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(2011) 09 AHC CK 0325

Allahabad High Court

Case No: Writ C. No. 10607 of 1997

State of U.P.		APPELLANT
	Vs	
The Labour Court and Another		RESPONDENT

Date of Decision: Sept. 3, 2011

Acts Referred:

- Industrial Disputes Act, 1947 - Section 2

Hon'ble Judges: Amreshwar Pratap Sahi, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Amreshwar Pratap Sahi, J.
Heard learned Standing Counsel appearing on behalf of the Petitioner and learned Counsel for the Respondents.

2. The amendment application moved in November, 1999 appears to have been allowed on 6.12.1999 but the same does not appear to have been incorporated in the writ petition.

3. By the said amendment application, the State questions the jurisdiction of the industrial tribunal to entertain the reference on the ground that the Irrigation Department, where the Respondent was employed is not an industry within the meaning of the Industrial Disputes Act. The issue as to whether the irrigation department is an industry or not, was raised in the case of R.M. Yellatti v. Assistant Executive Engineer where the Apex Court in its decision dated 7th November, 2005 reported in R.M. Yellatti Vs. The Assistant Executive Engineer, held that the Court is not inclined to defer the matter as some larger Bench is engaged in hearing the aforesaid issue. Paragraph-11 of the said judgment is relevant for the said purpose which is quoted herein below:

At the outset, we may mention that we are not inclined to adjourned the matter sine die pending the decision of the larger Bench as urged on behalf of the management, particularly in view of the fact that there is nothing on record to indicate that the management had argued the point in question. As stated above, the Labour Court had ruled that the "irrigation department" was an "industry" in terms of Section 2(j) of the 1947 Act. Against the award of the Labour Court, the department had filed its writ petition in which ground was taken as a plea to the effect that the irrigation department was not an industry in terms of Section 2(j) of the said Act. However, there is nothing in the decision of the learned Single Judge as well as in the impugned judgment to show as to whether the management had argued on this aspect of the case and, therefore, we are not inclined to await the decision of the larger Bench following the referral order in Jai Bir Singh. even in the counter affidavit filed before this Court, No. such plea has been taken.

4. The reference is by a five Judges Bench in the case of State of U.P. Vs. Jai Bir Singh, is quoted hereinbelow:

44. We conclude agreeing with the conclusion of the Hon''ble Judges in the case of Hospital Mazdoor Sabha (SCR p.876)

Though Section 2(j) used words of very wide denotation, a line would have to be drawn in a fair and just manner so as to exclude some callings, services or undertakings."

This Court must, therefore, reconsider where the line should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in Section 2(j). That No. doubt is rather a difficult problem to resolve more so when both the legislature and the executive are silent and have kept an important amended provision of law dormant on the statute-book.

45. We do not consider it necessary to say anything more and leave it to the larger Bench to give such meaning and effect to the definition clause in the present context with the experience of all these years and keeping in view the amended definition of "industry" kept dormant for long 23 years. Pressing demands of the competing sectors of employers and employees and the helplessness of the legislature and the executive in bringing into force the Amendment Act compel us to make this reference.

5. Learned Standing Counsel submits that he may be permitted to address the Court on this issue keeping in view the aforesaid two judgments.

6. As prayed, list in the next cause list.