

(1981) 07 KL CK 0016
In the High Court Of Kerala

Muthayyan

APPELLANT

Vs

Manager, Kadalur Estate

RESPONDENT

Date of Decision : 13-07-1981

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1982) 1 LLJ 23

Hon'ble Judges : Khalid, J

Bench : Single Bench

Judgement

Khalid, J.—Is a school teacher a workman? Such a question two decades ago would have astonished many and irritated some. But today nobody will feel either surprise or astonishment at such a question. This is the metamorphosis that has been brought in the outlook of man in the relationship between employer and employee by the Bangalore Water Supply case. That case has opened up new vistas in industrial relations which could not have been thought of even when the Industrial Disputes Act was passed. The question posed in this petition is a sequel to some observations in the above judgment.

2. The petitioner was a teacher in the primary school at Kadalur Estate from 7-1-1959. He was dismissed from service with effect from 12-10-1970. His case was that he was a "workman" as defined in the Industrial Disputes Act (for short the Act). He was employed in the estate and was included in the check roll of the estate. The Government referred the dispute raised by the petitioner for adjudication as per its order dated 21-11-1978. The 2nd respondent, Labour Court, numbered the case as I.D. 1 of 1978 and after hearing the parties held against the petitioner on the preliminary objection raised that the petitioner was not a workman. In this petition the award Ext. P1 is under challenge.

3. The 2nd respondent relied upon the decision of the Supreme Court reported in University of Delhi and Another Vs. Ram Nath, to hold that a teacher in a school is not a workman. Though Bangalore Water Supply case reported in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, was brought to

his notice he distinguished it on the ground that in the said case the Supreme Court had overruled *University of Delhi and Another Vs. Ram Nath*, only to the extent that it held that a school was not an industry but the finding that a teacher was not a workman was not disturbed. Before me the petitioner's counsel put forth a strong plea that the only deduction possible from the discussion in the Bangalore case decided by the Supreme Court is that a teacher is a workman. Counsel for the Management Ist respondent pleaded, however, that this question was left open by the Supreme Court and was therefore, available for consideration

4. I shall first refer to the definition of the word "work man" in the Act:

2. Definition:-In this Act, unless there is anything repugnant in the subject or context-

x x x x (s) "workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment has led to that dispute; but does not include any such person-

(i) who is subject to the Army Act, 1950 (XLVI of 1950), or the Air Force Act, 1950 (XLV of 1950) or the Navy (Discipline) Act, 1934 (XXXIV of 1934); or

(ii) who is employed in the Police Service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature.

This section excludes four categories from its definition. At one time there was a line of approach to this section to the effect that all those who were outside these four groups would be workman. This approach did not find favour with the Supreme Court. The reason advanced is that the body of the section itself contains necessary guidelines for exclusion, in addition to the named four groups. Therefore, a person who does not come within the four exempted groups would still go out of the definition if he does not do any of the work mentioned in the body of the section. In other words, it is the nature of the work that decides the question whether a person is a workman under the Act or not.

5. What type of work does a teacher do? It cannot be said to be a technical work. Can it be a clerical work for hire or reward. A teacher may in the course of his

work do some work which may be clerical in nature but that will not impress the character of his work with that of a clerical work. Is his work supervisory in nature? A definite answer is not possible. The dictionary meaning of the word "supervise" in the Chambers Twentieth Century Dictionary is as follows: "to read over; to superintend: reading over: act of supervising: inspection: control;". It may be possible to say that a teacher supervises the wards under his charge. He controls them. He reads over to them. But that is not the important part of his function. Normally a teacher is known by his work of teaching. Teaching means imparting knowledge and education to the taught of subjects which a teacher is expected to teach. Could it be said to be a manual work? Manual work means work done with the hands. It may not be correct to say what the teacher does is a work with the hands. Is it skilled or unskilled manual work? On a close scrutiny of the section and its contents I am, as at present advised, inclined to hold that the teacher cannot be brought within the section. In my view, evidence has to be made available for coming to a proper decision. From the materials available in the case I find that the petitioner is employed in a school run by a plantation. The Plantation Act requires the running of such a school the duties which a teacher in such a school discharges have to be proved by evidence. It may also be that in schools under the plantation a teacher does work other than teaching. Such evidence, if available may also help a decision of this difficult question. I am deliberately adverting to these aspects of the case for the reason that the 2nd respondent, Labour Court, chose to reject the petitioner's case on a prima facie impression that a teacher is not a "workman" since it had been so decided by the Supreme Court in *University of Delhi and Another Vs. Ram Nath*, In support of my view that the matter needs consideration on evidence I think it necessary to refer to the following citations made at the Bar.

6. I shall first consider *University of Delhi and Another Vs. Ram Nath*, itself. What fell for consideration before a Bench of three Judges of the Supreme Court in that case was whether work imparting education carried on by educational institutions would come within the meaning of Section 2(j) of the Act. Gajendragadkar, J., has this to say about this aspect of the case.

Having regard to the fact that the word "industry" as defined in the Act takes within its sweep any calling or service or employment, it cannot be denied that there is prima facie some force in the argument urged by the respondents; but in testing the validity of this argument, it will immediately become necessary to enquire whether the work carried on by an educational institution can be said to be work carried on by it with the assistance of labour or co-operation of teachers. The main function of educational institutions is to impart education to students and if it is held that the imparting of education is industry in reference to which the educational institution is the employer it must follow that the teachers who co-operate with the institution and assist it with their labour in imparting education are the employees of the institution, and so, normally, one would expect that the teachers would be employees who would be entitled to the benefits of the Act. The cooperation of the employer and the employees, or, in

other words, the co-operation between capital and labour to which reference is always made by the industrial adjudication must, on the respondent's contention, find its parallel in the cooperation between the educational institution and its teachers. It would no doubt, sound somewhat strange that education should be described as industry and the teachers as workmen within the meaning of the Act, but if the literal construction for which the respondents contend is accepted, that consequence must follow. If the scheme of the Act and the other relevant considerations necessarily lead to the said consequence, the Court will have to accept the respondents' contention notwithstanding the fact that it does not fit in with the generally accepted cases of the word "industry".

The learned Judge proceeding further observed thus:

It is common ground that teachers employed by educational institutions, whether the said institutions are imparting primary, secondary, collegiate or post-graduate education, are not workmen u/s 2(s), and so 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 are out side the scope of the Act. In other words if imparting education is an industry u/s 2(j), the bulk of the employees being outside the purview of the Act, the only disputes which can fall within the scope of the Act are those which arise between such institutions and their subordinate staff, the members of which may fall u/s 2(s). In our opinion, having regard to the fact that the work of education is primarily and exclusively carried on with the assistance of the labour and co-operation of teachers the omission of the whole class of teachers from the definition prescribed by Section 2(s) has an important bearing and significance in relation to the problem which we are considering. It could not have been the policy of the Act that education should be treated as industry for the benefit of a very minor and insignificant number of persons who may be employed by educational institutions to carry on the duties of the subordinate staff. Reading Sections 2(g), 2(j) and 2(s) together, we are inclined to hold that the work of education carried on by educational institutions like the University of Delhi is not an Industry within the meaning of the Act.

(Emphasis supplied)

One important point that cannot be lost sight of while considering the above passage is that in that case there was agreement the parties that a teacher is not a workman; for the above extract opens with the sentence that it is common ground, etc.

7. If this judgment had stood by itself there would have been no difficulty in holding that a school is not an industry and consequently a teacher not a workman. In Vishnu Sugar Mills Ltd. Vs. State of Bihar and Others, a Division Bench of the Patna High Court held following University of Delhi and Another Vs. Ram Nath, that a teacher is not a workman within the meaning of Section 2(s) of

the Act.

8. But what about the Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, I may at once state that this decision overruled University of Delhi and Another Vs. Ram Nath, The 2nd respondent rested his decision for holding that a teacher was not a workman on the sole ground that the University of Delhi's case was not wholly reversed by the Bangalore Water Supply's case. In other words, the finding that a teacher is not a workman under the Act has been kept in tact. (I am afraid that the 2nd respondent is not wholly correct. The Supreme Court, when its pointed attention was drawn to the following observations of Gajendragadkar, J:

It would, no doubt sound somewhat strange that education should be described as industry and the teachers as workmen within the meaning of the Act, but if the literal construction for which the respondents contend is accepted, that consequence must follow.

observed as follows:

Why is it strange to regard education as an industry. Its respectability? Its lofty character ? Its professional stamp? Its cloistered virtue which cannot be spoiled by the commercial implication and the raucous voices of workmen ? Two reasons are given to avoid the conclusion that imparting education is an industry. The first ground relied on by the Court is based upon the preliminary conclusion that teachers are not "workmen" by definition. Perhaps, they are not, because teachers do not do manual work or technical work. We are not too sure whether it is proper to disregard, with contempt, manual work and separate it from education, nor are we too sure whether in our technological universe, education has to be excluded. However, that may be a battle to be waged on a later occasion by litigation and we do not propose to pronounce on it at present.

The Ist respondent's counsel relied upon the above observation to contend that the Supreme Court left open the question without deciding it. I find force in this submission, for if the Supreme Court had held in the Bangalore Water Supply's case that a teacher was a workman that would have been the end of the matter. But that question is at large. In my view, a tailor-made answer to the question whether a teacher is a workman or not is not easy. The matter has to be considered in the light of the evidence adduced in the case. The parties will be in a position to make available evidence so far as this case is concerned, as to the nature of the work that the teacher does in the school in question under the Plantation, and as to whether the said work would come within the definition. In any case the 2nd respondent will have to consider and decide independently whether the petitioner is a workman or not. I would like to make it clear that the Labour Court was in error in holding that the earlier Supreme Court ruling and its finding that the teachers were not workmen still hold the field. It should have seen that finding is a consequence of the earlier finding that education is not an industry. When education is not an industry no one attached to an educational

institution can claim to be a workman. In that case the Supreme Court held that not only were the teachers of the University not workmen but even clerks, drivers, typists, stenographers and peons were not entitled to invoke provisions of the Industrial Disputes Act as against educational institutions. Since the law of land has now been declared in the Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, that the education is an industry, one will have to straightaway hold that drivers, clerks, etc., attached to the educational institutions are workmen. The Labour Court should have paused to consider in the light of the latest pronouncement of the Supreme Court whether teachers would come within the definition of Section 2(s) of the Act. It is for this purpose that I am persuaded to send back the case to it.

9. At present I do not have all the materials before me except a layman's information about the functions of a teacher in a school. A finding on evidence would be the proper decision. The petitioner's counsel submits that he should be given an opportunity to adduce evidence. I hold that this request has to be allowed. I, therefore, quash Ext. PI and remit the case back to the 2nd respondent for re-consideration of the question in accordance with law and evidence and in the light of the observations made in this judgment. The 2nd respondent will give sufficient opportunity to both the petitioner and the 1st respondent to adduce evidence and to be heard before final orders are passed. No costs.