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**(1980) 05 PAT CK 0003**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 2605 of 1979**

Prakash Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 22-05-1980

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Factories Act, 1948 — Section 2(k), 2(m)

Industrial Disputes Act, 1947 — Section 2(j), 2(k), 25F

**Citation :** (1980) PLJR 462

**Hon'ble Judges :** Choudhary Sia Saran Sinha, J; B.P. Jha, J

**Bench :** Division Bench

**Advocate :** Chandra Shekhar and Atul Chandra, for the Appellant; H.R. Das for the State, for the Respondent

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## Judgement

B.P. Jha, J.—In an application under Articles 226 and 227 of the Constitution, the petitioner prays for quashing paragraph no. 6 of Annexure-4. By paragraph no. 6 of Annexure-4, the service of the petitioner was terminated. It is clear from paragraph no. 6 of annexure-4 that the petitioner was employed in the polytechnic at Saharsa. It is stated in the supplementary affidavit that the polytechnic institution at Saharsa runs a workshop. This polytechnic at Saharsa is an institution to impart technical education to persons in Civil, Electrical and Mechanical Engineering. A large number of workmen are employed the workshop of the institution. It is also stated in paragraph no. 6 of the supplementary affidavit that the workshop of the institution is registered under the Factories Act, 1948. It is also stated in paragraph no. 6 that there are power generating machines, such as, lath machine, milling machine, grinder machine, planer machine, slaughter machine besides welding, moulding, fitting, carpentry, casting and drilling etc. in the workshop. It is further stated in paragraph no. 8 of the supplementary affidavit that there is a systematized and well-organised activity in the workshop which involves the co-operation of the employer and the employees, and this results in the production of the goods and services. It is

further stated in paragraph no. 8 that the goods are produced in the workshop in the course of imparting training to the Engineering students.

2. There is no counter-affidavit to the supplemental affidavit filed by the petitioner. At the request of the learned counsel of the State, we adjourned the case on 19th May, 1980 for three days for filing reply to supplementary affidavit. In spite of this adjournment no counter-affidavit has been filed by the State in reply to the supplementary affidavit filed on behalf of the petitioner. The supplementary affidavit was filed on 19th May, 1980. In these circumstances, I accept the correctness of the facts stated in the supplementary affidavit.

3. The admitted position, in the present case, is as follows:

(i) The polytechnic at Saharsa runs a workshop.

(ii) The petitioner was a junior instructor working in the workshop since more than two years.

(iii) The workshop carries on trade in a systematic and organised manner. In the trade, there is a relationship of employer and employee between the State and the petitioner.

4. This workshop is run for imparting technical education to the students in order to produce qualified engineers who may render service to the society and nation. This workshop is registered under the Factories Act. According to the definition occurring in Section 2(m) of the Factories Act, it is clear that where in a certain precinct ten or more workers or twenty or more workers are engaged in a manufacturing process, either with the aid of power or without the aid.....or is ordinarily so carried on, such premises come within the purview of "factory". The expression "manufacturing process" is defined in Section 2(k). It is relevant to quote the definition of "manufacturing process" which runs as follows:

"manufacturing process" means any process for

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water or sewage, or

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing; printing by letter press, lithography, photogravure or other similar process or book binding;

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ship or vessels.

5. If the definition of "factory" is read along with the definition of "manufacturing process." It is clear that such premises will come within the purview of the definition of "industry" u/s 2(j) of the Industrial Disputes Act, 1947 (hereinafter

referred to as "the Act"). It is relevant to quote Section 2(j) and 2(k) of the Act:

2. Definitions--To this Act, unless there is anything repugnant in the subject or context,--

x x x x

(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:

(k) "industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between Workmen and workmen; which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

According to the Halsbury's Laws of England, factory includes the premises in which persons are employed in manual labour. On the basis of the statement made in the affidavit, it is clear that the trade in the workshop is being carried on in a systematic and well organised manner by the State of Bihar. In that trade, the petitioner was working as a junior technical instructor, and, as such, the petitioner was a workman in the industry being carried on by the State of Bihar.

6. If it is so if any dispute arises between the State of Bihar and the petitioner, such a dispute will come under the purview of industrial dispute as defined in Section 2(k) of the Act.

7. Mr. H.R. Das; learned counsel of the State, contends that it is not an industry within the meaning of the Industrial Disputes Act. I reject his contention in view of the reasons mentioned above.

8. On a perusal of Annexure-1; It is clear that the petitioner was appointed on a daily rate wage with effect from 19th July, 1972 for erecting the workshop. By Annexure-2 it is clear that he was regularly appointed as a junior instructor machinist on the pay scale of Rs. 240-6-300-E. B.-8-396 on an ad hoc basis. By Annexure-3; he was appointed as a junior instructor (machinist) in the State polytechnic, Saharsa. On a perusal of Annexure 1, 2 and 3, it is clear that the petitioner was working since 19th July, 1972 till he was removed by Annexure-4 on 9th January, 1975. It is, therefore, clear that he was in continuous employment of the State for more than two years. In this circumstance, learned counsel for the petitioner contends that the case of the petitioner comes under the purview of Section 25-F of the Act. This point has been specifically raised in paragraph no. 21 of the writ petition. It is mentioned in paragraph no. 21 that the conditions laid down in Section 25-F of the Act were not complied with in the cases of the petitioner. There is no specific denial in the counter-affidavit filed by the respondents. It is relevant at this stage to quote Section 25-F of the Act which runs as follows;

25-F. Conditions precedent to retrenchment of workmen.--No workman employed

in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

9. The admitted position is that the petitioner was in continuous service of the State of Bihar for more than two years. It also an admitted position that the petitioner was not given one month's notice in writing indicating the reasons for his retrenchment, nor any payment was made in lieu of such notice. It is also an admitted position that the workman was not paid the compensation which would be equivalent to fifteen days' average pay. In these circumstances, in view of the non-compliance of Section 25-F of the Act, the retrenchment order contained in Annexure-4 is illegal, in view of this infirmity. I quash paragraph no. 6 of Annexure-4, by which the service of the petitioner was terminated by the respondents. In the result, the petition is allowed; and paragraph no. 6 of Annexure-4 is hereby quashed. The petitioner will be reinstated in his service, and he will be entitled to all salaries and other emoluments to which he was entitled. I direct the respondents to reinstate the petitioner with full back wages and emoluments to which he was entitled. The parties shall bear their own costs.

Chaudhary Sia Saran Sinha, J.

The term "industry" might have a limited meaning as is attributed to it in common parlance; but it has to be given a broad meaning as has been emphasised in Section 2(j) of the Industrial Disputes Act. Any business, trade, undertaking, manufacture or calling of employers including any calling, service, employment, handicraft, or Industrial occupation or avocation of workmen come within the definition of this term, as defined in this Act. This term came up for consideration before the Supreme Court in the case of (1) Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, , and their Lordships of the Supreme Court while holding that this term has a wide Import laid down three tests to be considered while construing this term. They are (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical), and (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes

(not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale, prasad or food). The Government Polytechnic Institute at Saharsa is mainly meant for imparting technical education to engineering students. This Government Institution, which we may call an educational institution, has a workshop, where a good number of machines of the types mentioned in the proposed order of my learned Brother are installed with the primary purpose of imparting practical training to the Engineering students of the institution. The case of the petitioner in the application is that this workshop unit of Saharsa Polytechnic Institute is an industry, and our decision in this case is limited only to the workshop unit of the institution, above mentioned. On going through the statements made in the supplementary affidavit, assertions whereof do not stand disputed in any counter-affidavit, all the triple tests laid down by the Supreme Court in the case of Bangalore Water Supply and Sewerage Board (Supra) stand satisfied. Mr. Das, learned counsel for the respondents, however, contended that since this Polytechnic educational institute of which the workshop in question is a limb, was specifically meant for imparting education to engineering students, it should not be treated as an industry. In view of the broad and sweeping definition of the term "industry" as used in the Industrial Disputes Act and wide import attributed to this term by the Supreme Court in the above mentioned case, it is difficult to accept the contention of Mr. Das and the same is bound to be negative and it is, accordingly, negatived. The position thus boils down to this that the workshop unit of the Polytechnic Institute at Saharsa duly registered under the Factories Act is an "Industry" within the meaning of this term as used in the Industrial Disputes Act. It is in this unit that the petitioner is an employee continuously working there since the year 1972. There are several other workmen designated as senior and junior instructors of a grade called "machinist trade". Once this workshop of the Polytechnic Institute is held to be an industry, the mischief of Section 25-F of the Industrial Disputes Act will be attracted. There being no compliance with the provisions of that section, the termination of the service of the petitioner with effect from the date of issue of the letter (Annexure-4) will be held to be illegal. I, therefore, agree to the order proposed by my learned Brother that Paragraph no. 6 of Annexure-4 terminating the service of the petitioner is liable to be quashed.