(2000) 84 FLR 126 : (2001) 3 LLJ 469 : (1999) 3 UPLBEC 1969

Allahabad High Court

Case No: Writ Petition No. 2417 of 1997

HAL Education Society and Others		APPELLANT
	Vs	
Jitendra Kumar Srivastava and Others		RESPONDENT

Date of Decision: Aug. 31, 1999

Acts Referred:

- Uttar Pradesh Industrial Disputes Act, 1947 - Section 2, 6N

Citation: (2000) 84 FLR 126 : (2001) 3 LLJ 469 : (1999) 3 UPLBEC 1969

Hon'ble Judges: P.C. Verma, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

P.C. Verma, J.

This writ petition has been filed by the petitioners challenging the award made by the Labour Court in adjudication case No. 171 of 1991 dated September 17, 1996, contained in Annexure No. 1 to the writ petition. The said award was made on the reference made by the Deputy Labour Commissioner under the Industrial Disputes Act on September 30, 1991 to the effect as to whether the termination or disengagement of Sri Jitendra Kumar Srivastava workman, clerk-cum-typist on February 1, 1990 by the employer was just and legal, if no to what relief the workman was entitled. After the aforesaid reference the workman, opposite party No. 1, filed his claim in the form (sic) written statement on March 10, 1992 statin(sic) therein that the employer, the petitioners institution is run in the compound of H.A.I Korwa under its control for impartin education to the children of the employees (sic) the H.A.L.

The workman was appointed in the above establishment on July 30, 1987 to work as clerk/typist and from the date of appointment he continued to work till January 31, 1990 and in this period every year he has completed 240 days. The services of the opposite

party No. 1, the workman, have been terminated without any notice or compensation on February 1, 1990 illegally. The order of termination is in violation of Section 6-N of the U.P. Industrial Disputes Act, 1947, therefore, oral order of termination is liable to be set aside and the workman, opposite party No. 1 is entitled to reinstatement. The employer, the petitioners, also filed their written statement on March 10, 1992 in which it has been stated that the petitioners'' institution H.A.L. is run by the Education Society in H.A.L. which is registered under the Societies Registration Act and is recognised by the Central Board of Secondary Education, New Delhi. This institution is not on grant-in-aid of the Government. In this institution the children of the employees of HAL, Korwa are imparted education. Few students from outside are also admitted. The entire expenditure of the institution is borne by the HAL Korwa Division from its welfare fund. The institution is not being run for any benefit, therefore, it does not fall within the definition of Industry as defined u/s 2-Z of the U.P. Industrial Disputes Act. It has further been stated that the opposite party No. 1 workman was never appointed against any regular post; he was on casual basis, therefore, he was not entitled for regularisation. His services have not been terminated on February 1, 1990, rather he himself did not turn up to work and abandoned the employment.

2. In his rejoinder affidavit filed by the workman, opposite party No. 1, to the written statement filed by the petitioner the workman had denied the statement of the petitioners that the institution does not fall within the definition of industry. He has further stated in his rejoinder affidavit that the work which was being done by him was of permanent nature and since he had continuously worked from 1987 to 1990 he stood regularised. The work which was being done by him is still being done in the institution, therefore, he is entitled for reinstatement.

3. A rejoinder affidavit was also filed by the petitioners to the written statement filed by the opposite party No. 1, the workman stating therein that the employer institution is independent of HAL, and, therefore, does not fall within the purview of U.P. Industrial Disputes Act.

4. Before the Labour Court both the parties filed their documentary evidence. The opposite party No. 1 filed Work Distribution Chart of the employer which was issued by the Principal on September 23, 1993. In this chart the name of the opposite party No. 1 has been shown as casual worker as typist/clerk. Another application dated April 9, 1990 was filed by the opposite party No. 1, the workman which was addressed to the Principal. Alongwith this, letter dated April 18, 1990 was also filed which was issued by the employer and a letter dated July 2, 1990 issued by the Labour Enforcement Officer was also filed.

5. The employer filed the registration certificate of the institution and the bye-laws of the school and balance sheet of 1991 alongwith audit report. Apart from these documents the details of service rendered by the opposite party No. 1 in 12 months before the date of termination of services of the workman. The documents were filed after inspection by

either parties. The workman opposite party No. 1 examined himself and in his examination-in-chief he stated that he was employed on July 30, 1987 in HAL Korwa on post of clerk/typist and continued to work till January 31, 1990. On February 1, 1990 he was removed from work but no notice was served or no retrenchment allowance was "given to him. He further stated that before the termination of his engagement or employment one Smt. Kanta Pushpakar was engaged as casual labour and the work which was being done by him was allotted to her. He further stated that he was neither given the letter of appointment nor letter of termination. There was no complaint regarding his work. He was appointed for a regular work. He used to keep the registers of admitted students and he was given the type work. He made an application for taking him into employment but was in vain. The work which was being done was permanent in nature and still is being carried out. In his cross-examination he stated that he gave his appointment to the Principal when he was appointed. No advertisement was published nor name from employment exchange was obtained. He further stated that after the termination from service he is sitting unemployed.

6. Petitioner"s employer examined the Head Clerk of the institution, Sri Gautam Majumdar who stated in his examination in chief that HAL Education Society is registered under the Societies Registration Act. He stated that the opposite party No. 1 the workman was employed in the establishment as casual labour. He was not appointed on any permanent vacancy. As and when the work was available he was engaged and the wages for the period he has worked has been paid. The work of the opposite party No. 1 was not satisfactory but no written warning was given to him but he was warned orally several times. He stated that the institution is not on grant-in-aid. He further stated that neither the name of the workman was obtained from Employment Exchange nor any advertisement was issued for appointment. He further stated that the opposite party No. 1 has worked from July 1987 to January 1990. In this period he was engaged as per need. He further stated that the services of the workman has not been terminated and at present there is no need of the workman. In cross-examination he further stated that the institution was established on November 27, 1984, classes are run from K.G., Nursery to 12th; medium of imparting education is Hindi and English both. There are about 1800 students. He admitted in his cross-examination that opposite party No. 1 Jitendra Kumar Srivastava has worked in the institution from 1987 to 1990. He used to do despatch, diary and maintenance work. He also used to maintain the files of the students. He was paid wages at the rate of Rs. 32/- per day. He was appointed orally by the Principal but who was the Principal he could not tell the name. He further stated that the workman has not been removed, he himself left the work. He stated that HAL Education Society bears the expenditure of running of the institution. The account is properly maintained which is audited properly. He stated that there was no agreement or contract between the employer and the employee workman Sri Jitendra Kumar Srivastava. He was engaged as and when the services were required. In his cross-examination he further stated that as to whether there was any break in the service of the workman could be informed after perusal of the record. The workman opposite party No. 1 was required to come on work

but he refused to come. He admitted that before termination of services of workman no notice was issued or compensation was paid.

7. The petitioners examined Sri Vijay Vardhan, who is a Senior Manager of the HAL, Korwa who admitted that he is Manager of HAL Education Society from 1994. He stated that the institution is being run for imparting education to the children of the employees of HAL for which the fund is provided from the welfare fund of HAL. He further stated that from 1994, when he took over charge, no appointment, either permanent or casual, has been made. He placed balance-sheet of the institution as Ext. E-5. He further stated that it is a totally private institution and it has no connection with HAL, Korwa. The present dispute is related to the HAL Education Society and not HAL Korwa. He has stated that he has no personal knowledge about the workman.

8. The Labour Court after examining the facts and evidence on record, pleadings of the parties, held that the school is run by the Education Society, very nominal fees is charged from the students. It is an independent institution than that of HAL Korwa. The employees of the institution are different, they cannot be treated to be employees of the HAL Korwa. The Labour Court held, referring the judgment of the Hon''ble Supreme Court without giving any citation, that U.P. Industrial Disputes Act applies to class-Ill and Class IV employees of the Educational Institutions but the teachers of the Educational Institutions are not covered under the Industrial Disputes Act.

9. The Labour Court has further held that no notice or compensation was given to the opposite party No. 1 and further recorded a finding on the basis of the evidence on record that the opposite party No. 1 had completed 262 days before the termination of his service. The Labour Court has relied on admission of witness of the employer that the opposite party No. 1 has continuously worked for more than 240 days. The Tribunal has held that the opposite party No. 1 has completed more than 240 days and his services have been terminated without giving retrenchment notice or compensation, therefore, the termination order was in violation of provisions of 6-N of the U.P. Industrial Disputes Act, 1947. The break in service has not been accepted in view of the decisions of this Court in Writ Petition No. 24630/1988, Govind Singh v. Shram Nyayalay and Anr., dated November 10, 1992 and Writ Petition No. 4571/1986, Umesh Saxena v. Shram Nyayalay Agra and Ors. dated November 26, 1992.

10. The Tribunal has held that in case of termination in violation of provisions of 6-N, workman shall be entitled to reinstatement.

11. Learned Counsel for the petitioners submitted that the Labour Court failed to appreciate that the institution was not an industry within the meaning of Section 2(j) of the Industrial Disputes Act. The definition of Industry given in the Industrial Disputes Act in Section 2(j) is quoted below:

"2(j) "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."

12. The aforesaid discussion came into consideration before the Constitution Bench of Hon"ble Supreme Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, and the apex Court after referring to the judgment of ISAAC J. in School Teacher"s Association case 1929 41 CIR 569 held in the last line of para-83 that Education is the nidus of industrialization and itself is an industry.

13. In para-85 of the said report while referring to the case of The Corporation of the City of Nagpur Vs. Its Employees, observed which reads as under:

"Education Department. This department looks after the primary education i.e. compulsory primary education within the limits of the Corporation for party No. 1. This service can equally be done by private persons. This department satisfies the other tests. The employees of this department coming under the definition of "employees" under the Act would certainly be entitled to the benefits of the Act".

14. In view of this settled position by the Constitution Bench of the Supreme Court that educational institutions fall within the meaning of "industry" the contention of the learned counsel for the petitioner is rejected.

15. The Tribunal has rightly held that there was violation of Section 6-N of the U.P. Industrial Disputes Act as before the Labour Court it was admitted that the services of the opposite party No. 1, the workman, was terminated without notice or without compensation, therefore, he was entitled for reinstatement.

16. In the latest judgment reported in Lal Mohammad and Others Vs. Indian Railway Construction Co. Ltd. and Others, while dealing with the effect of violation of Section 25-N, has held that an order passed in non-compliance of Section 25-N of the Act had no legal effect and was null and void and the employer employee relationship between the parties did not get snapped, therefore, the appellants in that case continued to be in service of respondent, despite such null and void notices. The relevant extract of the said judgment is reproduced as under;

"As we have already held that Section 25-N would apply to the facts of the present case while deciding Point 1, the net effect of the aforesaid conclusion of ours is that the impugned retrenchment notices which were issued without following the conditions precedent to retrenchment of such workmen as required by Section 25-N are necessarily to be treated to be void and of no legal effect. Point 2 is, therefore, answered by holding that the impugned notices on account of non-compliance with Section 25-N of the Act had no legal effect and were null and void and the employer employee relationship between the parties did not get snapped and all the 25 appellants, therefore, continued to be in the service of the respondent despite such null and void notices."

17. The case of Bangalore Water Supply Sewerage Board v. A. Rajappa (supra) was later on relied upon by the Supreme Court in the case of Miss A. Sundarambal v. Government of Goa, Daman and Diu and Ors. in which case the question involved was as to whether the Educational Institution is an industry or not and as to whether the teachers were workmen or not. Para -6 of the said report is reproduced us under:-

"Thus it is seen that even though an educational institution has to be treated as an industry in view of the decision in the Bangalore Water Supply and Sewerage Board v. A. Rajappa (supra) the question whether teachers in an educational institution can be considered as workmen still remains to be decided."

18. Since the present case is of a clerk/typist and is not of a teacher therefore, the further observation in the aforesaid judgment is not relevant for the purpose of present case. Suffice to say that it is settled law that the educational institutions are to be treated as industry. It may be seen that the opposite party No. 1 is a workman in view of definition of workman given in Sub-section 2(s) of the Industrial Disputes Act which is quoted below:

"2(s) "workman" means any person (including an apprentice) employed in any industry to do any skilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceedings under this Act in relation to an industrial dispute, including 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 had led to that dispute, but does not include any such person -

(i) who is subject to the Army Act, 1950 (46 of 1950), or the Air Force Act, 1950 (45 of 1950), or the Navy (Discipline) Act, 1934 (34 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."

19. For the aforesaid reasons I find that the judgment of the Labour Court does not suffer from any apparent error of law which may call for interference by this Court under Article 226 of the Constitution of India.

20. The writ petition is devoid of merit, hence dismissed.

No order as to costs.