(2006) 04 DEL CK 0029

Delhi High Court

Case No: Writ Petition (Civil) No. 5857 of 1998

Mgt. State Farms Corpn. of India Ltd.		APPELLANT
	Vs	
P.O., Industrial Tribunal-II and Another		RESPONDENT

Date of Decision: April 28, 2006

Acts Referred:

- Industrial Disputes Act, 1947 - Section 17B, 2, 25(F), 25(G), 25(H)

Hon'ble Judges: Gita Mittal, J

Bench: Single Bench

Advocate: C.N. Sreekumar, for the Appellant; Sanjay Ghose and Pragya, for the Respondent

Final Decision: Allowed

Judgement

Gita Mittal, J.

The petitioner has assailed an industrial award dated 18th July, 1998 whereby it has been held that services of the respondent No. 2 were terminated in violation of Section 25(F) of the Industrial Disputes Act, 1947 and his reinstatement into service and back wages has been directed. The petitioner has assailed this award primarily on the following grounds:

(i) that the workman was appointed as apprentice under the provisions of Apprentices Act, 1961 and for this reason, the respondent No. 2 is outside the purview of Industrial Disputes Act, 1947 (referred to as "the Act" for brevity hereafter) as there is no relationship of employer and employee.

(ii) The appointment of the petitioner mandated the respondent No. 2 to take a final test upon completion of his course as an apprentice for which he was given two chances and upon failure to clear the same, the contract was liable to be treated as cancelled. The workman failed in the final test once and did not take the same at any

point thereafter and thereby is not entitled to any employment with the petitioner.

(iii) The engagement of the respondent No. 2 after completion of the period of his apprenticeship training was upon his specific request for extension on the ground of his financial straits on demise of his father which engagement was of short durations for specific periods while the result of his test was awaited. The termination of the services of the respondent No. 2 on expiry of the period for which he had been appointed did not amount to retrenchment within the meaning of the expression in 2(oo) of the Act and that the instant case was clearly within the exception provided in Section 2(oo)(bb). For this reason, the petitioner was not required to comply with the provisions of Section 25(F) of the Act prior to the termination of services of the respondent.

(iv) The main function of the petitioner is agriculture in nature and that it is engaged in the activity of only production of quality seeds for being supplied to the State Governments. Only if there are any left-overs, they are supplied to local farmers. The petitioner, therefore, contends that the petitioner has no systematic activity producing goods or rendering services and it, therefore, is not an industry as per the definition of the expression in Section 2(j) of the Industrial Disputes Act, 1947. For this reason, the adjudication before the industrial adjudicator was wholly incompetent.

(v) The issue at serial No. (iv) is a legal issue which is jurisdictional in nature and no pleadings in respect thereof are required. There is a judicial pronouncement of the High Court of Judicature at Madras reported at 1997 (1) LLN 361 entitled State Farms Corporation of India Ltd. v. The Second Additional Courts, Madras and Ors. as well as of a learned single Judge of this Court dated 26th September, 2005 rendered in Writ Petition (C) No. 2037/1996 entitled State Farms Corporation of India Ltd., Beej Bhawan, Nehru Place v. Government of India and Anr. wherein it was held that the petitioner is not covered within the definition of industry u/s 2(j) of the Industrial Disputes Act, 1947. Such authoritative pronouncements are binding on this Court and, therefore, on this count also, the petitioner must succeed.

2. Before addressing the afore noticed contentions, it is necessary to notice certain proceedings in the present matter.

This writ petition came up for hearing initially on the 16th of November, 1998 when notice was issued to the respondent to show cause and interim stay of the award was granted. Despite repeated opportunities, the respondent failed to file the counter affidavit. Consequently, rule was issued in the matter on 18th August, 2000.

3. On an application of the respondent No. 2 u/s 17B of the Industrial Disputes Act, 1947, an order was passed on 4th of February, 2004 directing the petitioner to make payment of wages at Rs. 1500/- per month, the wages which he was drawing at the time of termination of his services. This order was modified on an application of the respondent on 27th July, 2004 whereby it was directed that the

respondent/workman would be paid wages u/s 17B of the Industrial Disputes Act, 1947 at the higher of the rates between last drawn and the minimum wages notified by the statutory authorities from time to time subject to security being furnished by the workman. This order was assailed by the petitioner before the apex court wherein the court modified the interim order directing the petitioner to deposit the difference between the last drawn pay and the minimum wages with this Court for the purposes of being invested in a nationalised bank in a short term fixed deposit pending disposal of the writ petition. The appellant was directed to go on paying the last drawn pay pending disposal of the writ petition and this Court was directed to dispose of the writ proceedings as soon as conveniently possible preferably within a period of three months from the date of the order. The order was passed by the apex court on the 2nd of January, 2006.

However, the petitioner failed to place this order before the court. The same was brought to the attention of this Court by an application being CM No. 2183/2006 filed by the respondent No. 2 which came up for hearing on 21st of February, 2006. The matter was posted for immediate hearing on 28th of February, 2006. It is noteworthy that no counter affidavit has been filed by the respondent No. 2 in the matter. However, it was contended that the record of the industrial adjudicator which has been placed before this Court along with the writ petition is relied upon by the respondent No. 2 and is sufficient for final hearing. Accordingly, the matter was heard on several dates at the request of both parties and is being disposed of at the earliest thereafter.

4. Inasmuch as there is no real dispute to the basic facts, to the extent necessary for adjudication, the same are noticed hereafter. For the purposes of adjudication of the first three issues noticed above, it has to be assumed that the petitioner is an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947.

Admittedly, the respondent No. 2 was appointed as an apprentice by a contract dated 19th July, 1983 for training as an apprentice in the trade of clerk (General). The period of training was prescribed as one year commencing from 19th July, 1983. Clause 2 of the terms and conditions of the appointment of the respondent/workman provided that the respondent would complete the apprenticeship course within this period and to take a final test thereafter. Extension of the period of the training would be allowed by the petitioner in case of the apprentice, having completed the course, failed in the final test. In case the apprentice failed in the second test, he would not be allowed any extension of the period of training and the contract would be treated as cancelled. During his apprenticeship, the respondent was entitled to a stipend of Rs. 230/- per month. Schedule II to this contract provided the obligations of the apprentice. However, clause 5 of this Schedule which is important, reads as follows.

5. The apprentice shall appear for periodical tests that may be conducted by the Corporation or other authorities concerned and also appear for the final test to be

conducted by the National Council for Training in Vocational Trades for award of a certificate of proficiency in the trade.

5. This contract was duly registered under the provisions of the Apprenticeship Act, 1961 on the 2nd of December, 1983. Apprenticeship was required to be extended as the respondent did not pick up the clerical work which was requested by a letter dated 15th of June, 1984 from the petitioner to the Regional Director, Regional Directorate of Apprenticeship Training, Kanpur, U.P. This period was further extended by an office order dated 18th July, 1984 with effect from 19th July, 1984 to 18th January, 1985 or till the next All India Trade Test was held, whichever was earlier on the same terms and conditions as the original contract. Respondent No. 2, Shri Baljit Singh accepted and consented to the extension of his apprenticeship on the stated terms and to appear in the All India Trade test by a letter dated 18th January, 1985. Apprenticeship was extended upto final period of 18th July, 1985 by the concerned authorities.

6. The respondent submitted a representation dated 4th April, 1985 for sympathetic consideration and regular appointment on account of the death of his father. Therefore, after expiry of the period of apprenticeship training of the respondent, he was given an appointment on temporary basis on daily wages for different fixed periods from 23rd of July, 1985 to 22nd of March, 1986.

7. The petitioner had given an explanation as to the reason why the respondent was given these temporary appointment on sympathetic considerations. In accordance with the terms of the Apprentice Contract noticed above, the respondent had taken the 42nd All India Trade Test conducted by the Regional Directorate of Apprenticeship Training. It was while the result of the test was being awaited, the respondent was given the temporary appointment pursuant to his request for sympathetic appointment on daily wage basis. The result of the 42nd All India Trade Test was conveyed by the Regional Directorate vide a letter dated 28th of February, 1986 whereby it was informed that the respondent had failed to qualify the afore stated trade test. Result of this test was conveyed to the respondent by a letter dated 10th of March, 1986 whereby he was informed that he had been unable to qualify in the trade test. The respondent was directed to re-appear as a private candidate by applying in the prescribed proforma and the Regional Directorate was directed to send a copy of the proforma to the respondent.

8. It is an admitted position that the respondent after having failed the trade test once, never re-appeared in the same and has not passed the trade test. Therefore, so far as the initial engagement of the respondent is concerned, the same was purely as an apprentice in terms of the contract dated 25th of July, 1983 which is governed by the Apprentices Act, 1961. The respondent having failed in the trade test cannot seek any benefit or entitlement to engagement as the termination of his services was strictly in terms of the contract. There can be no manner of doubt that so long as the respondent was engaged as an apprentice, in any case, he would be

outside the purview of the definition of the workman under the Industrial Disputes Act, 1947.

9. As far as the reliance placed by the workman on his temporary engagement with effect from 23rd of July, 1985 is concerned, the petitioner had proved before the industrial adjudicator its office orders dated 23rd July, 1985; 19/23rd September, 1985; 22nd November, 1985; 21st January, 1986 and 21st February, 1986. These office orders were issued in identical terms and were in the nature of orders of appointment for the respondent which stipulated that the respondent was hereby appointed as a ''Lower Division Clerk'' on daily wage basis for specified duration and on temporary basis. The orders also stipulated that the services of the respondent could be terminated at any time without any notice and without assigning any reason.

10. So far as the order dated 21st February, 1986 is concerned, the same reads as under.

Shri Baljit Singh is hereby appointed as a Lower Division Clerk on daily wage basis with effect from 21st February, 1986 to 22nd March, 1986 on a purely temporary basis.

Shri Baljit Singh shall be entitled to the wage of Rs. 18.40 (Rupees Eighteen and Paise Forty only) per day (inclusive of weekly off day).

The services of Shri Baljit Singh can be terminated at any time without any notice and without assigning any reason.

Shri Baljit Singh is posted to work in Establishment section.

11. Undoubtedly, therefore, each time the office order was issued, the respondent was put to notice of the last date of his engagement that his appointment was on temporary basis as a daily wager and that his services could be terminated at any time without any notice and without assigning any reason.

12. The workman assailed the termination of his services with effect from 22nd of March, 1986 primarily on the ground that he has worked more than 240 days and that termination of his services was in violation of Section 25F, G and H of the Industrial Disputes Act, 1947. This claim of the workman was referred for adjudication to the industrial adjudicator and was strongly contested on the afore-noticed submissions on behalf of the petitioner. The industrial adjudication culminated in the award dated 18th July, 1998 which was passed in favour of the workman holding that he had worked for more than 240 days and consequently his termination in non-compliance of the provisions of Section 25F of the Act was illegal and invalid thereby directing his reinstatement into service with back wages.

13. In the statement of claim filed by the workman, it has been admitted that he was appointed as an apprentice though the workman contended that "the management

adopted the dubious method of employment showing the appointment as a trainee and apprenticeship which was extended from time to time till 19th of July, 1985. Otherwise, the workman was doing the job of LDC throughout. Thereafter the workman was shown to have been taken into employment as LDC on daily wages with effect from 23rd July, 1985 and was paid his wages as fixed."

14. The appointment of the respondent was undoubtedly for fixed tenures pursuant to written orders. The respondent/workman was fully aware of the same. The petitioner has established the same by evidence in this behalf.

15. It is therefore necessary to consider the relevant statutory provision of Section 2(oo) of the Act which is concerned with termination of service of the workman and the exception provided in Section 2(oo)(bb) and has been cited before this Court. For purposes of convenience, the same is reproduced in extenso hereunder:

2(oo) - ''retrenchment'' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein.

16. In this behalf, reference can usefully be made to the pronouncement of the apex court reported at Harmohinder Singh Vs. Kharga Canteen, Ambala Cantt., In this case it was held that contracts of service which are for a fixed term, are excluded from the definition of retrenchment in the Industrial Disputes Act, 1947. It was held that where termination takes place on the expiry of the contract period or in terms of the contract, the principles of natural justice are not attracted. In this behalf, reliance was placed on the earlier pronouncement of the Supreme Court in Uptron India Limited Vs. Shammi Bhan and Another, .

17. In a pronouncement of the Supreme Court reported at Escorts Limited v. Presiding Officer, (1997) 11 SCC 521 , an argument was laid that even though a workman had been appointed on temporary basis for period of two months, it was urged that because the workman had worked for 240 days, the termination of his services amounted to retrenchment u/s 2(oo) of the Industrial Disputes Act, 1947 and the same being in violation of Section 25F of the Industrial Disputes Act, 1947 was illegal. The Apex Court held that it was unnecessary to go into the question whether a workman had worked for 240 days in a year inasmuch termination of services of the workman did not constitute retrenchment in view of Clause (bb) in

Section 2(oo) of the Act. The termination of the services of the workman was in accordance with the stipulation contained in his contract which is to be found in his letter of appointment. Therefore, even though termination of the services of the workman was before the expiry of the period of probation, however, since the termination of the service was in accordance with the terms of the contract, it fell within the ambit of Section 2(oo)(bb) of the statute and did not constitute retrenchment. In this regard, the Supreme Court cited with approval its earlier decision reported at M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another, .

Therefore, there can be no manner of doubt that this Court is bound by the authoritative judicial pronouncement of law to the effect that so long as the termination of service of the workman is in accordance with the terms of the contract on or expiry of the contract, the same does not amount to retrenchment within the meaning of the expression as it is excepted u/s 2(oo) of the Industrial Disputes Act, 1947. In the instant case the respondent was fully aware of the terms and tenure of his engagement. In these circumstances, upon termination of services of the respondent the employer could not be required to comply with the provisions of Section 25F of the Industrial Disputes Act, 1947.

18. The services of the respondent No. 2 in the instant case were terminated as the period for which he had been appointed pursuant to the office order dated 21st February, 1986 came to an end. Furthermore, even in terms of his original contract of apprenticeship dated 25th July, 1983, the respondent/workman had failed to clear the trade test and consequently, his appointment could not be so continued. Therefore, such termination was clearly outside the purview of retrenchment as contemplated u/s 2(oo) of the Industrial Disputes Act, 1947 and fell within the stipulation prescribed u/s 2(oo)(bb) of the statute. Hence, in the light of the principles laid down by the Apex Court, there was no requirement of compliance with the Section 25F of the Industrial Disputes Act, 1947.

19. At this stage, I may notice another submission which was vehemently made on behalf of the petitioner to the effect that even in the event of termination of service falling within the definition of the expression ''retrenchment'' as given under the Industrial Disputes Act, 1947, merely for non-compliance of Section 25F of the Industrial Disputes Act, 1947, the direction for reinstatement into service could not have been made. In this behalf, reliance is placed on the pronouncement of the apex court reported at Branch Manager, M.P. State Agro Industries Development Corpn. Ltd. and Another Vs. Shri S.C. Pandey, .

It had been urged before the Apex Court that in the event of non-compliance of Section 25F of the Industrial Disputes Act, 1947, the respondent/workman had been reinstated into service on account of an erroneous order by the court. Therefore, in order to do complete justice between the parties, instead of direction to reinstate the workman into service, the employer was directed to pay an amount of Rs.

10,000/- as compensation. 20. In the present case, it has been held that there was no requirement to comply with the provisions of Section 25F of the Industrial Disputes Act, 1947 and inasmuch as the termination of the service of the workman was outside the definition of retrenchment as has been provided u/s 2(oo) in view of Clause (bb) of the Act.

21. On behalf of the respondent, Mr. Sanjay Ghose, Advocate has stated that the period of apprenticeship of the workman came to an end on expiry of one year from 25th of July, 1983. Thereafter, the respondent was appointed as a Lower Division Clerk on daily wage basis and on this basis, he worked for a period of 240 days from 23rd of July, 1985 till his services were terminated. It has been contended on behalf of the respondent that there was not a whisper in any of the orders that the appointment was conditional upon a trade test.

22. In this behalf, there is no dispute that the workman was appointed as an apprentice under the Apprenticeship Contract which was duly registered with the competent authority under the Apprentices Act, 1961. The respondent had taken the written test in April, 1985, the result of which was not pronounced till February, 1986. It was during this period only that the respondent was given short term appointment on daily wage basis, which engagement was almost co-terminus with the declaration of his result. The services of the respondent/workman came to an end as the period for which he had been appointed by the office order dated 21st of February, 1986 also came to a close.

23. In view of the foregoing discussion, the respondent would clearly be disentitled to any relief on these two counts which also answers the ground (i) to (iii) raised by the petitioner, as noticed above.

24. Coming now to the main submission which was made on behalf of the petitioner to the effect that the petitioner is engaged principally in agriculture activity and is consequently outside the purview of definition of industry given u/s 2(j) of the Industrial Disputes Act, 1947. In this behalf, the industrial adjudicator has noticed that an objection in this behalf was taken for the first time by the petitioner in the course of argument on behalf of the management when reliance was placed upon the judgment of the Madras High Court in the case involving the State Farms Corporation of India Ltd.

The industrial adjudicator has noticed that the petitioner has submitted a plea that the petitioner was not an industry was a legal plea and therefore, could be urged even without pleadings to that effect. However, the industrial adjudicator has refused to entertain this plea on the sole ground that the same had not been taken by the management in its written statement and had placed reliance on the observation of the Apex Court in Harinagar Cane Farm and Others Vs. State of Bihar and Others, to the effect that it was desirable that industrial adjudication should deal with problems as and when they arise and confine its decision to points which

strictly arise on the pleadings between the parties. In this view of the matter, without anything further, the Industrial Tribunal refused to entertain the management''s objection in this behalf.

25. So far as industrial adjudication is concerned, it is well settled that strict rules of procedure are not applicable. However, the purpose of requiring a party to be bound by its pleadings is that the other party is put to notice of the case of the other side which it is required to meet. However, even in civil litigation to which Code of Civil Procedure, 1908 strictly applies, it is well settled that issues of law can be struck at any stage. No pleadings are necessary so far as issues of law are concerned. In this behalf, regard may be had to the pronouncement of the Division Bench of this Court reported at 1996 (39) DRJ 774 entitled Chet Ram Gupta v. Motian Devi Lamba and Ors. Industrial adjudication is not confined by the formalities of strict procedure. Deriving force from these well settled principles applicable to civil litigation, so far as industrial adjudication is concerned, it has to be held that no pleading is necessary so far as an issue of law is concerned.

26. It cannot be at all doubted that a challenge to the maintainability of the proceedings on the ground that the management was not covered under the definition of industry u/s 2(j) of the Industrial Disputes Act, 1947 goes to the very root of the jurisdiction of the industrial adjudicator and the maintainability of reference against such a management. Undoubtedly, the objection may have been raised at a late stage. But the question is as to whether the industrial adjudicator could have refused to permit examination of such a plea as the same may have delayed adjudication on the ground that if the other side contested the submission and required an opportunity to lead evidence in respect of its objection, the matter would have required further consideration.

27. In the instant case, the petitioner had placed reliance on a pronouncement of the Division Bench of the Madras High Court relating to an establishment of the petitioner itself. The industrial adjudicator did not arrive at a conclusion that the question raised was a mixed question of fact and law and could not be gone into without pleading or evidence, but refused to even consider this judicial pronouncement, which in my view, it ought not to have done so. It is well settled that the rules of procedure are not strictly applicable to industrial adjudication. It was open to it to adopt such fair procedure as was necessary to do justice. Such a plea as taken in the instant case was based on a judicial pronouncement. The plea was jurisdictional and undoubtedly went to the root of the matter. It certainly deserved a consideration. To test its maintainability, such a plea would be akin and can be compared to a prayer for belated amendment of a pleading. It is well settled that delay alone would not defeat even a belated request for amendment when such delay can be compensated by payment of adequate costs. The powers of the industrial adjudicator are undoubtedly very wide. Therefore, it was open to the industrial adjudicator to consider the plea if it involved adjudication based on law or,

if requested and deemed necessary, permit amendment of pleading, frame an issue appropriately and to require parties to lead evidence thereon. Such fair procedure as the adjudicator decided to follow would, needless to say, depend on the stand which the workman took.

In the instant case, the stand of the workman on this plea before the adjudicator is not available in the award. However, certainly the industrial adjudicator was required to consider the objection of the petitioner as well as the judicial pronouncement which was cited before it especially as it related to an establishment of the very management which was before it.

28. Before going any further, inasmuch as the learned Counsel for the respondent has placed reliance on the pronouncement of the apex court reported at Harinagar Cane Farm and Others Vs. State of Bihar and Others, , it becomes necessary to examine this authoritative and binding pronouncement. In this judgment, it was argued on behalf of the appellant that legislative history has shown a sharp distinction between industry on the one hand and agriculture operations, on the other. Therefore, agricultural operations are as a whole, outside the purview of definition of industry given u/s 2(j) of the Industrial Disputes Act, 1947. The argument on behalf of the Harinagar Cane Farms was a broad and general submission that all agriculture operations would be outside the purview of definition of industry under the statute. It was in this context, that the apex court was of the view that industrial adjudication should refrain from enunciating any general principles or adopting any doctrinaire consideration with regard to the issue involved and the court ought to restrict itself to the fact and circumstances which were before it in the adjudication. In this behalf, the court observed thus:

8. In dealing with the present appeals, we do not propose to decide the large question as to whether all agriculture and operations connected with it are included within the definition of Section 2(j). As we have repeatedly emphasised, in dealing with industrial matters, industrial adjudication should refrain from enunciating any general principles or adopting any doctrinaire considerations. It is desirable that industrial adjudication should deal with the problems as and when they arise and confine its decisions to the points which strictly arise on the pleadings between the parties. If in reaching any conclusion while dealing with the narrow aspect raised by the parties before it, industrial adjudication has to evolve some principle, it should and must, no doubt, attempt to do so, but in evolving the principle, care should be taken not to lay an unduly general or broad proposition which may affect facts and circumstances which are not before industrial adjudication in the particular case with which it is concerned.

After so observing, so far as Harinagar Cane Farm was concerned, the court held thus.

Bearing in mind the importance of adopting this approach in dealing with industrial matters, we propose to deal with the narrow question as to whether agricultural operations carried on by the two appellants constitute an industry u/s 2(j) or not. There is no doubt that for carrying on the agricultural operations, the appellants have invested a large amount of capital and it is not disputed that the appellants have invested capital for carrying on their agricultural operations for the purpose of making profits. It is also common ground that the workmen employed by the appellants in their respective operations contribute to the production of agricultural commodities which bring in profit to the appellants. Therefore, even the narrow traditional requirements of the concept of trade or business are, in that sense, satisfied by the agricultural operations of the appellants.

29. It is noteworthy that so far as Harinagar Cane Farm is concerned, the court noticed other prior judicial pronouncements.

30. In earlier pronouncements of the apex court reported at Thiru Arooran Sugars Ltd. Vs. Industrial Tribunal and Others, and at 1951 II LLJ 37 entitled Vellankara and Thattil Rubber Estate Union v. Vellankara and Thattil Rubber Estates and The Corporation of the City of Nagpur Vs. Its Employees, , the Supreme Court laid down the principle that if agricultural and industrial operations are carried out in an integrated fashion, then the entire operations would have to be treated as industrial activity. Thus, when sugarcane is grown in farms by a company which is captively consumed for manufacturing sugar, then the establishment is engaged in the sugar industry.

31. Similarly, a rubber farm wherein the rubber which is tapped on the farm is utilised by it in an industrial operation in manufacturing of other rubber products, then the agricultural activity is completely integrated with the industrial operation and in such a circumstance it has to be held to be an industrial establishment if the agricultural operation and industry is owned by the same ownership and management.

32. So far as the pronouncement of the apex court reported in The Corporation of the City of Nagpur Vs. Its Employees, relied upon by the petitioner is concerned, it was held by the Supreme Court that the Corporation is a juristic person capable of holding and disposing of property and conferred with vide powers and functions. The apex court observed that the corporation was analogous to a big public company carrying out most of the duties which such a company can undertake to do with a difference that certain statutory powers had been conferred on the corporation for carrying out its functions satisfactorily. The court sought to draw a distinction between certain functions of the municipality which, if undertaken by an individual, would be an industry and others which a private person could not perform. It was on such a distinction that the court pointed out that certain departments would be covered under the definition of industry under the Industrial Disputes Act, 1947 to which this statute would apply while others would not. On this

test, the engineering department, sewage department, health department, market department, public earns department, public works department, assessment department, estate department, education department, printing press department and others were held to be covered under the definition of industry.

According to the apex court, the question which was required to be answered is not whether the discharge of certain functions by the Corporation has statutory backing but whether those functions can equally be performed by private individuals. The present petition does not raise any such issue.

33. So far as the petitioner is concerned, it is necessary to examine the pronouncement of the High Court of Judicature at Madras reported in 1997 (1) LLN 361 entitled State Farms Corporation of India Ltd. v. The Second Additional Courts, Madras. In this pronouncement, it has been noticed that the petitioner was a farm which was a unit of the State Farm Corporation of India Ltd., a Central Government undertaking which runs a model farm. All that it does is to maintain the farm by carrying out agricultural operations and incidental functions. The main function of the petitioner is agricultural in nature. It produces quality seeds for being supplied to the State Government and only if there are left overs, they are supplied to the local farmers. The submission was that the petitioner had no systematic activity producing goods or rendering service and therefore, was not an ''industry'' as per Section 2(j) of the Industrial Disputes Act, 1947.

34. The workman in this case had placed reliance on the pronouncement of the apex court in 1978 (1) LLN 376 and 657 Bangalore Water Supply and Sewerage Board v. Rajappa, to contend that the three tests laid down in the judgment were squarely applicable to the activity carried on the farm. However, the Madras High Court held that tests are applied to find out whether an activity carried on in a particular establishment is an ''industry'' within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 and that the test cannot be applied to an agricultural activity. Even in an agricultural farm, production is there, cooperation of the employer and employee is also there, commercial activity is also there but the distinction has to be made between commercial activity and the industrial activity. When the predominant activity is agricultural activity, then the tests cannot be applied. It was noticed in the judgment of the Madras High Court that the Supreme Court had noticed that professions, clubs, educational institutions, cooperatives, research institutes, charitable projects and other kindred adventure, if they fulfil the triple tests listed by the court, cannot be exempted from the scope of Section 2(j) of the Industrial Disputes Act, 1947. It was observed by the Madras High Court that the exclusion of agricultural activity from the listed categories in the entire judgment indicated that the judgment did not relate to agricultural activity at all.

35. After considering the nature of activity of the petitioner that is the Central State Farms, it was held that the petitioner farm could not be termed as an ''industry''.

36. It has been contended on behalf of the respondent that the issue as to whether an establishment is an ''industry'' within the meaning of expression given in Section 2(j) of the Industrial Disputes Act, 1947 or not, is a mixed question of law and fact and that if such an objection had been taken before the industrial adjudicator, the respondent would have had an opportunity to challenge the same and by leading appropriate evidence in this behalf. It has been contended that the respondent cannot be denied this opportunity and no such finding can be returned so far as the establishment of the petitioner is concerned in the instant case.

37. The workmen can succeed in demonstrating that the firm is "an industry" by application of the predominant nature activity test in which they have to establish that the establishment indulges in a number of activities, some of which fall within the category of "industry" and do not qualify for the exemption. Further, the workman will have to establish that the activities which are not exempted, dominate over the activities which are exempted from the purview of Section 2(j) of the Act.

38. This issue also arose for consideration before the Supreme Court in the case of The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, wherein the court was called upon to answer an objection that the respondent was a hospital and concerned with medical education and hence, was outside the purview of Section 2(j) of the Industrial Disputes Act, 1947. The court held thus:

16. In considering the question as to whether the group of Hospitals run by the appellant undoubtedly for the purpose of giving medical relief to the citizens and for helping to impart medical education are an undertaking or not, it would be pertinent to enquire an activity of a like nature would be an undertaking if it is carried on by a private citizen or a group of private citizens. There is no doubt that if a hospital is run by private citizens for profit it would be an undertaking very much like the trade or business in their conventional sense. We have already stated that the presence of profit motive is not essential for bringing an undertaking within Section 2(j). If that be so, if a private citizen runs a hospital without charging any fees from the patients treated in it, it would nevertheless be an undertaking u/s 2(j). Thus the character of the activity involved in running a hospital brings the institution of the hospital within Section 2(j). Does it make any difference that the hospital is run by the Government in the interpretation of the word "undertaking" in Section 2(j)? In our opinion, the answer to this question must be in the negative. It is the character of the activity which decides the question as to whether the activity in question attracts the provision of Section 2(j); who conducts the activity and whether it is conducted for profit or not do not make a material difference.

17. We have yet to decide which are the attributes the presence of which makes an activity an undertaking within Section 2(j), on the ground that it is analogous to trade or business. It is difficult to state these possible attributes definitely or exhaustively; as a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the

rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the cooperation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organised or arranged in a manner in which trade or business is generally organised or arranged. It must not be casual nor must it be for oneself nor for pleasure. Thus the manner in which the activity in question is organised or arranged, the condition of the cooperation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which Section 2(j) applies. Judged by this test there would be no difficulty in holding that the State is carrying on an undertaking when it runs the group of Hospitals in question.

When an issue is raised as to whether an establishment is an industry or not, the Court is required to advert itself to this question and to apply the ''predominant nature of activity'' test after ascertaining the basic facts upon which such a doctrine can operate.

39. So far as the issue as to whether an establishment is covered under the definition of "industry" as set up u/s 2(j) of the Industrial Disputes Act, 1947, is concerned, the matter has been concluded by the decision of the Supreme Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, wherein the entire case law on the point has been reviewed and it has been laid down that absence of a profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

40. In this behalf, it would be useful to advert to the discussion on this aspect of the matter in the case of Ramesh Chander Singh v. Union of India 1981 Lab IC 781, wherein the Court held as under:

13. Where a complex of activities, some of which qualify for exemption, others not, involve employees on the total undertaking some of whom are not "workmen" or some departments are not productive of goods and services if isolated, even then the predominant nature of the services and integrated nature of the departments will be true test. The whole undertaking will be "Industry" although those who are not "workmen" by definition may not benefit by the status.

Applying this criteria to the facts of the instant case we find that the National Sugar Institute is predominantly a research institute and its objective is to devise ways and means of economising in sugar production and also to design machines and machine parts so as to make the working of the sugar mills more efficient. It also helps the industry in solving their specific problems and to advise the industry in various other ways to make the whole industry more effective and viable. The

defendant has admitted in its written statement that the Institute charges for advice to the Industries and also undertakes other jobs of research on payment by the Industries. It is indeed an organised and systematic enterprise but to my mind it does not qualify to the various requirements which can make an enterprise an industry. It is purely a technical institute which provides the industry with its know-how and skill and gives advantage of its research to the industry, of course, on payment but not on profit. Under these circumstances, I find myself unable to agree with the submissions made by the appellant that the research institute was an industry.

41. In the case of P. Jose v. The Director, Central Institute of Fisheries and Anr. 1986 Lab I.C. 1564, the Bench ruled as under:

7. Except to contend that the petitioner is a casual worker, the learned Counsel for the petitioner has not placed anything before this Court to sustain his plea that the 1st respondent is an ''industry'' within the meaning of ''the Act''. In this connection it is relevant to recall the pleadings in the counter-affidavit sworn on behalf of the respondents. In the counter-affidavit it has been stated thus:

The Central Institute of Fisheries, Nautical and Engineering Training, is not engaged in research in deep sea fishing. The Institute is meant for training personnel in deep sea fishing and allied operations and not for research.

Such institutions as the respondent-institute will not be an ''industry'' because it belongs to the restricted category of institutions mentioned in the decision of the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, .

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9. For the reasons stated above, I have no hesitation to hold that the petitioner is not entitled to the benefits of the provisions contained in Chapter VA of the Industrial Disputes Act. In this view of the matter, the Original Petition is liable to be dismissed. The Original Petition is accordingly dismissed. No order as to costs.

42. An issue similar to the question raised before this Court arise for consideration before the Punjab & Haryana High Court. It was urged that the Agriculture Department of the Punjab State comes within the ambit of ''industry'' as defined in Section 2(j) of the Industrial Disputes Act. The Court in the case of State of Punjab thr. The Director of Agriculture Punjab, Chandigarh and Anr. v. Shri Daljit Singh and Anr. 1986 (1) SLR 420 held as under :

4. There is no dispute that the Agriculture Department of the Punjab Government deals with the governmental activity. It has been held by a Full Bench of this Court is State of Punjab v. Sh. Kuldip Singh and Anr. 1983 Lab. I.C. 83 that the State or governmental activity is of the following four classifications:

(1) the sovereign or the legal 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.

Dealing with these four categories it was held that although the second and third categories would be clearly within the spirit and letter of the definition of "industry" as given in Section 2(j) of the Act but the first and the fourth categories are to be judicially excluded from the ambit of the definition of "industry". Thus to be within the ambit of "industry" a governmental activity must atleast be analogous to trade and business and there must be an element of an economic venture in governmental activity before it can be brought within the four corner of an industry.

5. It is not controverted that the function of the Agriculture Department of the Punjab Government is to render help to the agriculturists in the pursuit of farming. The nature of work of this department is largely advisory. It is not even remotely suggested that this department delves in economic ventures of any kind. It seems to follow that the character of activity of this department is neither that of trade or business nor any economic venture. Hence, the Agriculture Department of the Punjab Government cannot possibly come within the ambit of an "industry" as defined in the Act. The question posed in this case at the very outset must, therefore, be answered in the negative.

43. I find that it is not even the contention of the respondent that the petitioner is engaged in any systematic activity producing goods or rendering any service. The seeds produced at the farms are supplied to the State Governments and even the head office would be part of the same functions being performed by the petitioner. The main and predominant purpose of the State Farms Corporation is production of high breed or quality seeds for the farmers, which is clearly agricultural activity. In view of the above, it has to be held that the predominant activity of the petitioner is agricultural in nature.

44. The State Farm Corporation of India at Beej Bhawan, Nehru Place, New Delhi was a petitioner in had challenged an order dated 31st January, 1992 passed by the Regional Labour Commissioner certifying the standing orders of the petitioner. Even though the petitioner had applied for certification initially, however, subsequently a plea was raised before the Regional Labour Commissioner to the effect that this application was made on the mistaken belief and as the petitioner was not an ''establishment'' under the Industrial Employment (Standing Orders) Act, 1946,

therefore, no such exercise was required. This contention was rejected by the Chief Labour Commissioner in an order passed on 23rd January, 1996. The petitioner''s appeal against this order was rejected by the Central Government by an order dated 23rd January, 1996. These orders were assailed before this Court by way of writ petition which was registered as Writ Petition (C) No. 2037/1996. It appears that the respondent had opted not to appear in the matter. By a judgment passed on 26th September, 2005, Writ Petition (C) No. 2037/1996 was allowed in favour of the State Farms of India holding thus:

Learned Counsel for the petitioner states that the issue that petitioner is not an industrial establishment has since been determined by Madras High Court in the case of State Farms Corporation of India Ltd. v. Second Addl. Court Madras 1997 (1) LLN 361. Perusal of that judgment would show that it has been held by Madras High Court that the petitioner is not an ''industry'' within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as ''the Act''). While coming to Section, the Madras High Court took into consideration the judgment of the Supreme Court in the case of Bangalore Water Supply and Sewerage Board v. Rajappa 1978 (1) LLN 376 and observed that since the predominant activity of the petitioner is agriculture and does not amount to industrial activity, it would not fall within the definition of ''industry'' as contained in Section 2(j) of the Act. Relying upon the ratio of this judgment it could safely be concluded that the petitioner is not an industrial establishment within the meaning of the Industrial Employment (Standing Orders) Act, 1946. The impugned orders 31st January, 1992 and 23rd January, 1996 are hereby quashed. Prayer made in the writ petition is allowed. Rule is made absolute.

45. The stand taken by the respondent may deserve to be sustained in a case where such issue had not fallen for judicial scrutiny and consideration and there was no judicial finding and precedent on the matter. In the present matter, this Court in its judgment dated 26th September, 2005 has categorically held that the petitioner is not an industrial establishment. There is no dispute that the present petitioner was a petitioner in Writ Petition (C) No. 2037/1996.

46. I also find that the petitioner did make averments in this behalf in the writ petition and has assailed the refusal of the industrial adjudicator to examine this matter when an objection was raised, even though belatedly. The respondent has not filed any counter affidavit to the writ petition. The Madras High Court has noticed that it is the contention of the petitioner that the farm which was agricultural in nature, produces quality seeds for being supplied to the State Government and only the left overs are supplied to the local farmers. It has been orally submitted on behalf of the respondent that the petitioner is the head office of the various farms.

47. The present petitioner was also the petitioner in the writ petition which was decided by the judgment dated 26th September, 2005. It has already been held that

since the predominant activity of the petitioner is agriculture and does not amount to industrial activity. It has been categorically held that the petitioner''s establishment would not fall within the definition of ''industry'' as contained in Section 2(j) of the Industrial Disputes Act, 1947. It has also been observed that the petitioner is not an industrial establishment within the meaning of Industrial Employment (Standing Orders) Act, 1946.

48. This judgment is undoubtedly binding on this Court. Therefore, on grounds of judicial discipline and legal proprietory also, it has to be held that the petitioner in the instant case is not covered within the definition of ''industry'' u/s 2(j) of the Industrial Disputes Act, 1947.

In this view of the matter, this writ petition has to be allowed. The award dated 18th July, 1998 is consequently set aside and quashed.

There shall be no order as to costs.