

(2021) 11 TEL CK 0016
In the Telangana High Court
Case No : Writ Appeal No. 747 Of 2019

St. Anns College For Women

APPELLANT

Vs

State Of Telagana

RESPONDENT

Date of Decision : 12-11-2021

Acts Referred:

Constitution Of India, 1950 — Article 19(1)(g)
Telangana Shops And Establishments Act, 1988 — Section 2(10), 48(1), 48(3)
Bihar Shops And Establishments Act, 1953 — Section 2(6)
Motor Transport Workers Act, 1961 — Section 2(g)

Citation : (2021) 11 TEL CK 0016

Hon'ble Judges : Satish Chandra Sharma, CJ;A. Rajasheker Reddy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

The appellant before this Court has filed this present writ appeal being aggrieved by the order dated 19.08.2019 passed by the learned Single Judge in W.P.No.17619 of 2019.

The facts of the case reveal that the appellant institution is undisputedly an educational institution and the respondent No.3/employee was appointed in the year 1985 as an Attender in the Nutrition Lab Department. She tendered her resignation on 18.12.2009 and service dues were also settled.

The respondent No.3/employee preferred an Appeal before the Assistant Labour Commissioner, Labour Circle-IV, Authority under Telangana Shops and Establishments Act, 1988 stating that she was illegally terminated by the appellant institution and the said Appeal was preferred with a delay of more than 2500 days. The appellant institution filed a counter affidavit. It was stated before the appellate authority that it was the respondent No.3/employee who had tendered her resignation, her dues have been settled and Appeal deserves to be dismissed. It was further contended by the appellant institution before the appellate authority that the Appeal preferred by the respondent No.3/employee

under Section 48(1) of the Shops and Establishments Act, 1988 is not maintainable. In spite of the aforesaid ground, the Appeal was allowed by an Order dated 24.07.2019 directing the appellant institution to reinstate the respondent No.3/employee with full back wages. The appellant institution preferred a writ petition stating that the appellant institution is not an establishment and is not covered under the provisions of the Shops and Establishments Act. However, the learned Single Judge dismissed the writ petition on the ground of availability of alternative remedy before the Deputy Commissioner of Labour under Section 48(3) of the Shops and Establishments Act. The Order passed by the learned Single Judge is under challenge.

Heard the learned counsel for the parties at length and perused the records.

The undisputed facts reveal that the appellant institution before this Court is an educational institution and the respondent No.3/employee was appointed in 1985. She tendered resignation on 18.12.2009.

The basic question which requires to be answered in the present case is whether an educational institution is covered within the meaning and definition 'establishment' as defined under Section 2(10) of the Telangana Shops and Establishments Act, 1988. Section 2(10) of the said Act is reproduced as under:-

"2(10) 'Establishment' means a shop, restaurant, eating-house, residential hotel, lodging house, theatre or any place of public amusement or entertainment and includes a commercial establishment and such other establishment as the Government may, by notification, declare to be an establishment for the purposes of this Act."

Undisputedly, the institution in question is governed by the provisions of the Telangana Education Act, 1982 and the said Act provides for redressal of grievance of the nature involved in the present writ appeal.

Whether an educational institution falls within the meaning of 'establishment' or not, has been looked into by the Hon'ble Supreme Court in the case of *Ruth Soren v. Managing Committee* (2001) 2 SCC 115. In the aforesaid case, a similar definition under the Bihar Shops and Establishments Act, 1953 was considered. Section 2(6) of the Bihar Shops and Establishments Act is reproduced as under:-

"2(6) 'establishment' means an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to any business, trade or profession and includes -

(i) Administrative or clerical service appertaining to such establishment;

(ii) A shop, restaurant, residential hotel, eating house, theatre or any place of public amusement or entertainment; and a society Registered under Societies Registration Act, 1860 charitable or other trust, whether registered or not which carries on any business, trade or profession or work in connection with or incidental or ancillary thereto, journalistic establishments, contractors or auditors

establishments, educational or other institution run for private gain and premises in which business of banking, insurance, stocks and shares brokerage or produce exchange is carried on;

(iii) Such other establishment as the State Government may, by notification, declare to be an establishment to which the Act applies; but does not include a 'motor transport undertaking' as defined in clause (g) of Section 2 of the Motor Transport Workers Act, 1961 (27 of 1961).

The Hon'ble Supreme Court in the case of Ruth Soren (supra), in paragraphs 2 to 5 has held as under:-

"2. Two contentions were put forth before the appellate court, firstly that Respondent 1 is not an establishment for the purposes of the Act and, therefore, the application filed by the appellant is incompetent and secondly that Respondent 1 terminated her services after giving salary for a period of three months as provided in the relevant rules and, therefore, was not liable to be interfered with by the Labour Court even if it were to be held that Respondent 1 is an establishment. The High Court, after adverting to several decisions, in particular to Unni Krishnan, J.P. v. State of A.P. [(1993) 1 SCC 645] took the view that an establishment running an educational institution or imparting education does not carry on a business, trade or profession and came to the conclusion that the Labour Court, therefore, had no jurisdiction to interfere with the order of Respondent 1 and allowed the appeal on the first contention after noticing that it was not necessary to deal with the second submission.

3. For the conclusion the High Court reached, the High Court wholly depended on the observations made by this Court in Unni Krishnan case. In that case, at para 66, Mohan, J., while concurring with the majority view, started the discussion by stating that in the cases before them, depending upon the statute, either "occupation" or "business" has come to be defined and it cannot be contended that establishment of an educational institution could be "business". Nor again, could that be called trade since no trading activities are carried on. Equally it is not a profession and it is one thing to say that teaching is a profession but, it is a totally different thing to urge that establishment of the category of occupation provided no recognition is sought from the State or affiliation from the University is asked on the basis that it is a fundamental right. However, while analysing the decision in Bangalore Water Supply & Sewerage Board v. A. Rajappa [(1978) 2 SCC 213 : 1978 SCC (L&S) 215] the learned Judge concluded that while considering as to what would constitute an industry under the Industrial Disputes Act, the observations made therein is that an educational institution is an industry and nothing could stand in the way of that conclusion and certainly that is very different from claiming a fundamental right under Article 19(1)(g) of the Constitution. To a similar effect B.P. Jeevan Reddy, J. also stated that the context in which the observations were made in Bangalore Water Supply & Sewerage Board case would have no application in the present case. A Bench of seven-Judge of this Court examined this question and held that we have to look at

educational activity from the angle of the Act, and so viewed the ingredients of industry are fulfilled and education is, therefore, an "industry" and nothing could stand in the way of that conclusion. The basis upon which this conclusion is reached is that an educational institution renders service and, therefore, falls within the concept of an industry, as was noticed by Isaacs, J. in an Australian case, *Federated Municipal & Shire Council Employees' Union of Australia v. Melbourne Corporation* [(1919) 26 CLR 508].

4. An "establishment" for the purposes of the Act means an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary thereto. Concept of industry, as defined under the Industrial Disputes Act, would include any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen. There is an organised activity between employers and employees to impart education. Such an activity, though may be industry will not be a profession, trade or business for the purposes of Article 19(1)(g) of the Constitution, would not be one falling within the scope of "establishment" under the Act. Therefore, the view taken by the Division Bench of the High Court is unexceptionable. The High Court did appreciate that *Unni Krishnan* case itself made a distinction between what was stated in *Bangalore Water Supply & Sewerage Board* case.

5. In *Corporation of City of Nagpur v. Employees* [(1960) 1 LLJ 523 : AIR 1960 SC 675] , LLJ at p. (540) this Court held the Education Department of the Corporation to be an industry. The reason given is that imparting education amounts to service and can be done by a private person also. In *University of Delhi v. Ram Nath* [(1963) 2 LLJ 335 : AIR 1963 SC 1873] this Court held that imparting education is not an industry as the work of the University cannot be assimilated to the position of trade, calling, business or service and hence cannot be an industry. The majority view in *Bangalore Water Supply & Sewerage Board* a decision of seven-Judge Bench, is that in the case of an educational institution, the nature of activity is "exhypothesi" and imparting education being service to community is an industry. Various other activities of the institution such as printing press, transport department, clerical, etc. can be severed from teaching activities and these operations either cumulatively or separately form an industry. Even so, the question for consideration is whether educational institution falls within the definition of "establishment" carrying business, trade or profession or incidental activities thereto. "Establishment", as defined under the Act, is not as wide as "industry" as defined under the Industrial Disputes Act. Hence reliance on *Bangalore Water Supply & Sewerage Board* case for the appellant is not of any help."

The Hon'ble Supreme Court keeping in view the definition 'establishment' under the Bihar Shops and Establishments Act, which is similar to the definition under the Telangana Shops and Establishment Act has held that an educational institution does not fall within the scope of establishment under the Act and

therefore, in the considered opinion of this Court once the Hon'ble Supreme Court has held that an educational institution is not an establishment, though it may fall within the meaning 'industry', but will certainly not fall within the meaning and term 'establishment', the Order passed by the Appellate Authority dated 24.07.2019 and the Order passed by the learned Single Judge deserves to be set aside. The Kerala High Court has also taken a similar view in the case of Sree Narayana Educational Institution v. Assistant Labour Officer 2001 (91) FLR 284.

In the considered opinion of this Court once the Hon'ble Supreme Court has held that an educational institution is not an establishment, the Order passed by the respondent No.2/Assistant Commissioner of Labour, on an Appeal preferred by the respondent No.3/employee, dated 24.07.2019 deserves to be set aside and subsequently Order passed by the learned Single Judge, dated 19.08.2019, in W.P.No.17619 of 2019 also deserves to be set aside and are accordingly set aside.

The learned Single Judge has also observed that the ground raised by the appellant institution that the respondent No.2/Assistant Commissioner of Labour lacks jurisdiction can be looked into by the appellate Authority, i.e., the Deputy Commissioner of Labour under Section 48(3) of the Telangana Shops and Establishments Act. In the considered opinion of this Court, once this Court has arrived at a conclusion that the Order passed by the respondent No.2/Assistant Commissioner of Labour is without jurisdiction, this Court can certainly interfere with the same even though there is an alternative remedy of Appeal before the Deputy Commission of Labour (*Whirlpool Corporation v. Registrar of Trade Marks* (1998) 8 SCC 1).

Resultantly, the Writ Appeal is allowed by quashing the Order passed by the learned Single Judge, dated 19.08.2019 in W.P.No.17619 of 2019. Consequently, the order dated 24.07.2019 passed by the second respondent is quashed. Miscellaneous petitions, pending if any, shall stand dismissed. There shall be no order as to costs.