

(1967) 01 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 450 of 1965

M.P. Sharma

APPELLANT

Vs

Industrial Court and Others

RESPONDENT

Date of Decision : 04-01-1967

Acts Referred:

Madhya Pradesh Industrial Relations Act, 1960 — Section 2(13), 2(18), 2(19), 31(3)

Citation : AIR 1967 MP 177 : (1967) 15 FLR 109 : (1967) JLJ 574 : (1968) 1 LLJ 99

Hon'ble Judges : P.V. Dixit, C.J.;R.J. Bhawe, J

Bench : Division Bench

Advocate : R.K. Pandey, for the Appellant; H.L. Khaskalam, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C.J.—In this case the petitioner, who was employed as a Physical Training Instructor in a Higher Secondary School, Sector VII, run by the Bhilai Steel Project, Bhilai, seeks a writ of certiorari for quashing a decision of the Industrial Court whereby that Court upheld an order of the Labour Court, Raipur, rejecting the petitioner's application u/s 31(3) of the Madhya Pradesh Industrial Relations Act, 1960 (hereinafter referred to as the Act), for reinstatement in service with back-wages.

2. In his application u/s 31 (3) of the Act, the petitioner complained that though his appointment as Physical Training Instructor was on a permanent basis, yet the management of the Project terminated his services with effect from 7th August 1962 without holding any enquiry and purely for victimising him as he had enrolled himself as a member of the Steel Worker's Union, Bhilai. The Labour Court held that the petitioner's application u/s 31 (3) of the Act was not maintainable inasmuch as he being a teacher in a school did not fall within the definition of "employee" given by Section 2(13) of the Act and consequently it had no jurisdiction to entertain the application. The learned Presiding Officer of

the Labour Court relied on *University of Delhi and Another Vs. Ram Nath*, Thereupon the applicant preferred a revision petition before the Industrial Court against the decision of the Labour Court which was rejected by the Industrial Court agreeing with the view taken by the Labour Court.

3. Shri Pandey, learned counsel for the petitioner, argued that the Bhilai Steel Project was "industry", as defined in Section 2(19) of the Act. and the school, where the petitioner was employed as a Physical Train-Ing Instructor, was run by the Project and, therefore, the applicant fell within the term "employee" as defined by Section 2(13) of the Act. It was said that the petitioner's case was governed by the decision of the Supreme Court in *The Corporation of the City of Nagpur Vs. Its Employees*, where it was held that the education department run by the Corporation was "industry" u/s 2 (14) of the C. P. and Berar Industrial Disputes Settlement Act, 1947. Learned counsel added that the decision in the case of *University of Delhi and Another Vs. Ram Nath*, was not in point as the predominant activity of the University of Delhi was educational and teaching whereat here the character of the activity of the Bhilai Steel Project was Industrial.

4. In our opinion, this application must be dismissed. The M. P. Industrial Relations Act, 1960, inter alia regulates the relations of only those persons in certain matters who are employees in industries or undertakings notified u/s 1(3) of the Act. Section 2(19) defines "industry" thus--

" "industry" means--

(a) any business, trade, manufacture, undertaking or calling of employers;

(b) any calling, service, employment, handicraft or industrial occupation or avocation of employees; and includes--

(i) agriculture and agricultural operations;

(ii) any branch of an industry or group of industries which the State Government may, by notification, declare to be an industry for the purposes of this Act".

The definition of "employee," as given by Section 2(13), omitting the portions which are not relevant here, is as follows--

" "employee" means any person employed in an industry to do any skilled, unskilled, manual, supervisory, technical or clerical work for hire or reward whether the terms of employment be express or implied, and includes x x x x x "

"Industrial matter" has been defined by Clause (18) of Section 2 in the following terms--

" "industrial matter" means any matter relating to employment, work, wages, hours of work, privileges, rights or duties of employers or employees, or the mode, terms and conditions of employment or refusal to employ and includes--

(i) all matters pertaining to--

- (a) the relationship between employers and employees;
- (b) the dismissal or non-employment of any person;

X X X X X "

Section 31 (3) says--

"31 (3) A representative of employees or an employee desiring a change in respect of an industrial matter specified in Schedule II or any other matter arising out of such change may make an application to Labour Court in such manner as may be prescribed:

Provided that no such application shall lie unless the representative of employees or the employee, as the case may be, has in the prescribed manner approached the employer with the request for the change and no agreement has been arrived at in respect of the change within the prescribed period."

Amongst the matters specified in Schedule 11 are (a) the propriety or legality of an order passed or action taken by an employer acting or purporting to act under the standing orders; and (b) the employment including reinstatement and recruitment. It is plain from the above provisions that Section 31 (3) can be invoked only by a person who is an "employee" as defined in Section 2(13) in an industry or an undertaking to which the Act applies. The Bhilai Steel Project is an industrial activity undertaken by the Hindustan Steel Ltd., Bhilai, for production and distribution of steel. But from this it does not follow that every activity undertaken by the Hindustan Steel Ltd., Bhilai, is an industrial activity. The School, where the petitioner was employed, is an educational activity undertaken by the Hindustan Steel Ltd., and not an industrial activity, and the petitioner was not an "employee" within the meaning of Section 2(13) of the Act.

5. This is clear from the decisions of the Supreme Court in D.N. Banerji Vs. P.R. Mukherjee and Others, , The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, and University of Delhi and Another Vs. Ram Nath, where the Supreme Court considered the definition of "industry" given in Section 2(j) of the Industrial Disputes Act, 1947, and of ""workman" in Section 2(s) of that Act. Section 2(j) and 2(s) of the Act of 1947 and the provisions contained in Sections 2(19) and 2(13) of the M. P. Industrial Relations Act, 1960, pari material, and what the Supreme Court has said in the three cases just referred to about the scope of the terms "industry" and "workman" occurring in the Act of 1947 must apply equally to the definitions of "industry" and "employee" given in the local Act because the intent underlying the two enactments is the same and the language is almonst similar.

The Supreme Court has emphasized in those cases that it is the character of the activity which decides the question as to whether the activity in question attracts the provisions of Section 2(j) of the Act of 1947; who conducts the activity and whether it is conducted for profit or not do not make a material difference. The working principles laid down by the Supreme Court for determining whether a

particular form of activity is an undertaking making it an "industry" are: (i) the activity must be systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of the employees; (ii) the activity must involve co-operation of the employer and the employees; (iii) its object must be the satisfaction of material human needs; (iv) the activity must be an organised one in a manner in which trade or business is generally organised; (v) it must not be casual; and (vi) no quid pro quo is necessary for constituting the activity an "industry".

In *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, the question whether an educational activity was an "industry" was left open by the Supreme Court. But it was decided later by the Supreme Court in *University of Delhi and Another Vs. Ram Nath*, . No doubt, in that case it was common ground between the parties that teachers employed in educational institutions, whether the said institutions are imparting primary, secondary, collegiate or post-graduate education, are not workmen u/s 2(s) of the Act of 1947. On this occasion the Supreme Court observed--

".... it follows that the whole body of employees with whose cooperation the work of imparting education is carried on by educational institutions do not fall within the purview of Section 2(s) and any disputes between them and the institutions which employed them outside the scope of the Act."

The Supreme Court also stated in case of *University of Delhi and Another Vs. Ram Nath*, the general considerations on which educational activity could not be regarded as "industry". After stating the conclusion that the work of education carried on by educational institutions like the University of Delhi is not an industry within the meaning of the 1947 Act, the Supreme Court said--

"Having reached this conclusion. It may be legitimate to observe that it is not surprising that the Act should have excluded education from its scope, because the distinctive purpose and object of education would make it very difficult to assimilate it to the position of any trade, business or calling or service within the meaning of Section 2(j). Education seeks to build up the personality of the pupil by assisting his physical, intellectual, moral and emotional development. To speak of this educational process in terms of industry sounds so completely incongruous that one is not surprised that the Act has deliberately so defined workmen u/s 2(s) as to exclude teachers from its scope.. .. Indeed, from a rational point of view, it would be regarded as inappropriate to describe education even as a profession. Education in its true aspect is more a mission and a vocation rather than a profession or trade or business, however wide may be the denotation of the two latter words under the Act. That is why we think it would be unreasonable to hold that educational institutions are employers within the meaning of Section 2(g), or that the work of teaching carried on by them is an industry u/s 2(j), because, essentially the creation of a well-educated, healthy young generation imbued with a rational progressive outlook on life

which is the sole aim of education, cannot at all be compared or assimilated with what may be described as an industrial process."

Applying the principles laid down by the Supreme Court in the aforesaid three cases here, there can be no doubt that the Higher Secondary School, Sector VII run by the Hindustan Steel Ltd. is not an "industry" within the meaning of Section 2(19) of the Act and the petitioner, who was a Physical Training Instructor in that School, cannot be regarded as an "employee" falling u/s 2(13) of the Act. His duties no doubt did not consist in teaching in class-rooms. But that does not make any difference. A Physical Training Instructor, who assists the pupils in the development of their physique, is as much an important agent in the development of the personality of the pupil as a person who assists the pupil in his intellectual and mental development.

The principal activity of the School, where the petitioner was employed, being educational, the School cannot be regarded as an "industry" merely because it is managed by the Bhilai Steel Project or by the Hindustan Steel Ltd. As the Supreme Court said, in the case of *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, it is the character of the activity that determines the question whether it is or it is not an undertaking amounting to an industry and that the question who conducts the activity is not relevant. In our opinion, having regard to the pronouncements of the Supreme Court in the cases to which a reference has been made earlier, the conclusion is inescapable that the School, where the petitioner was a Physical Training Instructor, is not an "industry" within the meaning of Section 2(19): nor is the petitioner an "employee" falling u/s 2(13) of the Act.

6. It is no doubt true that Section 31 (3) of the Act speaks of a "change" in respect of an industrial matter specified in Schedule-II, and "Industrial matter", as defined in Section 2(18) of the Act, includes all matters pertaining to "the dismissal or non-employment of any person". But the use of the words "any person" in Section 2(18)(i)(b) of the Act can afford no justification whatsoever for holding that u/s 31 (3) a person, who is not an employee within the meaning of Section 2(13), can also approach the Labour Court. Section 31 (3) uses the expression "A representative of employees or an employee desiring a change....", and not the words "any person".

The words "any person" in Section 2(18)(i)(b) of the Act must be read subject to the limitations and qualifications as arise from the language of Section 31 and the definitions of the terms "industry", "employer", "employee" and "industrial matter" given in the Act. So read, it cannot but be held that a person who is not an "employee" within the meaning of Section 2(13) can have no direct or substantial interest in any "industrial matter" or in his "employment" or "non-employment". In this connection, it is sufficient to refer to the decision of the Supreme Court in *Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate*, where the words "any person" occurring in Section 2(k) of the Industrial Disputes Act, 1947, were similarly construed.

7. Learned counsel for the petitioner placed all reliance on the decision of the Supreme Court in *The Corporation of the City of Nagpur Vs. Its Employees*, . In that case, the Supreme Court considered the question as to what extent the municipal activities of the Corporation of Nagpur City fell within the term "industry" as defined by Section 2 (14) of the C. P. and Berar Industrial Disputes Settlement Act, 1947. In the case of *University of Delhi and Another Vs. Ram Nath*, the Supreme Court has dealt at length with the effect of its decision in the case of *The Corporation of the City of Nagpur Vs. Its Employees*, and has pointed out what precisely was decided in that case and what was not decided. The Supreme Court pointed out the distinction between the case of *University of Delhi* AIR 1968 SC 1873 and that of *The Corporation of the City of Nagpur* (1960) 2 SCR 942 : AIR 1960 SC 676 thus--

"Dealing with the work carried on by the several departments of the Corporation, this Court observed that if a service rendered by individual or a private person would be an industry, it would equally be an industry in the hands of a corporation, and it held that if a department of a municipality discharges many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be criterion for the purposes of the Act. Amongst the departments which were then examined was the education department under which the Corporation looked after the primary education of the citizens within its limits. In connection with this department, it was observed that the service rendered by the department could be done by private persons, and so, the subordinate menial employees of the department came under the definition of employees and would be entitled to the benefits of the Act." Further the Supreme Court has observed that "Reading the judgment in the case of *Corporation of the City of Nagpur* (1960) 2 SCR 942 : AIR 1960 SC 676 as a whole, there can be no doubt that the question as to whether education work carried on by educational institutions like the University of Delhi which have been formed primarily and solely for the purpose of imparting education amount to an industry within the meaning of Section 2 (14), was not argued before the Court and was not really raised in that form".

Again, after tracing the course of the hearing of the case of *The Corporation of the City of Nagpur Vs. Its Employees*, the Supreme Court observed--

"We are making these observations with a view to emphasize the fact that the question which has been raised for our decision in the present appeals was not raised nor argued in the case of *The Corporation of the City of Nagpur Vs. Its Employees*, and cannot, therefore, be said to have been decided even incidentally only by reason of the fact that among the departments which were held to have been properly included in the award was the education department of the Corporation. If we had been satisfied that the said judgment had decided this point we would either have followed the said decision, or would have referred the question to a larger Bench."

It would be altogether supercilious on our part to add anything to all that the

Supreme Court has said in the case of University of Delhi and Another Vs. Ram Nath, about its decision in the earlier case of the The Corporation of the City of Nagpur Vs. Its Employees, . It is sufficient to say that after reading the discussion of the judgment in the case of the The Corporation of the City of Nagpur Vs. Its Employees, in University of Delhi and Another Vs. Ram Nath, , there can be no justification whatsoever for holding that the judgment of the Supreme Court in the case of the Corporation of the City of Nagpur (1960) 2 SCR 942: AIR 1960 SC 676 is an authority for the proposition that whenever an education Institution is run and managed by a body which is also running an industrial under-taking, the educational institution also becomes an industry. In our judgment, the decision of the Supreme Court in the case of the The Corporation of the City of Nagpur Vs. Its Employees, is of no assistance whatsoever to the applicant.

8. For the foregoing reasons, our conclusion is that both the Labour Court and the Industrial Court rightly held that the petitioner's application u/s 31 (3) of the M. P. Industrial Relations Act, 1960, was not maintainable. The result is that this petition is dismissed with costs of the respondent No. 3. Counsel's fee is fixed at Rs. 150/-. The outstanding amount of security deposit, if any after deduction of costs, shall be refunded to the petitioner.