
(1983) 07 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 7897 of 1976

Union of India (UOI)

APPELLANT

Vs

The Presiding Officer and Another

RESPONDENT

Date of Decision : 22-07-1983

Acts Referred:

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

Citation : (1984) 1 ILR (P&H) 190

Hon'ble Judges : D.S. Tewatia, J

Bench : Single Bench

Advocate : H.S. Brar, for the Appellant; M.S. Bedi, for the Respondent

Final Decision : Allowed

Judgement

D.S. Tewatia, J.—In this petition the Union of India (hereinafter referred to as the Petitioner) has impugned the adverse award rendered by the Labour Court, Jullundur, dated 12th August, 1976 on the preliminary objection raised before it by the Petitioner to the effect that the application of Respondent No. 2, Shri Sohan Singh Bhatti invoking the jurisdiction of the Labour Court u/s 33(C)(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) was not maintainable as the Post and Telegraph Department, in which he was employed as a Clerk could not be termed an "industry" as defined in the Act and Respondent No. 2 could not be treated as "workman".

2. The Labour Court after liberally quoting from the decisions of the Supreme Court in *The Workmen of Indian Standards Institution Vs. The Management of Indian Standards Institution*, and *Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club*, held the Post and Telegraph Department to be falling within the definition of "industry" as defined under the Act.

3. What constitutes an "industry" is an area, the twilight part, whereof is covered by plethora of decided cases both of the High Courts and of the apex Court. In

regard to the border line matters, every new decided case instead of showing any light has, in fact, added to the confusion more so, if the Court opted to widen the beneficial sweep of the expression "industry".

Their Lordship in, what can be termed as the ultimate dictum on the point, Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, sought to clearly delineate the scope of expression "industry" and in the process overruled some of their own earlier judgments as well as those of the High Courts. The endeavour was justified but with what success it is difficult to say. Two of the Judges who had rendered their opinion later had invoked the legislative interference to clear the confusion and set the matter right. So, it is not surprising that the discerning of the ratio of the judgment itself posed problem to the Courts and one of the matters here concerning P.W.D. (B&R) department required the intervention of a Full Bench in *State of Punjab v. Shri Kuldip Singh* 1983 Lab. I.C. 83 to identify the true ratio of Bangalore Water Supply's case (supra) and apply the same to the facts before it. I would, therefore, profit by the spade work done by the Full Bench in this regard, rather than take upon myself to analyse afresh the ratio of that case.

4. Sandhawalia, C.J., who delivered the opinion for the Bench in the light of the ratio of the Supreme Court judgments divided the governmental activity in following four categories:

- (1) The sovereign or the regal functions of the State which are the primary and inalienable rights of a constitutional Government.
- (2) Economic adventures clearly partaking of the nature of trade and business undertaken by it as part of its welfare activities.
- (3) Organised activity not stamped with the total indicia of business yet bearing a resemblance to or being analogous to trade and business.
- (4) The residuary organized governmental activity which may not come within the ambit of the aforesaid three categories.

5. The Bench found that the first category as also the fourth category is out of bounds of the Act. To the second category the Act was undoubtedly held applicable and category third is held to be constituting although a border line category but the provisions of the Act were held to cover this category also.

6. The Full Bench applied two tests in order to judge whether a given governmental activity fell in the first, fourth or the third category. First test was to see as to what was the dominant purpose of the Governmental activity. If the dominant purpose was one which could be considered to carry on activity which is analogous to "trade" and "business", then it would fall in category 3. But if the dominant purpose was to carry, on the sovereign or regal functions along with--a minor activity which could be considered to be analogous to carrying on "business" or "trade" and that minor activity was not severable from the dominant activity, then the given Governmental activity would fall in first

category.

7. Activities handled by Post and Telegraph Department, historically speaking have been handled by the State in this Country. Having regard to the importance of the communication to the successful coordination of the sovereign and regal functions of the State like defence of the country, maintenance of law and order etc., there is escape from the conclusion that the activity carried on by the Post and Telegraph Department falls within the first category, for the organisation of the Post and Telegraph Department has as its dominant purpose the performance of sovereign and regal functions of the State. The ancillary activity of receiving deposit under various savings schemes, maintenance of accounts etc. is a very minor part of the activity of the department and by no stretch of reasoning could it be considered to be the dominant purpose behind the establishment of the department of Post and Telegraph. What is more, this activity is not severable from the dominant activity of the department in that the very man who is handling telegrams etc. is also at the same time receiving the deposits and maintaining the account.. That person cannot at the same time be both, i.e., "a workman" as also "a Civil Servant."

8. For the reasons aforementioned I hold that the Post and Telegraph Department is not an "industry" and employees thereof are not "workmen". Therefore, the application of Respondent No. 2, before the Labour Court was clearly untenable and the Labour Court had no jurisdiction in the matter.

9. In view of the above, I quash the impugned award and allow the petition with no order as to costs.