
(1996) 01 RAJ CK 0046
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2968 of 1994

Narendra Dev

APPELLANT

Vs

The Labour Court and Others

RESPONDENT

Date of Decision : 19-01-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 25F

Citation : (1996) 1 RLW 410 : (1996) 2 WLC 121 : (1996) 1 WLN 42

Hon'ble Judges : P.P. Naolekar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.P. Naolekar, J.—The petitioner was appointed as Instructor in G.D. Somani, Poly technique, Molasar (District Nagaur) as a Motor Mechanic in the pay-scale of Rs. 355-570 on three months probation as per order dated 05.11.79 by the second respondent. On completion of probation period the petitioner was confirmed on that post. It is the case of the petitioner that on 15.08.82 he applied for leave to go to Jodhpur for some urgent personal work, where he suddenly fell ill and he sent application from time to time for extension of leave. Later on, on 25.09.82 on recovery he joined duties and submitted the certificate of the Doctor for his illness. Thereafter, the petitioner worked from 25.09.82 to 28.09.82 and took half-day's leave on 28.09.82 and two day's further leave and went to Jodhpur where he again fell ill and applied for extension of leave alongwith medical-certificates. In spite of this the petitioner was served with a notice dated 13.10.82 and thereafter his service were terminated by order dated 25.11.82. The petitioner's termination tentamounts to retrenchment as provisions of Section 25F of the Industrial Disputes Act, 1947 were not complied with and thus his termination is per se illegal.

2. As the petitioner was retrenched he raised the industrial dispute and on submission of failure report a refrence was made by the State Government to the Labour Court, Bikaner for adjudication of the dispute as per Section 10 of the

Act. It was averred by the employer that the institution is not an industry nor the petitioner was a workman within the meaning of Section 2(s) of the Act and, therefore, reference under the Industrial Dispute Act is not maintainable. During the proceedings it was found by the Labour Court that the termination tantamounts to punishment for misconduct and on the request made by the employer the second respondent was permitted to lead evidence to prove the misconduct before the Labour Court itself. The evidence was led by filing affidavits. The petitioner's case was dismissed by the Labour Court holding that the petitioner is not a workman as per Section 2(s) of the Industrial Dispute Act and, therefore, reference is not maintainable. The objection of the employer that the petitioner was not a workman in an industry was however overruled. The Court below has also found misconduct proved against the petitioner.

3. It is submitted by learned counsel for the petitioner that the petitioner's job requires teaching of theoretical subjects as well as taking practicals in motor-mechanic trade and thus the petitioner is engaged in an industry to do technical work for hire or reward and, therefore, he is a workman within the meaning of Section 2(s) of the Industrial Disputes Act. Strong reliance has been placed on the decisions reported in 1977 Lab. I.C. 1739 [The Jay Engineering Works Ltd. v. The Fourth Industrial Tribunal, Calcutta and Ors.] and 1982 Lab I.C. 93 (Smt. M.D. Sigamani v. Presiding Officer, Labour Court, Madras and Anr.).

4. Section 2(s) of the Act defines "Workman" whereunder 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. Thus in order to be workman the person should satisfy the following requirements:

- i. he should be a person employed in an industry for hire or reward;
- ii. he should be engaged in skilled or unskilled manual, supervisory or technical work; and
- iii. he should not be a person falling under clauses (i) to (iv) mentioned in the definition in Section 2(s) of the Act.

The definition also provides that a workman employed in an industry to do skilled or unskilled manual, supervisory, story to do skilled or unskilled manual, supervisory, technical or clerical work for hire or reward includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of an industrial dispute or whose dismissal, discharge or retrenchment has led to a dispute.

5. Two questions arise for consideration in this case (i) whether G.D. Somani Polytechnique, Molasar (District Nagaur) where the petitioner was working is an industry, and (ii) whether the petitioner was a workman in that industry. The first question is now squarely covered by the decision of the Larger Bench of the Apex Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and

Others, , wherein it has been held that educational institution is an industry but it may be possible that some of the employees in that industry might not be workmen. Thus even though an educational institution is to be treated an industry whether the Instructor engaged in that industry can be considered as a workman. In *Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd. Bombay*, it has been held by the Apex Court that where an employee has multifarious duties and a question is raised whether he is a workman or some one other than a workman the test that the Court must employ in order to determine the question is what was the primary, basis or dominant nature of duties for which the persons whose status is under inquiry was employed. If he is incidentally asked to do some other work which may not necessarily be in tune with the basic duties, these additional duties cannot change the character and status of the person concerned. In *Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others*, the apex Court has held that even though an educational institution has to be treated as an industry the teachers in an educational institution cannot be considered as workmen. The teachers employed by educational institutions whether the said institutions are imparting primary, Secondary, graduate or post-graduate education cannot be called workmen within the meaning of Section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work.

6. In the light of the principle enunciated by the apex Court what has to be seen is the nature of the work carried out by the petitioner. Admittedly, the petitioner was appointed as an instructor in the trade of Motor Mechanic. In the course of his duties as an Instructor he was required to teach theoretical subjects as well as practicals in the trade of Motor-Mechanic. Can it be said that because he was required to give practical training in Motor Mechanic he was employed in an industry to do technical work. No doubt the petitioner is technically qualified to teach in the trade of motor-mechanic and he was, therefore, engaged by the educational institution. He was so engaged for the purpose of giving the benefit of his technical knowledge and expertise to the students and for the said purpose he had to impart that knowledge to the students whom he taught. But, the duty he has to do is to teach in fact and not to do technical work. Taking practical classes in the trade of Motor Mechanic is incidental to the principal work of teaching. Thus it is clear that although the petitioner was required to carry on the work of teaching and in the performance of his duties he was required to take practicals in the trade of Motor-Mechanic, but merely on this it cannot be said that he was engaged in an industry to do the technical work.

7. The cases strongly relied on by learned counsel for the petitioner are decided on their own facts. In 1982 Lab. I.C. 93- *Smt. M.D. Sigamani v. Presiding Officer, Labour Court, Madras and Anr.* It was found by the Court that the workman was engaged as a teacher in the school run by the factory and was given all benefits as given to the employees of the factory. The teacher was also told to do extra work in the -factory and she was not given extra remuneration for that. Under

these facts, it was found that the teacher engaged in such circumstances will be a workman within the meaning of Section 2(s) of the Act. In 1977 Lab. I.C. 1979. The Jay Engineering Works Ltd. v. The Fourth Industrial Tribunal, Calcutta and Ors., the question came for consideration whether the teachers engaged in various Usha Sewing Schools are workmen within the meaning of the definition given in Section 2(s) of the Act. The finding has been arrived at that the teaching staff and durban of the Usha Sewing Schools stand on the same footing as those other workmen of the company. The teachers of the sewing schools were engaged not only for imparting tailoring education but also for promoting the sales of the sewing machines. Students who learnt sewing were expected to buy the sewing machines otherwise the training would become useless. The teachers of the school were asked by the sales-division to push the sales of the sewing machines. The sewing-school was part of the Sale-division of the company. The teachers in the sewing school were not teachers simpliciter as in an educational institution where their duty is to impart education to the students only. On these findings, it was held that the teachers working in those schools are workmen within the meaning of Section 2(s) of the Act. Thus the aforesaid decisions are based on the peculiar facts of those cases.

8. Section 10 of the Act empowers the appropriate Government to refer a dispute to the Labour Court or the Industrial Tribunal for adjudication when it is of the opinion that an industrial dispute exists or is apprehended. The appropriate Government must also be satisfied that a person whose dispute is being referred for adjudication is a workman. This necessarily follows from the definition of "industrial dispute" as mentioned in Section 2(k) of the Act which says that "industrial dispute" means any dispute or reference between employers or employees or between employer and workman or between workman and workman which is connected with the employment or non-employment of the terms of employment or with a condition of labour of any person. Thus to be an industrial dispute it is to be satisfied that it is a dispute between the employer and workman. If it is not a dispute between employer and workman there could not be a reference of that dispute for adjudication u/s 10 of the Act. As the petitioner was not a workman under the Act of 1947 his dispute could not have been referred to or adjudicated by the Labour Court.

9. While parting with the case, it would be necessary to say that the finding arrived at by the Labour Court that the termination of the petitioner's services was on account of misconduct proved will not be binding between the parties. The moment the Labour Court arrived at the conclusion that the petitioner was not a workman and dispute between the employer and a non-workman could not have been referred to nor adjudicated by the Labour Court it had no jurisdiction to decide the case on merits. The findings given by the Labour Court on the merits of the case are, therefore, set aside. However, for the reasons stated above, the writ petition stands dismissed. The parties shall bear their own costs.