
(1982) 03 KL CK 0015
In the High Court Of Kerala

Venkitaraman

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 02-03-1982

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1982) 1 LLJ 454

Hon'ble Judges : Khalid, J

Bench : Single Bench

Judgement

Khalid, J.—The question whether a school teacher is a workman or not under the Industrial Disputes Act, for short the Act, presented itself before me in O.P. No. 3301 of 1979. In that case, the Industrial Tribunal held that a teacher was not a workman relying upon the Supreme Court decision in University of Delhi and Another Vs. Ram Nath, Though the later decision of the Supreme Court reported in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, was brought to his notice, he distinguished it on the ground that the later case had not overruled the earlier case. The overruling, according to him, was only to the extent that University was not an industry and the finding that a teacher was not a workman was not disturbed. In the judgment rendered by me on 13th July, 1981, reported in Muthayyan Vs. Manager, Kadalur Estate, held that the Industrial Tribunal was wrong in its finding that the decision in University of Delhi and Another Vs. Ram Nath, was not wholly reversed by the decision in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, and observed that the question whether a teacher was a workman or not was still at large. Even so, I did not decide the question in that judgment for the reason that the petitioner's counsel in that case requested me to give him an opportunity to adduce evidence for a proper adjudication of the dispute. The same question now comes up before me again in these two writ petitions I think it better to express my views on this question of law in these petitions.

2. The petitioner was an employee of the Udyogamandal School (TACT), an

institution run under the exclusive control and management and as a unit of the 3rd respondent, the Managing Director, F. A. C. T., Udyogamandal. The running of the school is by the 3rd respondent. In August 1975 he availed of the Onam holidays and went on a visit to Hyderabad where he had relations and friends. In the course of his stay in Hyderabad, he fell ill on 21-8-1975 and could not attend school on the re-opening date, viz., 25-8-1975. The principal issued Ext. P5 on 5-11-75 informing the petitioner that he was kept under suspension with immediate effect, pending a domestic enquiry. This was followed by Ext. P6 dated 2-12-1975 charge - sheet. Enquiry followed. By Ext. P13 he was informed that enquiry had revealed that he was guilty of all charges levelled against him. Since the repeated representations by him to the management for reconsideration of the issue yielded no result, he moved the District Labour Officer for conciliation. Thereafter, the case was referred as Industrial Dispute No. 9j of 1975 before the Labour Court, Quilon, wherefrom it was transferred to the Labour Court, Ernakulam. Before the first respondent, a preliminary objection was raised that the petitioner was not a workman. The first respondent upheld this objection by Ext. P 16. O.P. No. 3696 of 1979 is filed seeking to quash Ext. P 16 and for other reliefs. O.P. No. 637 of 1980 is filed seeking to quash Ext. P 17 award dated 11-9-1979 made by the first respondent following Ext. P. 16 order holding that since the petitioner was not a workman there was no industrial dispute between the parties, necessitating an adjudication.

3. In the counter-affidavit filed by the 3rd respondent, it is stated that the petitioner sent an application for 2 1/2 months' half-pay leave from Hyderabad enclosing a medical certificate to the effect that he was laid up at Hyderabad with Typhoid. On receipt of the application the Principal of the school addressed Ext. Rule 5 letter to the petitioner informing him that a certificate from a Doctor nominated by the Area Manager, Hyderabad was essential for grant of leave. On enquiry it was found that the petitioner was not ill and that he was touring Andhra Pradesh with a drama troupe. This resulted in the enquiry and Exts. P 16 and P 17 orders.

4. If the question that a school teacher is a workman under the Act had been decided in the University of Delhi's case and if that finding had not been disturbed by the Bangalore Water Supply case my ; task would have been easy. But a further probe into this question has become necessary because of certain observations in the Bangalore Water Supply case on this aspect. Gajendragadkar J., (as he then was) speaking for the Bench in the University of Delhi's case wound up his judgement thus:

Reading Sections 2(g), 2(j) and 2(s) together, we are inclined to hold that the work of education carried on by educational institutions like the University of Delhi is not an industry within the meaning of the Act.

Following this pronouncement, a Division Bench of the Patna High Court held Vishnu Sugar Mills Ltd. Vs. State of Bihar and Others, that a teacher was not a workman within the meaning of Section 2(s) of the Act. It has, therefore,

become necessary to examine the question as to the extent to which the Bangalore Water Supply case disturbs the University case. Krishna Iyer, J., speaking for the Bench in the Bangalore Water Supply case noted the following observation of Gajendragadkar J., in the University of Delhi's case:

It would, no doubt, sound somewhat strange that education should be described as industry and the teachers as workmen within the meaning of the Act. but if the literal construction for which the respondents contend is accepted, that consequence must follow.

And observed as follows:

Why is it strange to regard education as an industry. Its respectability Its lofty character? Its professional stamp? Its cloistered virtue which cannot be spoiled by the commercial implications and the raucous voices of workmen? Two reasons are given to avoid the conclusion that imparting education is an industry. The first ground relied on by the Court is based upon the preliminary conclusion that teachers are not "workmen" by definition. Perhaps, they are not, because teachers do not do manual work or technical work. We are not too sure whether it is proper to disregard, with contempt, manual work and separate it from education, nor are we too sure whether in put technological universe, education has to be excluded. However, that may be a battle to be waged on a later occasion by litigation and we do not propose to pronounce on it at present. The Court, in the University of Delhi and Another Vs. Ram Nath, proceeded on that assumption viz., that teachers are not workmen, which we will adopt to test the validity of the argument. The reasoning of the Court is best expressed in the words of Gajendragadkar, J.,

It is common ground that teachers employed by educational institutions, whether the said institutions are imparting primary, secondary, collegiate or postgraduate education, are not workmen u/s 2(s) and so, it follows that the whole body of employees with whose co-operation the work of imparting education is carried on by educational institutions do not fall within the purview of Section 2(s) and any disputes between them and the institutions which employed them are outside the scope of the Act. In other words, if imparting education is an industry u/s 2(j) the bulk of the employees being outside the purview of the Act, the only disputes which can fall within the scope of the Act are those which arise between such institutions and their subordinate staff, the members of which may fall u/s 2(s). In our opinion, having regard to the fact that the work of education is primarily and exclusively carried on with the assistance of the labour and co-operation of teachers, the omission of the whole class of teachers, from the definition prescribed by Section 2(s) has an important bearing and significance in relation to the problem which we are considering. It would not have been the policy of the Act that education should be treated as industry for the benefit of a very minor and insignificant number of persons who may be employed by educational institutions to carry on the duties of the subordinate staff. Reading Sections 2(g), (j) and (s) together, we are inclined to hold that the work of education carried on

by educational institutions like the University of Delhi is not an industry with the meaning of the Act.

5. Gajendragakar J., positively held that a teacher was not a workman. For this conclusion, the parties before the learned Judge appear to have agreed that it is so. This is evident from the opening words in the paragraph quoted above, that is, "it is common ground" Secondly, the learned Judge learned heavily on the omission in Section 2(s) of any mention of "teachers" and ""teaching profession". Krishna Iyer, J., in the sentence underlined by me at first suggested that teachers were not workmen. Though obiter that would have bound me and I could have answered the question involved in these petitions against the petitioner. But the following sentence that "that may be a battle to be waged on a later occasion by litigation and we do not propose to pronounce on it at present", makes it clear that the question was left open.

6. The finding in the University of Delhi's case that education is not an industry was clearly overruled by the later case in the following words:

Our conclusion is that the University of Delhi's case was wrongly decided and that education can be and is in its institutional form, an industry.

Simply because education is now declared to be an industry, it does not automatically follow that teachers working in schools are workmen. Whether they are workmen under the Act or not, will have to be considered in the light of the definition of workman contained in Section 2(s). The submission made by the petitioner's counsel is that the result of the declaration by the Supreme Court in the Bangalore Water Supply that education is an industry is that teachers attached to education are workmen. I do not agree. Further investigation is necessary.

7. In 1980(56) FJR. 483, a decision entered by Varadharajan J., of the Madras High Court, it was held that teachers were workmen on the ground that Bangalore Water Supply case had overruled the University of Delhi's case. Observed the learned Judge as follows:

On the other hand, the learned Counsel for the 2nd respondent relied upon the decision of the Supreme Court in J. K. Cotton Spinning and Weaving Mill Co., Ltd. v. Labour Appellate Tribunal of India 1963 II LLJ 436. In that decision, a teacher employed in a primary school run by a factory had been held to be not a workman within the meaning of the Industrial Disputes Act. But this decision has been specifically overruled by the later decision of the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, Though this decision has been overruled by the Supreme Court on 21st February, 1978 itself, the learned Presiding Officer of the Labour Court, Madurai, had relied upon this decision in his order dated 30th March, 1978. The learned Presiding Officer of the Labour Court has also relied upon the decision of the Supreme Court in University of Delhi and Another Vs. Ram Nath, That decision also has been specifically overruled by the Supreme Court in the said decision in Bangalore

Water Supply v. A. Rajappa (Supra).

With great respect, if the above extract reflects a conclusion that the Bangalore Water Supply case had overruled University of Delhi case to the extent of even deciding that teachers in educational institutions are workmen, I would like to disagree, for, in my view, this question has been left at large by the Supreme Court in the paragraph extracted above. At the risk of repetition, I quote the following sentence from the Bangalore Water Supply case:

However that may be a battle to be waged on a later occasion by litigation and we do not propose to pronounce on it at present.

8. The respondents' counsel attempted to check-mate the petitioner relying upon the Bangalore Water Supply case with the contention that the University of Delhi case had been overruled only not to the extent it held a University to be not an industry. The finding that teachers were not workmen was kept in tact. According to him, if this plea is accepted, it has to be straight away held that teachers are not workmen, This submission also has to fail, since, the question posed in these petitions has been left open by the Supreme Court.

9. This question has, therefore, to be decided with reference to the definition of the workman in Section 2(s) of the Act. At one time, there was a line of approach to construe the section to mean that all those who were outside the four groups mentioned in the section would be workmen. This approach did not find favour with the Supreme Court. The reason advanced was that the body of the section itself contained necessary guidelines for exclusion of person claiming to be workmen, in addition to the named four groups, therefore, a person who did not come within the four exempted groups would still go outside the definition if he did not do any of the work mentioned in the body of the section. In other words, it is the nature of the work that decides the question whether a person is a workman under the Act or not.

10. The respondents' counsel attempted an easy argument to take teachers out of the definition submitting that since a teacher's work was not enumerated in the definition, he should automatically go out of the definition. This contention cannot be accepted. It will not be possible to specifically enumerate all possible varieties of work in a definition. The object of a definition is to afford guidelines. The Court's function is to test whether a person who claims to come within it satisfies its requirements, consistent with: the object of the statute. That should be the attempt in this case also. Therefore, the question to be asked is what type of work does a teacher do. For a better appreciation of this question, I read Section 2(s) of the Act:

(S) "workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged

or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment has led to that dispute; but does not include any such person-

(i) who is subject to the Army Act, 1950 (XLVI of 1950), or the Air Force Act, 1950 (XLV of 1950), or the Navy (Discipline), Act, 1934 XXXIV of 1934); or

(ii) who is employed in the Police service or as an officer or other employee of a prison ; or

(iii) who is employed mainly in a managerial or administrative capacity ; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem, or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

11. This section excludes four categories from its definition. A teacher does not come within these categories. That takes me to the question whether he does any of the work enumerated in the body of the section. In understanding the nature of the work that a teacher does, it is the predominant nature of his work that should be the deciding factor and not such inconsequential work as he does occasionally in addition to the teaching work. I make this observation advisedly to meet a possible contention based on the occasional work of a teacher which may be supervisory, clerical or even skilled or unskilled manual work. Such occasional work will not by itself render a teacher a workman. Now I will consider the four types of work mentioned in the section.

12. Before considering the nature of the work, I may dispel a possible argument, though not raised before me, on the wording of the section. The definition refers to any person employed in any industry. If the Bangalore Water Supply case had only held that a University is an industry, I would have considered whether a school is an industry or not. Personally, what strikes me is that it is not. But what the Bangalore Water Supply case held is that education is an industry. So a school also can come within the ambit of the Bangalore Water Supply case.

13. The first category of work is to "do any skilled or unskilled manual". The petitioner's counsel wanted me to read this part of the section as "skilled or unskilled, mannual". According to him, the word "manual" is not controlled by skilled or unskilled, but is independent of the other two words. He wanted to contend that a teacher who had qualified himself with the specialities taking a particular optional subject should be deemed to be a skilled worker, and therefore, he should be deemed to satisfy this part of the definition. I do not think it necessary to go into this part of the argument in detail for the reason that the section has to be read not in the manner that the petitioner's counsel wants me to read it but as ""skilled or unskilled manual" without a coma between the words "unskilled" and "manual". In other words, the word manual is controlled by the two adjectives skilled or unskilled. Therefore what is necessary

for this part of the section to be satisfied is that the person who claims to be a workman should be doing manual work which is skilled or unskilled. The question therefore necessarily arises whether the work of a teacher is manual or not. Manual work means work done with hands. Krishna Iyer J., was not happy in regarding manual work with contempt and so guardedly observed as follows:

The first ground relied on by the Court is based upon the preliminary conclusion that teachers are not "workmen" by definition. Perhaps, they are not, because teachers do not do manual work or technical work. We are not too sure whether it is proper to disregard, with contempt, manual work and separate it from education, nor are we too sure whether in our technological universe, education has to be excluded.

It would be improper to look down upon manual work as doing something unworthy of respect. Manual work stands almost on the same footing as any other work and there is no reason why it should be looked down upon. But for that reason, it cannot be said that what the teachers are doing is manual work. Krishna Iyer, J., has in the paragraph quoted above observed that teachers do not do manual work. Theirs is largely an intellectual work, To quote Gajendragadkar J.,

Education seeks to build up the personality of the pupil by assisting his physical, intellectual, moral and emotional development.

The work of teacher falls within this sublime area of intellectual advancement of the wards under his charge, and his work, in my judgment, cannot be equated to manual work, though it may sometimes be skilled work. Therefore, I have no hesitation to hold that the work of a teacher is not manual work. He therefore goes out of this part of the definition.

14. The question whether a teacher does any technical work is not free from doubt. Even so, from the nature of the normal work entrusted to him of imparting education to the wards under him for helping their intellectual and cultural evolution, advancement and development, and to prepare them to be dutiful citizens of the country, it cannot be said that the work of a teacher is technical. Here again, Krishna Iyer, J., in the passage quoted above, after observing that teacher's work is not technical, qualified the statement by further observing;

Nor are we too sure whether in our technological universe, education has to be excluded.

There may be teachers who spend most of their time in the Laboratories. There may be teachers who spend most of their time in work-shops. Though such works may be characterised as technical or involving technological expertise, what is really involved in the work is imparting of education to the students. By using the word "technical" what the statute intends is the technical work in the ordinary parlance which a person does and not the work that a teacher does. The

meaning of the word "technical" in Dictionaries may not be of any help to lay down clearly the content or concept implied in it. It is the work that a teacher does and his normal activities that should go in it deciding whether his work is technical or not.

15. Though a decision answering to the requirements of the case on this aspect has not been brought to my notice, I think it only proper to refer to the following cases since they were brought to my notice in connection with this aspect of the case. In *Murugally Estate v Industrial Tribunal* 1964 II LLJ 164 the question that fell to be decided before the Madras High Court was whether a person employed as a Doctor by a Plantation Estate on a monthly salary exceeding Rs. 500 would attract the definition in Section 2(s) of the Act. The case put forward by the union on behalf of the Doctor was that his duties involved technical work and that he was a technical man. The Tribunal in that case upheld the plea of the union. Veeraswami, J., as he then was, repelled this contention and held that.

The test to be applied to cases of technical employments, such as in the instant case, should be the purpose for which the employment is made, irrespective of whether the performance of the duties may or may not occupy the entire time of the employee. This is because the employment is made on the basis of the particular level of professional efficiency and technical qualifications.

I refer to this decision only to dispel the contention widely made that a technical person employed as a teacher should necessarily be held to do technical work. A technical man need not necessarily be a workman. What has to be considered is the object of his employment and the main work that he does. The doctor in the above case had to perform (1) management and running of a central hospital (2) supervision over the work of the hospital staff, (3) supervision of the dispensaries, (4) inspection of lines and quarters. (5) malaria control and, (6) supervision of creches. The learned Judge had these manifold functions of the doctor involved in that case in mind when he observed that the purpose of employment the doctor in that case was to attend on patients and the primary function of the doctor was to look after the patients and attend on them. On this principle, I am of the view that even in the case of teachers who may in some cases be doing some technical work, the nature of his work has to be tested against the object of his employment. If what he does mainly is to look after the children under his care and impart education to them, the fact that he sometimes does some technical work will not render his work technical.

16 Out of the four categories mentioned in the section, one is clerical work. In common parlance the work that a clerk does is that of writing, preparation of accounts, etc. In some sense the teacher can be said to do sometimes clerical work also. But as indicated above, the question has to be decided not with reference to the occasional work that a teacher does but should be decided in terms of the main work that he is expected (sic) to do. In *South Indian Bank Ltd. Vs. A.R. Chacko*, the Supreme Court was considering the case of a clerk of a Bank who was subsequently promoted as an Accountant. Though the functions of

a clerk and the meaning of the word "clerical" have not been discussed by the Supreme Court in this decision, it was held that to determine the nature of the work that a person does, it is not enough to see whether on paper certain rights and powers were assigned to a person but to see his principal and main duty. In that case the clerk concerned was said to do supervisory work sometimes. But on a consideration of the relevant evidence, the Supreme Court found that the main duties performed by the employee of the Bank in that case consisted of clerical work though with supervisory functions. The only support that I seek from this judgment is to emphasise the fact that while the main function of a teacher is intellectual work of imparting education, he may occasionally do something which partakes of the nature of the work of a clerk, which will not render his work clerical.

17. Now about the expression "supervisory". The literal meaning of the word "'supervisory" if taken into account would persuade one to hold that a teacher does supervise the student under his control. But this is not the supervisory work that is contemplated by the section. The scope of the expression "supervisory" came in for consideration in *Blue Star Limited Vs. N.R. Sharma and Others*, It was held that "the essence of the supervisory nature of work is the supervision by one person over the work of others. Supervision contemplates direction and control. Ordinary supervision is not "supervisory" within the meaning of Section 2(s)". If this test is to be applied in relation to teacher-taught activities, it can be found that the supervision that a teacher has over the taught is not supervisory in the manner in which workmen in an industry are supervised by their superiors. The students are under the control of the teacher in an entirely different capacity on a high intellectual plane and not in any other plane. Therefore, the work of the teacher cannot be brought within the expression "supervisory" also. In *Lloyds Bank Ltd., New Delhi Vs. Panna Lal Gupta and Others*, the Supreme Court had to consider the scope of this expression. The word "supervisory" in the section has been used in the context of the supervision by a person over the works in a factory and similar institutions. The Supreme Court observed in the above decision, at page 24, as follows:

In considering the latter aspect of the problem industrial adjudication generally took the view that the supervisor or officer should occupy a position of command or decision and should be authorised to act in certain matters within the limits of his authority without the sanction of the manager or other supervisors.

After making this statement, the Supreme Court after referring to the decision in *A.R. Nataraja Ayyar v. Trichy Srirangan Transport Co. Ltd.* 1955 I LLJ 608 which considered the duties of a Checking Inspector held that general nature of the duties of the checking Inspector indicated that he belonged to the cadre of the supervisory staff. To the same effect was the decision in *United Commercial Bank Ltd , v. L.S. Seth* 1954 II LLJ 457 which dealt with the case of a Chief Cashier of a Banking Company whose work was held to be supervisory in nature. In the *Burmah-Shell Oil Storage and Distributing Company of India, Ltd., Madras v.*

Their employees 1954 I LLJ 21 also the Supreme Court considered the scope of the expression "supervisory" and it was held that "the employee must occupy a position of command and direction and should be authorised to act without the sanction of the Manager or other supervisors". The name or the designation of the employee is not the determining test. Ultimately, the test to be applied was enunciated by the Supreme Court thus:

We have referred to these industrial decisions merely for the purpose of emphasizing the fact that in deciding the status of an employee the designation of the employee is not decisive; what determines the status is consideration of the nature and duties of the function assigned to the employee concerned; that is why the point which arises for our decision in the present appeal lies within a narrow compass.

18. Having regard to the nature and duties of a teacher, it will be proper to say that his work is supervisory in nature. It is not necessary to multiply decisions in this regard. The heart of the matter is whether a teacher does a supervisory work as is normally understood. It is to be answered in the negative, for a teacher does not supervise the student's under his care in the manner that supervision is conducted by a manager in a factory over his workmen. Therefore, a teacher goes out of this class of workmen.

19. It has been uniformly held that the decision whether an employee falls in one or other of the categories, the test is the nature of the main duties that he performs. It is the predominant test that should decide this question. In determining whether a teacher does any work enumerated in Section 2(s), what has to be considered is the actual work performed by him and it is this test that is determinative of the question whether he is a workman or not. I do not think it necessary to refer to the case-laws on the point for it is well-settled that the test to be adopted is the test laid down in the Bangalore Water Supply. The work of education is primarily and exclusively carried on with the assistance of the labour and co-operation of teachers. I have already indicated that the omission of the mention of teachers from the definition in Section 2(s) cannot be made the basis for determining whether they are workmen or not. Going by the test of the nature of the work, it can be easily found that imparting education, shaping the children under his control to become useful citizens of the country, moulding the character of such students can never be considered as the work of a workman under the Act. The following extract in the University of Delhi's brings out the nature of the teacher's work:

Under the sense of values recognised both by the traditional and conservative as well as the modern and progressive social outlook, teaching and teachers are, no doubt, assigned a high place of honour and it is obviously necessary and desirable that teaching and teachers should receive the respect that is due to them. A proper sense of values would naturally hold teaching and teachers in high esteem, though power or wealth may not be associated with them.

When I extract this passage, I do not even remotely suggest that the work of an ordinary workman doing manual work can be looked down upon. All that I wish to emphasise is the pride of place that teachers occupy in society. In this connection, it would be useful to refer to the definition of the word "teacher" in the Aligarh Muslim University Act, 1920, Banares Hindu University Act, 1915 and the Visva-Bharati Act, 1951:

2(k) "Teachers" means professors, Readers, Lecturers and such other persons as may be appointed for imparting instruction in the University or a Hall and are designated as teachers by the Ordinances (AMU)

2(i) (Teacher) means a salaried Professor, Reader, Lecture or Tutor who imparts instruction in a Faculty of, or in a College maintained by, the University and includes any other person who is declared to be a teacher by the Academic Council (BHU)

3(h) ""teachers" means such persons as are engaged in imparting instruction and guiding students in practical work or otherwise in the University and in institutions under its control, and includes professors, readers, lecturers, demonstrators and other grades of teachers appointed by the University; (VBA)

Not that these definitions settle the law before me; I have extracted them only in support of my conclusion that the nature of the work that a teacher does is the imparting of education which does not partake of the nature of the work mentioned in Section 2(s) of the Act.

20. I will be failing in my duty if I do not advert to a Division Bench ruling of the Bombay High Court reported in P.R. Kokil v. General Manager, S.C. Railway 1972 (74) BLR 124, brought to my notice by the petitioner's counsel. In that case the question whether a teacher employed in and working at one of the schools provided by the Railway Board for children of railway employee as an amenity absolutely necessary for some railway employees, was a workman or not, came up for consideration. The Bombay High Court held that the work done by such a teacher was an activity or operation incidental to the main industrial operation carried on by the Railway establishment and the teacher was, therefore, a worker within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. A statement of the facts of the case is sufficient to distinguish it from the conclusion that I have arrived at in this judgement. There, the petitioner, a Headmaster of Railway Boys' Primary School at Pune, was elected as the Divisional President of the South Central Railway Mazdoor Union. The names of the newly elected office bearers of the union were communicated to the General Manager South Central Railway. The General Manager informed the General Secretary of the union that the petitioner being the Headmaster of a Railway Primary School could not, according to the directions of the Railway Board, be elected as an office bearer of the said union and hence he should be replaced by electing another person. The union replaced the petitioner by electing another person as an ad hoc president. The union, however, did not accept the General

Manager's view. That resulted in the petition before the Bombay High Court for a writ of mandamus directing the General Manager to recognise the petitioner as the Divisional President of the Union. It was under these circumstances that the question whether the petitioner would come within the purview of the Industrial Disputes Act arose. In that case reliance was placed on the University of Delhi by the General Manager. The Bombay High Court, however, had to consider the definitions of the expressions "railway school" and "railway servant" in that case. Railway servant means "a person who is a member of a service or who holds a post under the administrative control of the Railway Board and includes a person who holds a post in the Railway Board." In that case, it was not disputed by the General Manager that the school in question was a railway school falling under the definition of the expression "railway school" in the Indian Railway Establishment Manual. Reliance was further placed on Rule 3610 of the Manual, which dealt with the recognition of association of non gazetted railway servants which contained a note that "the term "industrial employee" includes "railway servants" These were the additional materials that led the Court in that case to hold that the teachers and other employees working in the railway schools and railway training schools were covered by the Industrial Disputes Act. A declaration was given that the petitioner could be entitled to be a member of the South Central Railway Mazdoor Union and that he was also entitled to contest the election to the post of its office bearers. These facts are sufficient to justify my disagreement-if disagreement is necessary with respect, with the conclusion that a teacher is a workman. From the facts of the above case, I am not prepared to hold that the Bombay High Court had held as a general proposition of law that teacher normally is a workman. The Bombay High Court had to deal with a special set of circumstances and facts and also with specific provisions of law. It was on this basis that the decision was rested and this perhaps accounts for the absence of any detailed discussion about the University of Delhi case. I hold that the principle enunciated cannot apply to the general question that is raised before me.

21. Having given my anxious consideration to the question involved in these petitions, I hold that a teacher in a school is not a workman. In the result the challenge against Exts. P16 and P17 fails and these writ petitions are accordingly dismissed I direct the parties to bear their costs.