
(2005) 03 AHC CK 0024
In the Allahabad High Court
Case No : C.M.W.P. No. 17221 of 2001

Principal, Amar Shaheed Inter College	APPELLANT
Vs	
Presiding Officer, Labour Court and Another	RESPONDENT

Date of Decision : 24-03-2005

Acts Referred:

Uttar Pradesh Industrial Disputes Act, 1947 — Section 2, 33C(2)

Citation : (2005) 5 AWC 4974 : (2005) 2 UPLBEC 1924

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : K.S. Chauhan, for the Appellant;

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—The Petitioner has challenged the impugned award dated 19.2.2000 published on 2.2.2001, passed by labour court, Agra, holding that the termination of the workman-Vinod Kumar-Respondent No. 2 is illegal.

2. Briefly stated, the facts of the case are that the Petitioner-institution is recognized private school, which receives grant-in-aid from the State Government. It imparts education to children upto Intermediate classes. Respondent No. 2 was appointed on 14.11.1985 as temporary safai karmachari in the institution.

3. It is submitted that Respondent No. 2 did not perform his work regularly and properly and did not improve his conduct, as such, a show cause notice dated 14.11.1986, was issued to him to show as to why he be not suspended for dereliction of duty. No reply was given by Respondent No. 2 to the show cause notice and he also did not improve his work and conduct. He was thereafter placed under suspension vide order dated 4.3.1987, vide Annexure-4 to the writ petition. It is further submitted that disciplinary proceedings were initiated and Respondent No. 2 admitted his guilt vide letters dated 6.3.1987 and 10.3.1987, appended as Annexures-5 and 6 to the writ petition. A preliminary enquiry report

was submitted that a prima facie case was made out against him, consequently charge-sheet was sent to the Respondent No. 2 through registered post on 11.6.1987, which was also not replied, hence his services were accordingly terminated on 13.7.1987. An appeal was preferred by him to the District Inspector of Schools against the order of termination which was dismissed on the ground that the appeal lies to the Manager and not directly to the District Inspector of Schools. The workman then raised an industrial dispute which was referred to labour court, Agra, in the following terms:

4. Before the labour court, the employer-institution filed written statement as well as filed 17 documents. The case of the Petitioner before the labour court that after termination of the services of Respondent No. 2, the post has been filled up by appointing one Dhaniram whose appointment has also been approved by District Inspector of Schools vide letter dated 1.7.1988, but Dhaniram has not been impleaded by Respondent No. 2 as necessary party. The Acting Principal as well as the erstwhile Principal who has since retired were also examined in evidence by the employer in support of its case.

5. The labour court by the impugned award has held that the domestic enquiry was concluded without opportunity to the workman to give evidence in support his case, as such, the enquiry was not properly conducted by the employer and was vitiated. It further held that the charges against the workman by the employer are not proved and from the evidence of the workman it is conclusively proved that his services had been terminated by the Principal due to bias and prejudice. The labour court believed the evidence of the workman to be reliable and also held that the termination of the services of the workman w.e.f. 13.7.1987, was illegal and bad and directed reinstatement of the workman with full back wages and consequential benefits w.e.f. 13.7.1987.

6. Aggrieved by the findings given by the labour court, the Petitioner has challenged the validity and correctness of the award in this petition.

7. The counsel for the Petitioner contended that Respondent No. 2 is not employed in an industry and was, therefore, not a workman. In support of his contention, he relied upon the decision of the Apex Court in the University of Delhi and Anr. v. Ram Nath and Ors. AIR 1963 SC 1873, wherein it has been held that:

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 workman u/s 2(s) as to exclude any problem connected with teachers and their salaries are outside the purview of the Act, and since the teachers form the sole class of employees with whose co-operation education is imparted by educational institutions, their exclusion from the purview of the Act necessarily corroborates the conclusion that education itself is not within its scope.

8. Relying upon *State of Bombay v. Hospital Mazdoor Sabha*, in paragraph 8 of the report, it has been held that:

It is true that like all educational institutions the University of Delhi employs subordinate staff and this subordinate staff does the work assigned to it, but in the main scheme of imparting education, this subordinate staff plays such a minor, subordinate and insignificant part that it would be unreasonable to allow this work to lend its industrial colour to the principal activity of the University which is imparting education. The work of promoting education is carried on by the University and its teachers and if the teachers are excluded from the purview of the Act, it would be unreasonable to regard the work of imparting education as industry only because its minor subsidiary and incidental work may seem to partake of the character of service which may fall u/s 2(j).

9. No other point has been argued by counsel for the Petitioner except that the educational institution is not industry. This contention of the counsel for the Petitioner has no force for the reasons given hereinafter in the judgment.

10. The question whether the activity of running of an educational institution would fall within the ambit of definition of industry was left undecided by the Apex Court in the case of *Hospital Mazdoor Sabha's* case (supra) as the Court was not called upon to decide that question. Hence reliance placed by counsel for the Petitioner on the observations made in paragraph 8 of the report, extracted above, is of no relevance. However, in the case of *The Corporation of the City of Nagpur Vs. Its Employees*, the Apex Court included education department of the corporation falling within the definition of industry. Thereafter, the question whether the work of imparting education by the educational institutions falls within the definition of industry was considered in the case of *University of Delhi* (supra). That case arose out of claim of two drivers of the University of Delhi u/s 33C(2) of the Act whose services had been terminated. The application was contested by the University on the ground that work of imparting education is not industry and their application was, therefore, not maintainable. The labour court rejected the preliminary objection and decided the case of the drivers on merits. The order of labour court was challenged by the University before Hon"ble the Supreme Court in appeal by special leave on the ground that the work carried out by the University is not industry. The Apex Court in that case, in coming to the conclusion that imparting education is not industry took into consideration the predominant nature of activity of the institution, i.e., teaching and held that (1) teachers are not workmen and (2) the work of University could not be assimilated to the position of any trade, business or service within the meaning of Section 2(j). The Hon"ble Supreme Court later on reconsidered this question in the case of *Bangalore Water Supply Sewerage Board v. A. Rajappa*, 1978 LIC 467, by majority decision and held that test laid down in the *University of Delhi's* case (supra) is not predominant number of employees enjoying the benefit of the Act but the true test of the predominant nature of the activity. It was held that in the case of educational institutions, the nature of the activity is

ex hypothesis. The education being a service to the community is an industry. It was further held that there may be number of activities of an educational institution such as, printing press, transport department, clerical and ministerial staff which may be severable from the teaching activity and they severally and jointly by themselves may be treated as an industry. The Supreme Court, therefore, observed that Delhi University's case (supra) was wrongly decided an education in institutional form as an industry.

11. Though the question whether the educational institution is an industry or not was not under consideration of the Court, as such observations on this point by the Apex Court is in the nature of obiter and the Court had not specifically decided the question as to whether the activity of teaching would fall within the ambit of definition of industry. However, this question has been considered in a number of cases. Again, in *Ram Kishan v. Samrat Ashok Technical School Bidisa*, 1995 (1) LIC 465, rendered by Madhya Pradesh High Court wherein it has been held that educational institution will fall within the ambit of definition of industry and a clerk employed therein would be workman. To the same effect are decisions in *T. Rajan v. State of Kerala*, 1994 LIC 1321 and *Suresh Chandra Mathe Vs. Jiwaji University and Others*,

12. The Apex Court, again in *Mrs. Sunderamba v. State of Goa, Daman and Diu*, 1988 (I) LLJ 61 held that even if educational institution is industry on the basis of ratio decidendi in *Banglore Water Supply Sewerage Board v. A. Rajappa* (supra), the teacher is not a workman.

13. Thus, from the aforesaid decisions, it can be safely inferred that education is "industry" and though teachers may not be workmen but other class of employees like clerks, sweepers, peons, chaukidars etc. will certainly fall within the definition of workman as defined under the U.P. Industrial Disputes Act, 1947.

14. The employers had not given any evidence regarding the issue of fairness and propriety of the domestic enquiry, and had also failed to prove the charges in the domestic enquiry as well as before the labour court. A finding of fact has been recorded by the labour court that the termination of services of the workman was due to enmity harboured by the Principal due to bias prejudice. I do not find any illegality in the award.

15. For the reasons stated above, the writ petition fails and is dismissed. No order as to costs.