

(2006) 04 DEL CK 0066

In the Delhi High Court

Case No : Writ Petition (Civil) No. 4692 of 2004

Shakuntla

APPELLANT

Vs

Tamanna Special School

RESPONDENT

Date of Decision : 26-04-2006

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Industrial Disputes Act, 1947 — Section 10, 2

Citation : (2006) 04 DEL CK 0066

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : R.P. Sharma, for the Appellant; Pramod Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—This writ petition has been filed by the petitioner aggrieved by an industrial award dated 7th February, 2004 holding that the project on which she was engaged was not an "industry". From the facts proved on record, the petitioner herein was engaged as a helper with the job of cleaning one room utilised for educating slum children in 1992 and an additional room from 1999 coupled with the duty of filling a water pitcher intended for the children.

2. The respondent is a non-governmental organisation which commenced running a Balwadi project for giving children of Ekta Basti in R.K. Puram, Delhi which was named as the "Badwadi Karyakram". This project was being run in the slum and J.J. Clusters of the Ekta Vihar which was meant to give education to children of labourers, street vendors and house maids etc. The project was operating from one room. Only three people including the petitioner were engaged for the purpose. After some time, the parents of these slum children made an appeal to the Commissioner, MCD to allocate one more room for the project. The Tamana Association which was running the project also requested the officials of the MCD to grant some more space. Finally, vide a letter dated 4th March, 1999, use of one additional room was permitted for the purposes of the

project by the Municipal Corporation of Delhi.

3. The respondents have placed material on record to the effect that funding for the project was primarily through donations and contributions from people from all walks of life who have concern for weaker sections of the society and families with low income groups who do not have the time and means to take care of their children or to ensure basic education to them. The parents of the children were required to pay a nominal contribution varying from Rs.5/- to Rs.10/- which was also not paid by most of the children. The money collected from such contributions was insufficient, it is stated, to run the project for even one week.

4. The representatives of the project were required to go from dwelling to dwelling and to persuade the parents to allow the children to attend this programme else they would be given into the vices of begging, gambling, hooch smuggling, etc if they remain unengaged. The project involved trips for the children to places of importance as the Rajghat, Rashtrapati Bhawan, Parliament House, India Gate, Zoo, Children Parks etc.

5. The petitioner was engaged as a helper since 1992 with duty hours from 9 a.m. to 1 p.m., which was increased to 8.30 a.m. to 2.30 p.m., for six days with effect from 12th May, 1998. The petitioner was being paid a salary of Rs.1,000/- per month. Due to financial constraints, the project could not be continued and a notice dated 20th January, 2001 was exhibited whereby it was notified to all that the project would be closed. The project was closed with the consent of the employees involved in the work as well as the Ekta Basti inhabitants.

6. It is noteworthy that the employees who were engaged in this project were offered adjustment in another project being run by the Tamana Association which was called the "School For Drop Out Children". Apart from the petitioner Mrs. Laxmi Bhatia and Mrs. Reena Samuel, the other employees who were engaged in the Ekta Basti project were offered adjustment in the other project. Though Mrs. Laxmi Bhatia and Mrs. Reena Samuel joined this other project, the petitioner herein did not join the project.

The respondent contends that the workman took her salary for the month of April, 2001 and never turned up for the project. Thereafter the petitioner raised a demand notice dated 12th April, 2001 upon the respondent contending that she is entitled to wages as well as resumption of duty from 4th April, 2001 when her services were illegally terminated. This demand notice was served upon the Director of the Tamana Special School being run at Vasant Vihar, New Delhi. The dispute raised by the petitioner resulted in a reference by the appropriate government u/s 10 of the Industrial Disputes Act, 1947.

7. It is noteworthy that the workman had set up a plea that she was employed by the Tamana Special School and she raised a claim alleging illegal termination of her service as well as entitlement to reinstatement with full back wages and consequential reliefs. The respondent contested the claim set up by the petitioner stating that the petitioner was engaged on the afore noticed project

which had been closed down and that the workman was offered opportunity to join another project or a similar project. After a detailed consideration of the matter, the reference was answered against the workman by an award dated 7th February, 2004. Aggrieved thereby, the petitioner has filed the present writ petition impugning and assailing this award.

8. The petitioner has contended that the award was without jurisdiction and that the labour court had no authority to go into the issue as to whether the respondent was an industry or not. The main thrust of the petitioner's challenge is based on the contention that the award is not sustainable inasmuch as the labour court permitted an additional affidavit of the management to be taken on record behind the back of the workman and denied opportunity to the petitioner to assail the same.

9. The issue as to whether the respondent was an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 or not is jurisdictional and goes to the root of the matter. There is no dispute that the respondent association is a non-governmental organisation engaged in providing opportunities to the children of the under privileged. The project where the petitioner was engaged as a helper was a Balwadi Karyakram run by the respondent in a slum and J.J. Colony. The petitioner has cleverly couched her engagement at the project as an employment with the Tamana Special School which is stated to be the NGO which was running the project. However, the petitioner does not disclose her duties or assignment.

10. The respondents had filed an affidavit by way of evidence in support of its case on 7th March, 2003. On 8th July, 2003, the representative of the petitioner was present before the Labour Court when the matter was listed. The respondents sought permission of the labour court to file an additional affidavit. No objection whatsoever was raised by the authorised representative of the petitioner and the request of the management was allowed.

On the next date of hearing fixed on 28th July, 2003, the respondent filed its additional evidence by way of an affidavit. The matter was thereafter adjourned to enable the petitioner/workman to effectively cross-examine the management witness. The witness of the management was cross examined on 10th September, 2003 where after the matter was kept for arguments and judgment.

11. In view of the objections raised by the petitioner, the original record of the labour court had been called for and has been perused. The aforesaid position is born out by the record. In these circumstances, it is not open to the petitioner to possibly contend that the additional affidavit of the respondent was taken on record behind its back. The petitioner failed to take any objection when the request of the management was allowed. No objection was taken by the petitioner on the several dates when the matter was listed thereafter or when the affidavit was filed or adjourned for cross examination of the deponent by the petitioner.

Therefore, I find no force in the submission of the petitioner that the additional affidavit was taken on record behind its back or that it was denied opportunity to effectively cross examine the management's witness.

12. The jurisdiction of this Court while examining a challenge to an industrial adjudication is not in the nature of appellate or revisional jurisdiction. In exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India, such discretion can be exercised within limited parameters which have been delineated by the Apex Court in several binding judicial pronouncements. In this behalf, reference may appropriately be made to the pronouncement of the Apex Court.

13. Noteworthy in this behalf are the observations of the Apex Court in AIR 2000 SC 1508 entitled *Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Anr.* in which it was held thus:

The learned single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a Tribunal, presided over by a Judicial Officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly one taken. The Division Bench was not only justified but well merited in its criticism of the order of the learned single Judge and in ordering restoration of the Award of the Tribunal. On being taken through the findings of the Industrial Tribunal as well as the order of the learned single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken, the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, Therefore, open to the writ Judge was the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of re-assessing the evidence and arriving at findings of one's own, altogether giving a complete go-bye even to the facts specifically found by the Tribunal below.

14. In *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, , the court held thus:

13. The jurisdiction which Articles 226 and 136 confer entitles the High Courts and this Court to examine the decisions of all Tribunals to see whether they have

acted illegally. That jurisdiction cannot be taken away by a legislative device that purports to confer power on a tribunal to act illegally by enacting a statute that its illegal acts shall become legal the moment the tribunal chooses to say they are legal. The legality of an act or conclusion is something that exists outside and apart from the decision of an inferior tribunal.

It is a part of the law of the land which cannot be finally determined or altered by any tribunal of limited jurisdiction. The High Courts and the Supreme Court alone can determine what the law of the land is vis a vis all other courts and tribunals and they alone can pronounce with authority and finality on what is legal and what is not. All that an inferior tribunal can do is to reach a tentative conclusion which is subject to review under Articles 226 and 136. Therefore, the jurisdiction of the High Courts under Article 226 with that of the Supreme Court above them remains to its fullest extent despite Section 105.

(1) That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not and should not, act as Courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensure. They will not allow themselves to be turned into Courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not lightly entertained in this class of case.

A.M. Allison Vs. B.L. Sen, There are moreover special reasons why we should not interfere with the orders of the Deputy Commissioner, Sibsagar, in these appeals. The matters do not come to us by way of appeal directly from the orders of the Deputy Commissioner, Sibsagar. They were the subject, in the first instance, of proceedings under Article 226 of the Constitution in the High Court of Assam. Proceedings by way of certiorari are "not of course". (Vide Halsbury's "Laws of England", Hailsham (Edition, Vol. 9, paras 1480 and 1481, pp.877-878). The High Court of Assam had the power to refuse the writs if it was satisfied that there was no failure of justice, and in these appeals which are directed against the orders of the High Court in application under Article 226, we could refuse to interfere unless we are satisfied that the justice of the case requires it. But we are not so satisfied. We are of opinion that, having regard to the merits which have been concurrently found in favor of the respondents both by the Deputy Commissioner, Sibsagar, and the High Court, we should decline to interfere.

15. In DTC v. The Presiding Officer and Ors. WP(C) 2575/1986 decided on 30.11.2004 (S.B.), the court held thus:

16. It was further submitted that the scope of judicial review is very limited in such cases. The High Court can quash an award of the Industrial Tribunal when it has committed an error of law apparent on the face of the record or when the findings of fact are perverse. Reference was made to *J.D. Jain Vs. Management of State Bank of India and another*, . It was submitted, relying upon *Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union and Another*, that the writ court does not exercise appellate jurisdiction over findings of fact arrived at by the Industrial Tribunal. Findings of fact should be considered as final and should not be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken.

27. Quite apart from the above, learned Counsel for the Workmen is right when he says that this Court should interfere with a decision of a Tribunal under Article 226 of the Constitution only if there is substantial injustice. In *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, the Supreme Court in paragraph 14 of the Report said:

The High Courts do not, and should not, act as Courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into Courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be.

28. To the same effect are the observations of the Supreme Court in *A.M. Allison Vs. B.L. Sen*, wherein (Edition, Vol. 9, paras 1480 and 1481, pp.877-878). The High Court of Assam had the power to refuse the writs if it was satisfied that there was no failure of justice, and in these appeals which are directed against the orders of the High Court in application under Article 226, we could refuse to interfere unless we are satisfied that the justice of the case requires it. But we are not so satisfied. We are of opinion that, having regard to the merits which have been concurrently found in favor of the respondents both by the Deputy Commissioner, Sibsagar, and the High Court, we should decline to interfere.

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14. That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not, and should not, act as Courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into Courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of case.

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19. So far as the objection of the respondent that the project was not covered within the definition of "industry" u/s 2(j) of the Industrial Disputes Act, 1947, reference has to be made to the binding and authoritative enunciation of the law by the Apex Court in *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, wherein the court has authoritatively laid the principles thus:

102. Can charity be "industry"? This paradox can be unlocked only by examining the nature of the activity of the charity, for there are charities and charities. The grammar of labour law in a pluralist society tells us that the worker is concerned with wages and conditions of service, the employer with output and economies and the community with peace, production and stream of supply. This complex of work, wealth and happiness, firmly grasped, will dissolve the dilemma of the law bearing on charitable enterprises. Charity is free ; industry is business. Then how? A lay look may scare ; a legal look will see ; a social look will see through a hiatus inevitable in a sophisticated society with organisational diversity and

motivational dexterity.

103. If we mull over the major decisions, we get a hang of the basic structure of "industry" in its legal anatomy. Bedrocked on the grundnorms, we must analyze the elements of charitable economic enterprises, established and maintained for satisfying human wants. Easily, three broad categories emerge; more may exist. The charitable element enlivens the operations at different levels in these patterns and the legal consequences are different, viewed from the angle of "industry". For Income Tax purposes, Trusts Act or company law or registration law or penal code requirements the examination will be different. We are concerned with a benignant disposition towards workmen and a trichotomy of charitable enterprises run for producing and/or supplying goods and services, organized systematically and employing workmen, is scientific.

104. The first is one where the enterprise, like any other, yields profits but they are siphoned off for altruistic objects. The second is one where the institution makes no profit but hires the services of employees as in other like businesses but the goods and services, which are the output, are made available, at low or no cost, to the indigent needy who re priced out of the market. The third is where the establishment is oriented on a humane mission fulfilled by men who work, not because they are paid wages, but because they share the passion for the cause and derive job satisfaction from their contribution. The first two are industries, the third not. What is the test of identity whereby these institutions with eleemosynary inspiration fall or do not fall under the definition of industry ?

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106. It is common ground that the first category of charities is disqualified for exemption. If a business is run for production and or supply of goods and services with an eye on profit, it is plainly an industry. The fact that the whole or substantial part of the profits so earned is diverted for purely charitable purposes does not affect the nature of the economic activity which involves the co-operation of employer and employee and results in the production of goods and services. The workers are not concerned about the destination of the profits. They work and receive wages. They are treated like any other workmen in any like industry. All the features of an industry, as spelt out from the definition by the decision of this Court, are fully present in these charitable businesses. In short, they re industries. The application of the income for philanthropic purposes, instead of filling private coffers, makes no difference either to the employees or to the character of the activities. Good Samaritans can be clever industrialists.

107. The second species of charity is really n allotropic modification of the first. If a kind-hearted businessman or high-minded industrialist or service-minded operator hires employees like his non-philanthropic counterparts and, in co-operation with them, produces and supplies goods or services to the lowly and the lost, the needy and the ailing without charging them any price or receiving a

negligible return, people regard him as of charitable disposition and his enterprise as a charity. But then, so far as the workmen are concerned, it boots little whether he makes available the products free to the poor. They contribute labour in return for wages and conditions of service. For them the charitable employer is exactly like a commercial-minded employer. Both exact hard work, both pay similar wages, both treat them as human machine cogs and nothing more. The material difference between the commercial and the compassionate employers is not with reference to the workmen but with reference to the recipients of goods and services. Charity operates not vis-?-vis the workmen in which case they will be paying a liberal wage and generous extras with no prospect of strike. The beneficiaries of the employer's charity are the indigent consumers. Industrial law does not take note of such extraneous factors but regulates industrial relations between employers and employees, employers and workmen and workmen and workmen. From the point of view of the workmen there is no charity. For him charity must begin at home. From these strands of thought flows the conclusion that the second group may legitimately and legally be described as industry. The fallacy in the contrary contention lies in shifting the focus from the worker and the industrial activity to the disposal of the end product. This law has nothing to do with that. The Income Tax law may have, social opinion may have.

xxxx xxxx xxxx 108. Some of the appellants may fall under the second category just described. While we are not investigating into the merits of those appeals, we may as well indicate, in a general way, that the Gandhi Ashram, which employs workers like spinners and weavers and supplies cloth or other handicraft at concessional rates to needy rural consumers, may not qualify for exemption. Even so, particular incidents may have to be closely probed before pronouncing with precision upon the nature of the activity. If cotton or yarn is given free to workers, if charkhas are made available free for families, if fair price is paid for the net product and substantial charity thus benefits the spinners, weavers and other handicraftsmen, one may have to look closely into the character of the enterprise. If employees are hired and their services are rewarded by wages "whether on cottage industry or factory basis" the enterprises become industries, even if some kind of concession is shown and even if the motive and project may be to encourage and help poor families and find them employment. A compassionate industrialist is nevertheless an industrialist. However, if raw material is made available free and the finished product is fully paid for "rather exceptional to imaging" the conclusion may be hesitant but for the fact that the integrated administrative, purchase, marketing, advertising and other functions are like in trade and business. This makes them industries. Noble objectives, pious purposes, spiritual foundations and developmental projects are no reason not to implicate these institutions as industries.

xxxx

140. "Industry", as denied in Section 2(j) and explained in Banerji (supra), has a

wide import.

(a) Where (i) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (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 prasada 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.

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142. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) professions, (ii) clubs, (iii) educational institutions, (iv) co-operatives, (v) research institutes (vi) charitable projects and (vii) other kindred adventures, if they fulfill the triple tests listed in I (supra), cannot be exempted from the scope of Section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt" not other generosity, compassion, developmental passion or project.

20. In the instant case, the respondent has stated that it was running the project

on purely paid contributions received from the public and by notional payments by the parents of the slum children of Rs.5/- or Rs.10/- which also were not being paid by them. The Apex Court has drawn a clear distinction between such establishments which would fall within the definition of industry and those which will not. The petitioner was aware of the nature of the project when he joined it. From the nature of its activities the project falls clearly within the exceptions carved out in para 142 (c) of the judgment in Bangalore Water Supply case and is not covered under the definition of "industry" in Section 2(j) of the statute.

21. In this regard reference can also be appropriately made to the pronouncement of the Apex Court in M.D., U.P. Land Dev. Corpn. and Another Vs. Amar Singh and Others, In this pronouncement, the court held thus:

10. The letter dated 22.2.1993 of the joint secretary, U.P. Government extracted above, in clear terms states that 260 posts of different categories were created for the appellant-corporation, against which 140 posts were already occupied by the incumbents and 120 posts were still left vacant; those 120 posts were kept suspended and in lieu thereof permission was given to fill 107 posts temporarily newly created for the purpose of U.P. Sodic Land Reclamation Project sponsored by the World Bank. From these documents it is clear that the respondents were never recruited as against regularly sanctioned posts on a regular basis. Reading of these documents and the contentions raised on either side go to show that the appointments of the respondents were temporary under the "Million Wells Scheme" aforementioned. When the work of the scheme had come to an end, the respondents were not entitled to claim regularisation of their services. Even though their services were continued after 31.3.1994 by virtue of an interim order passed in the writ petition, they cannot claim benefit of regularisation of their services as a matter of right. This Court in State of Himachal Pradesh v. Nodha Ram and Ors. in para 4 has stated thus:

4. It is seen that when the project is completed and closed due to non-availability of funds the employees have to go along with its closure. The High Court was not right in giving the directions to regularise them or to continue them in other places. No vested right is created in temporary employment. Directions cannot be given to regularise their services in the absence of any existing vacancies nor can directions be given to the State to create posts in a nonexistent establishment. The court would adopt pragmatic approach in giving directions. The directions would amount to creating of posts and continuing them despite non-availability of the work. We are of the considered view that the directions issued by the High Court are absolutely illegal warranting our interference. The order of the High Court is, Therefore, set aside.

22. In Bharat Bhawan Trust Vs. Bharat Bhawan Artists Association and Another, the court held thus:

8. The Bharat Bhawan Trust, as is clear from its object, to which we have adverted to earlier, is engaged only in the promotion of art and preservation of

artistic talent. Such activities are not one of those in which there can be a large scale of production to involve the cooperation of efforts of the employer and the employee nor can it be said that the production of the plays will be a systematic activity to result in some kind of service. Therefore, it is doubtful, in spite of the wide connotation given to "industry" in *BWSSB v. A. Rajappa*'s case (*supra*), if the appellant can be classed as an "industry" under the definition given u/s 2(j) of the ID Act and we need not finally decide this aspect in the present case.

23. There is yet another circumstance which would weigh against grant of any relief to the petitioner, even if her contention that her employer was an industry was to be sustained. The petitioner has not challenged the fact that the other two employees were also employed by the respondent on this project. In view of its pending closure, all of them including the petitioner were offered adjustment in the other project being run by the respondent called the "School for Drop Out Children". It is also admitted that these two persons joined the same while the petitioner did not. The petitioner did not disclose such an offer in the claim filed by her. These facts have been brought out only by the respondent. The petitioner set up a plea of illegal termination which has been completely disbelieved by the Labour Court. In this view of the matter, the findings of fact arrived at by the Labour Court deserve to be sustained.

24. Learned counsel for the petitioner has placed reliance on 2005 LLR 541 *Sports Authority of India v. Sports Authority of India Kamgar Union and Ors.* in support of the contention that the respondent was an industry within the meaning of the expression given in Section 2(j) of the Industrial Disputes Act, 1947.

The court had found that the Sports Authority of India was a society which employs large number of persons in different cadre and positions for discharge of its objects; it is not a welfare society which is working for no profit for no return. It was also observed that it was not a charitable institution. It was on the basis of its contents, functions that it was held that this Authority is an industry within the purview of Section 2(j) of the Act.

Similarly the pronouncements in 2005 LLR 796 *Principal, Amar Shaheed Inter College v. Presiding Officer, Labour Court* and 2004 LLR 83 *Delhi Administration v. Presiding Officer, Labour Court* are clearly distinguishable on the facts of the case. In 2004 LLR 83 the petitioner was engaged in the activity of manufacture of garments while in 2005 LLR 796, the appellant was running an educational institution. Neither of these functions fell in the excepted categories.

In the instant case, the nature of activities performed by the respondents is clearly distinguishable and the source of finding is from sheer charity. Therefore these judgments are of no support to the petitioner.

The project cannot possibly be termed as an industry and for this reason also the claim set up by the petitioner in the present writ petition is wholly misconceived. No other point has been urged.

For all the foregoing reasons, I do not find any merit in the writ petition which is hereby dismissed. There shall be no order as to costs.