

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 29.02.2024
Pronounced on: 07.03.2024

SWP No.1396/2003

Ashok Kumar S/o Sh. Gian Chand
R/o Nehalpur Simble Tehsil R.S.Pura,
Jammu, Age 35 years

...Petitioner(s)

Through:- Mr. Ajay Abrol, Advocate with
M/s Ayush Gupta & Manik Bhardwaj
Advocates

V/s

1. Union of India through Secretary to Govt.,
Industries Department, New Delhi.
2. Secretary to Govt. of India, Labour Department,
New Delhi.
3. Director, Small Industries Service Institute, 36-B/C,
Gandhi Nagar, Jammu.
4. Dy. Director, Small Industries Service Institute,
36-B/C, Gandhi Nagar, Jammu.
5. Central Government Industrial Tribunal-cum-Labour Court,
Chandigarh.

...Respondent(s)

Through:- Mr. Vishal Sharma, DSGI

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1. The petitioner is aggrieved and has called in question an award dated 30th June, 2003 passed by the Industrial Tribunal-cum-Labour

Court, Chandigarh [“the Tribunal”], whereby the Tribunal has turned down and returned the reference under the Industrial Disputes Act, 1947 to the Central Government as “not maintainable”.

2. Briefly stated, the facts leading to the filing of this petition by the petitioner invoking extraordinary writ jurisdiction vested in this Court under Article 226 of the Constitution of India are that, on an industrial dispute having been raised by the petitioner with the management of Small Industries Service Institute, the Central Government vide No.L-42012/132/93-1R(DV) dated 29.11.1994 referred the dispute to the Tribunal for adjudication in the following term:-

“whether the action of the management of Small Industries Service Institute, Jammu in terminating the services of Shri Ashok Kumar is legal and justified? If not, to what relief the workman is entitled to?”

3. The claim of the petitioner claiming to be a workman with the respondent-Institute, as was laid before the Tribunal, was that he was working as peon on daily wage basis with the respondent-Institute for the last about seven years and his services were terminated on 12.02.1993 arbitrarily and without passing any order. He was neither paid any retrenchment compensation nor was any prior notice of termination given to him. A UDC of the respondent-Institute, who had no authority or competence, terminated his services. The claim of the petitioner was refuted by the respondent-Institute, which, apart from meeting the case of

the petitioner on merits, also took a preliminary objection with regard to the maintainability of the reference. It was claimed that the respondent-Institute was not an 'industry', as defined in the Industrial Disputes Act and, therefore, not amenable to the provisions of the Industrial Disputes Act, 1947. It was pleaded that the respondent-Institute provides only consultancy services to prospective units and also assists the State Government in implementing Central Government Policies. It also provides technical guidance to the entrepreneurs proposing to set up their industries. On merits, it was submitted that the engagement of the petitioner was on daily wage basis and without availability of Class-IV post in the respondent-Institute in Jammu. It was submitted that a request was made to the Central Government to sanction three posts of Class-IV to respondent-Institute at Jammu but the request was declined by the headquarter and, therefore, the respondent-Institute was left with no option but to terminate the arrangement under which the petitioner was appointed.

4. The matter was considered by the Tribunal. Relying upon definition of the 'industry' given in the Industrial Disputes Act, 1947 ["the Act"] and the judgments referred to by the management of the respondent-Institute, the Tribunal concluded that the respondent-Institute performing consultancy services was not covered under the definition of 'industry' and, therefore was not amenable to the provisions of the Act. It is in this background, the reference was turned down and returned to the appropriate government by the Tribunal vide its award dated 08.04.2003, which is impugned in this petition.

5. Having heard learned counsel for the parties and perused the material on record, the following question seeks determination in this petition:-

“whether the Small Industries Service Institute, Jammu qualifies to be an ‘industry’ under the Industrial Disputes Act, 1947 and, therefore, amenable to the provisions of the Industrial Disputes Act, 1947?”

6. The core question to be determined in this petition is the nature of activities, which the respondent-Institute performs and whether such activities bring the respondent-Institute within the purview of the term “industry” used under the Act.

7. The issue as to what makes an organization, society or authority an industry within the meaning of the term given in the Act was subject matter of considerable debate and discussion in **Banglore Water Supply and Sewerage Board v. R.Rajappa and others, (1978) 2 SCC 213**. The definition of industry given by the Supreme Court in **D.N. Banerji v. P.R.Mukherjee and others, AIR 1953 SC 58** was adopted with approval by the majority opinion in the **Banglore Water Supply’s** case (supra) and the triple test as enunciated in **Banerjee’s** case to find out as to whether a particular organization is ‘industry’ as defined in Section 2(j) of the Act was accepted i.e.;

(a) an organization where a systematic activity is carried out;

- (b) the activity is organized by cooperation between employer and employee (the direct and substantial element is chimerical); and
- (c) the activity is 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 i.e. making on a large scale Prasad or food).

However, following were held irrelevant consideration:-

- (A) Whether or not there is profit motive or gainful objective or investment of capital in an industry.
- (B) A private individual shall be employer of the industry. This Act equally applies when the Government or the local authority is the employer. The nature could be public, joint or otherwise, the true focus is functional and the decisive test is nature of activity with special emphasis on the employer and employee relation.

8. The Supreme Court also enunciated “Dominant Nature Test”, which is a test where there is complex of activities, the test would be predominant nature of services and integrated nature of departments. All departments integrated with industry will also be industry. Following are the exceptions carved out to the ‘industry’:-

- i) Casual activities (because they are not systematic);
- ii) Small clubs, co-operatives, research labs, gurukuls which have essentially non-employee character;

- iii) Single door lawyer taking help from clerk (because there is no organized labour) as contradiction to Solicitors Firm having employed served people each one contributing directly or indirectly to outcomes.
- iv) Selfless charitable activities carried through volunteers e.g. free legal or medical service;
- v) Sovereign functions-strictly understood are maintenance of law and order, legislative and judicial functions.

9. The discussion made in the Seven Judge Bench judgment in **Banglore Water Supply's** case (supra) in paras 140 to 144 highlights the legal position churned out after considerable debate and discussion. The majority did not find favour with the law laid down in **Management of Safdarjung Hospitals v. Kuldip Singh Sethi, (1970) 1 SCC 735** and **University of Delhi v. Ram Nath, AIR 1963 SC 1873** and reinstated the view taken by the Hon'ble Supreme Court in the case of **State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 SC 610**. This majority view is still the law on the point, though there was suggestion made in the judgment itself to the Union Government to come up with legislation to clear the confusion created by the loosely and inadequately worded definition of the term 'industry' made in Section 2(j) of the Act. The amendment was enacted but the same was not enforced by the Government of India for the reasons best known to it.

10. At one point of time there was also an attempt made by a two Judge Bench of the Supreme Court to seek reconsideration of the **Banglore**

Water Supply case's judgment but the same was declined by a three Judge Bench of the Supreme Court in the case of **Coir Board Ernakulam Kerala State and another v. Indira Devi P.S. and others, (2000) 1 SCC 224**. It is in the light of this judgment and the principles laid down therein, the issue raised before this Court in the instant petition is required to be examined.

11. From the material on record, it is seen that in the reply affidavit/objections filed by the respondent-Institute before the Tribunal it has been pleaded that the main functions of the respondent-Institute are as under:-

- a) to provide consultancy to the prospective entrepreneurs in establishing their industrial units in the State of J&K;
- b) to assist the State Government in implementing the Central Government Policies; and
- c) to provide technical guidance to the entrepreneurs for starting their ventures.

12. The Branch office of Small Industries Service Institute headed by its Director is functioning at Jammu since 1967. This position explained by the respondent-Institute before the Tribunal has not been rebutted. From a reading of the objects and functions of the Institute, it is clearly discernible that the respondent-Institute is predominantly involved in providing of consultancy services to the entrepreneurs for starting their business

ventures or to the State Government for implementing the Central Government policies. The activities, which are carried out by the respondent-Institute are obviously carried through the experts in the field, who are capable of providing technical guidance and consultancy in the matter of starting industrial ventures by the entrepreneurs in the State. It has also a duty to provide assistance to the State Government in implementing the Central Government policies. The aforesaid activities cannot, by any stretch of imagination, be said to be such activities as are required to be performed by the experts involving the cooperation of persons performing menial jobs in the office. The duties of the organization are performed predominantly by the experts and the consultants and in the performance of their duties they are not directly or indirectly assisted by the workmen like the petitioner.

13. The petitioner was admittedly engaged as Class-IV on daily wage basis and was, thus, providing services in the office. Undoubtedly, the activity carried out by the respondent-organization/Institute is a systematic activity providing services calculated to satisfy the human wants but the question is whether this systematic activity is organized by cooperation between the employer and the employee. The answer to this question, in my humble opinion, is not in the affirmative. The cooperation between the employer and the employee must have direct or indirect nexus with the performance of duties and rendering of services by the Institute so as to qualify the Institute to be an 'industry' within the meaning of Section 2(j) of the Act.

14. Not only the predominant object but also the only object of the respondent-Institute is to provide services in the form of consultancy to the State Government in implementation of the Central Government policies and to the entrepreneurs in establishing their ventures. The duties performed by a person in the office as Class-IV do not directly or even remotely contribute towards the performance of duties of consultancy and the experts providing the intended services to the beneficiaries. The nexus, direct or indirect between the services provided by an employee and the services rendered by the Institute is sine qua non to bring an organization within the scope of the term 'industry' as defined in Section 2(j) of the Act.

15. For the reasons given above, I find no legal infirmity in the award passed by the Tribunal. The petition is, without merit and, therefore, dismissed. The petitioner shall, however, be free to avail of any other remedy/remedies available to him under law.

(Sanjeev Kumar)
Judge

JAMMU
07.03.2024
Vinod, PS

Whether the order is speaking : Yes
Whether the order is reportable: Yes