behalf and the matter has been taken up finally.

2. The petitioner is aggrieved by the award dated 18.07.2003 contained in Reference Case No. 2 of 2000 (Annexure-9) which has answered the reference against him on the industrial dispute raised by the petitioner. The following reference was made before the learned Labour Court, Deoghar; which is quoted hereinunder:-

Whether the termination of services of workman Md. Israil Ansari of M/s. Phoolin Sanstha, Mahila Chetna Vikash Kendra Deoghar is justified! If not, what relief, he is entitled to!

3. It was the contention of the petitioner made through his written statement filed before the learned Labour Court that he was appointed by the Management

on 19.7.1992 and had been working on different posts such as Worker, Supervisor etc. continuously till he was orally dismissed from service. He was a permanent employee of the management and comes under the purview of the definition of the workman as defined under the Industrial Disputes Act. He, accordingly was entitled to salary or wages, which used to be paid and was deposited in his savings Bank Account No. 93/49 in the Allahabad Bank before his termination. Though he has represented number of times before the institution but without assigning any reason or notice, he was dismissed from service on 23.1.1998. Earlier he had submitted his resignation on 11.11.1994, which was not accepted and on oral assurance by the management to enhance his salary he continued in service. No domestic inquiry was conducted before his termination. Therefore, he has raised the industrial dispute in relation to his dismissal from service, which has been referred for adjudication before the learned Labour court.

4. The management had, in their written statement, taken a stand that reference itself was not maintainable as the workman in question has no cause of action to raise industrial dispute. The claimant had never been appointed by the management on 19.7.1992 on monthly salary basis. He had himself resigned on 11.11.1994 but not in the capacity of any officer or employee but he had disassociated from the institution as a Social Worker. He had never been authorized to participate in any meeting or in any training centre. The management had taken a specific stand that the institution in question was a purely non-government voluntary organization making proclaimed social service voluntarily for upliftment of the downtrodden. The person engaged with the institute are social workers who had joined on their own interest and were working at honorarium on part time basis without any fixed pay or remuneration. The institution does not come under the definition of industry nor the claimant comes under the definition of the workman under the Industrial Disputes Act. The instant dispute has been raised by the claimant to blackmail the secretary of the institution and to destroy the reputation of the institution by hook or by crook and as such, his claim should be rejected and the reference should be answered in the negative. Following issues were framed by the learned Labour Court, which is quoted hereinbelow:-

1. Is the reference maintainable.
2. Has the claimant Israil Ansari any cause of action to raise the Industrial Dispute.
3. Is M/s. Phoolin Sanstha Mahila Chetna Vikash Kendra and industry as defined under the I.D. Act.
4. Is there relationship of employer and workman between the parties.
5. Whether the termination of the service of the claimant Israil Ansari from the institution is justified.

6. To what relief or reliefs if any the claimant Israil Ansari is entitled.

5. Issue no. 3 is the important issue, which has also been harped upon by the learned counsel for the petitioner. The findings in relation to the issue no. 3 are contained in paragraph nos. 21 to 49 of the impugned award. According to the learned counsel for the petitioner, the institution comes within the definition of an industry, as defined u/s 2(j) of the I.D. Act, which prescribed three stipulated conditions (I) there should be systematic activities (II) organised by the cooperation between employer and employee and (III) for the production, supply or distribution of goods or services intended to satisfy human wants or wishes.

6. Learned counsel for the petitioner by referring to the Annexure-8, notification dated 08.06.2000 submitted that religious and social institutions are covered u/s 3 of the Minimum Wages Act. The institution in question fulfilled all these three criteria as prescribed under the definition of industry as would be evident from the materials brought on record. The petitioner, therefore, had a right to raise the industrial dispute being a workman on being dismissed without any domestic enquiry or show cause. In such circumstances, the impugned award suffers from serious error of law and finding of facts.

7. I have heard learned counsel for the petitioner at length. The very issue, which requires consideration for determination of the challenge to the impugned award by the petitioner is that whether the institution in question is an industry or not and whether the petitioner had been engaged as a workman in the said institution or otherwise he was working as a voluntary social worker.

8. It is interesting to take into account that the material witnesses produced by the workman himself who are five in numbers excluding claimant have deposed otherwise. The five workman witnesses have categorically stated that the institution is purely engaged to promote health and is a voluntary organization. It is not engaged in any business or trade nor selling any goods in the markets after manufacturing. Witness nos. 2 to 5 have also deposed in similar manner as witness no. 1, Sarwari Khatoon whose deposition has been just discussed hereinabove. Discussion of the evidence of the claimant, witness no. 6 reveals that though he had claimed to be appointed in the year 1992 but he admits that there is no appointment letter issued to him and any payments made between 1992 to 1997 were in the nature of cash, which varied time to time from Rs. 250 to 600 and Rs. 800 to 1000. Thereafter in 1997 at some point of time, the amount used to be deposited in his account.

9. The witnesses also admits that there has been no termination letter issued by the respondent but he has been dismissed by oral order. On the other hand the management had adduced six witnesses. M.W. 1, Safruddin Ansari deposed that the institution is a voluntary organization for upliftment of females and the persons working there are called social worker who render services free of cost without any salary or wages paid by the institution. Nothing is produced by the institution nor is there any selling of goods in the markets after manufacturing

and only training is being given in the institution. M.W. 2 had also deposed in similar manner and also stated that this petitioner had never worked in the agriculture farm of the Secretary namely Janki Singh. The said Secretary is said to be a gentle lady and social worker and the institution has meager resources like Tata Sumo vehicle which is used for health services. M.W. 3, M.W. 4, M.W. 5, M.W. 6, all of them have stated in similar manner. They have also stated that they worked as volunteers of the institution.

10. Learned Labour court had also taken into account the contentions relating to payment made to the petitioner and other such persons and found that these payments were made in the nature of honorarium and which ranged from Rs. 650 to 1000 and could not be considered as wages or salary but only as honorarium. Even since May, 1997 when the same were paid through cheques and deposited in their accounts. The movable properties of the institution have also been referred to on perusal of the income tax returns of the Secretary, Janki Singh, which are in the nature of one Motorcycle, one Tata Sumo, one computer, one weighing machine, one bicycle, one water pump, one typewriter and some music system. Inference has been drawn by the learned labour court that these materials can never convert the nature of the institution into an industry. The only source of income of the institution are the aids and grants of the welfare institutions including Ministry of Health and Family welfare, Government of India, for R.C.H. Programme. There is not a single item of income, which has been received from any industrial activity. He has also found that only some zonal officers and field workers are paid salary while rest of the persons engaged with the institution are paid honorarium. The income received through aids and grants are spent over the social work such as documentation of traditional health, disease, pattern on herbs, agriculture fair, training programme for upgradation skills, training of village farmers for plantation in homestead land and other helps such as vaccination, medicines for teteness etc. Based upon all these materials evidence oral as well as documentary, it has been held by the learned Labour Court that the institution has indulged in the noble acts in helping people became independent by engaging themselves in the cottage industries and imparting training through training centers.

11. After discussion of the various components of the criteria laid down relating to the definition of the industry i.e. (i) systematic activity (ii) organized by cooperation between the employer and employee (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, the Labour Court has finally arrived at a conclusion that the institution is not at all an industry. It has further considered the submission of the workman relating to nature of the institution being a religious and social institutions as per the notification under the Minimum Wages Act and held that on that ground alone the institution can not be turned as an industry.

12. Based on the aforesaid findings on the main important issue no. 3, the learned Labour has also answered rest of the issues in favour of the Management

and held that reference itself is not maintainable and that the workman has no cause of action to raise an industrial dispute.

13. From a perusal of the entire impugned judgment and other materials available on record, it is, therefore, obvious that the claim of the petitioner that he was appointed as a workman in the institution M/s. Phoolin Sanstha Mahila Chetna Vikash Kendra, Deoghar, is not substantiated on the materials based on record and produced during course of the proceeding in the reference case. The learned Labour Court has also rightly held that institution is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act. These findings do not suffer from any error of law or of facts and are based upon sufficient materials available on record which conclusively point to such an inference. The impugned award, therefore, does not require any interference in exercise of powers under judicial review by this Court under Article 226 of the Constitution of India. Accordingly, this writ petition is dismissed.