

(2016) 09 OHC CK 0041
In the Orissa High Court
Case No : O.J.C. No. 10196 of 1997.

**Regional Transport Authority - Petitioner @HASH State of Orissa and
Others - Opposite Parties**

Date of Decision : 15-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2(oo)(bb), Section 25F

Citation : (2016) 151 FLR 1087 : (2016) 4 LLJ 323

Hon'ble Judges : Kumari Sanju Panda and Shri Sujit Narayan Prasad, JJ.

Bench : Division Bench

Advocate : M/s N.K. Mishra, D. Dasmohapatra, M. Rath and S. Mishra, Advocates, for the Petitioner; Mr. S.K. Biswal (for O.P. No. 2) and Mr. S. Mishra, Addl. Government Advocate, for the Opposite Parties

Final Decision : Disposed Off

Judgement

Shri Sujit Narayan Prasad, J. - Both the writ petitions are being decided by common order since the award passed in Industrial Dispute Case No. 77 of 1995 by the Labour Court has been assailed both by the workman and the management.

2. Management has filed the writ petition being O.J.C.No.10196 of 1997 for quashing of the award on the ground that the finding has been given without appreciation of all facts and as such the same is based upon perverse finding, while the workman has filed the writ petition being O.J.C.No.12085 of 1997 challenging the part of award whereby and where under full back wages has been denied.

3. Case of the workman is that he has been appointed as N.M.R. Clerk to work on daily wage basis being attached to Cashier for 20 days which was continued with renewals, the workman along with two other employees were working as N.M.R. Clerk at Unified Check Gate, Girisola until further orders. His services has been terminated without assigning any reason, hence an industrial dispute was raised, ended in failure of conciliation and thereafter the appropriate Government

has made reference for its adjudication by making the following reference:

"Whether the action of the management of the Regional Transport Authority, Ganjam, Chatrapur in terminating the services of Sri Ramesh Ch. Sahu, N.M.R. Clerk of Unified Check Gate, Girisola, vide order No. 2330 dated 14.5.92 is legal and/or justified? If not to what relief the workman Sri Sahu is entitled to?"

While on the other hand, case of the management is that State Transport Authority will not come under the definition of "industry as defined under section 2(j) of the Industrial Disputes Act, 1947 being regulated in the name and style of Regional Transport Authority and as such the work which is being done in the management authority is not an "industry and the finding given in this regard by the Labour Court is without considering the nature of work which was performed under the management authority and as such the matter needs fresh adjudication to decide this issue.

The other ground taken that Section 25-F is also not application in the facts and circumstances of the case for the reason that from the nature of appointment of the workman it cannot be said that he has been retrenched as because he was engaged on contract basis and due to non-renewal of contract he has automatically been ousted from service.

4. Before going through the award we have gone into the definition of Section 2(j) of the Industrial Disputes Act, 1947 which is reproduced herein below:

"2(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."

The definition of "industry" as per section 2(j) of the Industrial Disputes Act, 1947 consists of two parts; the first part says that it means any business, trade, undertaking, manufacture or calling of employees and then goes on to say that it includes any calling, service, employment handicraft or industrial occupation or avocation of workmen. Thus, one part defines it from the standpoint of the employer; the other from the standpoint of the employees.

5. The matter with respect to the definition of "industry" as per the provision as contained in Section 2(j) of the I.D. Act fell for consideration before the Hon"ble Apex Court in the case of Physical Research Laboratory v. G. Sharma, reported in AIR 1997 S.C. 1855 and their Lordships after discussing the facts in detail has been pleased to hold at para-7 wherein it has been stated by taking into consideration of the judgment rendered by the Hon"ble Apex Court in the case of Bangalore Water Supply and Sewerage Board v. A. Rajappa reported in AIR 1978 SC 548 and by referring paragraph-140 of the said judgment it has been observed that "industry" as defined in Section 2(j) and explained in Banerji (supra) has a wide import

(a) where (i) systematic activity, (ii) organised by cooperation between employer and employee (the direct and substantial element is chimerical), (iii) for

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, prima facie, there is an "industry" in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

The Hon''ble Apex Court also discussed in paragraphs 141, 142 and 143 of the said judgment and thereafter at paragraph-8 of the judgment passed in Physical Research Laboratory v. K.G. Sharma (supra) it has been held that the question whether Physical Research Laboratory is an "industry" under the Industrial Disputes Act will have to be decided by applying the above principles; but, at the same time it has to be kept in mind that these principles were formulated as this Court found the definition of the word "industry" as vague and rather clumsy, vaporous and tall-and-dwarf?. Therefore, while interpreting the words "undertaking", "calling" and "service" which are of much wider import, the principle of "noscitur a sociis" was applied and it was held that they would be "industry" only if they are found to be analogous to trade or business. Furthermore, an activity undertaken by the Government cannot be regarded as "industry" if it is done in discharge of its sovereign functions. One more aspect to be kept in mind is that the aforesaid principles are not exhaustive either as regards what can be said to be sovereign functions or as regards the other aspects dealt with by the Court.

6. The Hon''ble Apex Court after taking into consideration the said aspect of the matter has been pleased to hold that the Physical Research Laboratory is not an "industry" for the reason that it is an institution discharging Governmental functions and a domestic enterprise than a commercial enterprise.

In the background of this proposition the submission advanced on behalf of the parties is to be appreciated. The Labour Court while adjudicating the first issue has to find whether the management is an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 or not, it has been held that it is an "industry" and the reason for holding this has been assigned by the Labour Court i.e. judgment reported in 1977 (35) FLR 258 (V. Subramanian v. Tamil Nadu State Transport Department, Nagercoil and another) whereby and where under it has been held that Transport Department of the State Government which provides transportation service for public would be "industry".

There is no dispute with respect to the fact that the State Transport Department is an "industry" because transport department is providing service for the public

but here in this case the management is State Transport Authority and its daily function and objectives is to regulate transportation activities within the State, meaning thereby it is regulatory authority and not providing any service to the public.

7. We found that while answering issue No. (i) the Labour Court while assessing into consideration the judgment rendered in the case of V. Subramanian v. Tamil Nadu State Transport Department, Nagercoil and another (supra) it has been made application to the facts by way of concluding that the State Transport Department is a service provider and the Regional Transport Authority is a regulatory body, without leading any evidence in regard. In view thereof, according to us, issue No. (i) has not properly been dealt with by the Labour Court.

8. So far as applicability of Section 25-F of the Industrial Disputes Act, 1947 is concerned, the case of the management is that the workman was engaged under a contract basis with renewal clause which is evident from the payment letter which stipulates condition that the workman is appointed as N.M.R. Clerk until further orders and time to time renewal of appointment has been extended by passing renewal order in his regard. Labour Court has given finding making the provisions of section 25-F applicable in the case of the workman although he was engaged as N.M.R. Clerk, before going to that conclusion the Labour Court has not given finding with respect to the fact as to whether the clerk can be appointed on N.M.R. basis and if appointed can he be reinstated in service. Labour Court has also not answered the issue regarding applicability of section 25-F taking into consideration the definition of retrenchment as provided under section 2(oo)(bb) of the Industrial Disputes Act, hence according to us, Labour Court while answering issue No. (ii) has also not applied its mind. The award has been passed for engagement as N.M.R. Clerk with 50% of back wages, we are of the conscious that the fact regarding scope of the writ Court sitting under Article 226 of the Constitution of India regard power to intervene in the finding given by the Labour Court or Industrial Tribunal and in this regard the proposition laid down by the Hon'ble Apex Court in the case of Syed Yakoob v. K.S. Radhakrishnan and others, AIR 1964 SC 477 wherein in paragraph 7 their Lordships have been pleaded to hold as follows:-

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute

is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was "insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised."

The proposition laid down by the Hon'ble Apex Court in the case of Syed Yakoob (supra) still holds good since the same has been considered by Hon'ble Apex Court recently in the case of M/s. Pepsico India Holding Pvt. Ltd. v. Krishna Kant Pandey, (2015) 4 SCC 270 wherein their Lordships while discussing the scope of Article 226 of the Constitution of India in the matter of showing interference with the finding of the Tribunal has been pleased to hold after placing reliance upon the judgment rendered in the case of Chandavarkar Sita Ratna Rao v. Ashalata S. Guram, (1986) 4 SCC 447 as follows:

"17. In case of finding of facts, the court should not interfere in exercise of its jurisdiction under Article 227 of the Constitution. Reference may be made to the observations of this Court in Bathutmal Raichand Oswal v. Laxmibai R. Tarta where this Court observed that the High Court could not in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal. The High Court was not competent to correct errors of facts by examining the evidence and re-appreciating. Speaking for the Court, Bhagwati, J. as the learned Chief Justice then was, observed at p. 1301 of the report as follows: (SCC p. 864, para 7)

"The special civil application preferred by the appellant was admittedly an application under Article 227 and it is, therefore, material only to consider the scope and ambit of the jurisdiction of the High Court under that article. Did the High Court have jurisdiction in an application under Article 227 to disturb the

findings of fact reached by the District Court? It is well settled by the decision of this Court in Waryam Singh v. Amarnath that the ... power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways v. Sukumar Mukherjee to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

This statement of law was quoted with approval in the subsequent decision of this Court in Nagendra Nath Bose v. Commr. of Hills Division and it was pointed out by Sinha, J., as he then was, speaking on behalf of the court in that case:

It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226 the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority."

9. From perusal of these judgments it reveal that there is scope of Article 227 of the Constitution of India which cannot be exercised but jurisdiction under Article 226 of the Constitution of India for judicial review of the award can be exercised if finding is perverse or error apparent on the fact of record. As we have discussed herein above that the Labour Court while answering issue Nos. (i) and (ii) has not discussed and appreciated all aspects of the matter and as such we are of the considered view that the finding is not only perverse rather it also error apparent on the face of record, hence we, in exercise of power conferred under Article 226 of the Constitution of India, is interfering with the same and accordingly the award is set aside.

10. In the result, the matter is remitted before the Labour Court, Jeypore for fresh adjudication of the dispute on the basis of the observations and discussions made by us herein above.

With the above observations and directions, both the writ petitions are disposed of.