Registrar, M.P. Ayurvedic Tatha Unani Chiktsa Padhati Avam Prakratik Chikitsa Board Vs Bhagwandas Relwani and Bhartiya Chikitsa Padhati Avam Homeopathy

Writ Petition No. 5328 of 1997

Court: Madhya Pradesh High Court

Date of Decision: May 9, 2006

Acts Referred:
Industrial Disputes Act, 1947 â€" Section 10(1), 2, 25F#Madhya Pradesh Ayurvedic, Unani Tatha Prakratik Vyaysay Adhiniyam, 1970 â€" Section 19, 24, 28

Hon'ble Judges: A.K. Shrivastava, J

Bench: Single Bench

Advocate: R.K. Verma, for the Appellant; Ashok Shrivastava and D.K. Khare, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

A.K. Shrivastava, J.
The petitioner has filed this petition against the award dated 14th July, 1997 passed in Case No. 63/93 I.D.Ref. by

the Labour Court, Bhopal whereby the respondent No. 1 (hereinafter referred to as "workman") has been directed to be reinstated with 50%

back wages.

2. Petitioner is the Registrar of M.P. Ayurvedic Tatha Unani Chikitsa Padhati Avam Prakratik Chiktsa Board (hereinafter referred to as "Board").

The Board is constituted under the M.P. Ayurvedic, Unani Tatha Prakratik Vyaysay Adhiniyam, 1970 (in short "Adhiniyam"). The object of the

Board is to maintain State Register of the practitioners and list of the practitioners as required under Sections 24 and 28, respectively. The powers,

duties and functions of the Board are described u/s 19 of the Adhiniyam. According to the petitioner, the job of the Board is to register the

practitioners and to suspend and remove from the State Register of practitioners and to take all disciplinary actions against them.

3. The stand of the petitioner is that the petitioner. Board does not come under the ambit and sweep of Industrial Disputes Act, 1947 (for brevity,

''the Act of 1947'') and the Board is not an ''industry'' as defined u/s 2(j) of the Act of 1947.

4. In the year 1987 the workman was appointed as a daily wager for a period of three months for election purpose on the wages fixed by the

Collector. It was made very specific that his services could be terminated at any time without giving notice. Copy of the appointment letter is

Annexure-P-1. Thereafter, on 1.1.88 he was further given appointment only for a period of one month on the same terms and conditions. The

process of giving appointments to the workman in the same manner was continued and every time he was given appointment for a period of one

month. Thereafter, again the workman was given appointment on 30.4.90 in the pay scale of Rs. 870-1430 on temporary basis. It was further

made specific in the order itself that he will have no claim for the said post for his confirmation.

5. The services of the workman were extended from time to time. Thereafter on 6.4.93 an order was issued by the petitioner informing the

workman that his services are no longer required and, therefore, he would be terminated w.e.f. 5.5.93.

6. The workman raised a dispute under the Industrial Disputes Act and the same was referred u/s 10(1) of the said Act for adjudication of the

claim to the Labour Court. The stand of the workman before the Labour Court was that his termination amounts to retrenchment and since the

provisions of Section 25F were not followed, therefore, the termination amounts to illegal retrenchment and he is entitled for reinstatement with full

back wages. It was the further stand of the workman that the petitioner Board is an industry and hence provisions of Act of 1947 are applicable.

7. The averments made by the workman in his statement of claim were refuted by the petitioner by filing statement of claim before the Labour

Court and the stand of the petitioner in the statement of claim was that the workman was appointed on temporary basis as a daily wager. His

appointment was made for election purpose and on account of completion of the work of the election, since there was no necessity to continue him

in service, by giving one month notice, his services were terminated vide order dated 5.5.93. An objection was also raised that the Board is not an

industry and, therefore, the provision of Act of 1947 are not applicable.

8. Before the Labour Court the parties led their evidence and the Labour Court came to the conclusion that the petitioner Board is an industry and,

therefore, provisions of the Act of 1947 are applicable to it. On merit it has been found by the Labour Court that the action of the Board

terminating the services of the workman amounts to illegal retrenchment and since the workman has worked for more than 240 days, therefore,

provisions of Section 25F should have been complied with and since the same are not complied with, the workman is entitled for reinstatement.

Looking to the facts and circumstances the Labour Court also allowed 50% back wages. Hence this petition has been filed by the Board.

9. It has been contended by Shri R.K. Verma, learned Counsel appearing for the petitioner that definition u/s 2(j) of the Act of 1947 cannot be

stretched to the extent in order to include the petitioner Board in its sphere and, therefore, because the petitioner is not an industry, the provisions

of the Act of 1947 are not applicable to the Board and hence the Labour Court was not having any jurisdiction to pass the impugned award. In

support of his contention, learned Counsel has placed reliance on a decision of the Supreme Court in the case of Physical Research Laboratory

Vs. K.G. Sharma, and Single Bench decision of this Court in the case of Project Director, District Literacy Samiti Vs. Ms. Mamta Shrivastava and

Another,

10. Per contra, it has been argued by Shri Ashok Shrivastava and Shri D.K. Khare, learned Counsel appearing for the respondent No. 1 that the

systematic activity is being carried out by the Board and the activity is being organised by co-operation between the employer and employee and

looking to the aim and object of the Board it can safely be said that Board is an industry and if that is the position, since admittedly the workman

has served for more than 240 days in a calendar year, therefore, the termination of his services is contrary to Section 25F of the Act of 1947 and

hence the Labour Court did not err in passing the impugned award. In support of his contention, learned Counsel has placed reliance on the

decision of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others,

11. After having heard learned Counsel for the parties, I am of the view that this petition deserves to be allowed.

12. India as a sovereign, secular, democratic republic has to establish an egalitarian social order under rule of law. The welfare measures partake

the character of sovereign functions and the traditional duty to maintain law and order is no longer the concept of the State. Directive Principles of

State Policy enjoin on the State diverse duties under Part IV of the Constitution and the performance of the duties are constitutional functions. One

of the duties of the State is to provide registration of Ayurvedic practitioners and to achieve this object the petitioner-Board appears to have been

constituted. The object of the Board is to maintain State Register of the practitioners and list of the practitioners as required under Sections 24 and

28, respectively. The object of the Board is to register practitioners and to suspend and remove them from the State Register of practitioners and

to take disciplinary actions against them. Thus the service which the Board is rendering to the general public is an amenity and so is an essential

part of the sovereign functions of the State as a welfare State. Hence, the Board cannot be said to be an ""industry"".

13. In the case of Physical Research Laboratory (supra) it has been held by the Supreme that neither from the nature of its organization nor from

the nature and character of activity carried on by it, can it be said to be an ""undertaking"" analogous to business or trade. It is not engaged in a

commercial activity and it cannot be described as an economic venture or a commercial enterprise as it is not its object to produce and distribute

services which would satisfy wants and needs of the consumer community. It is more an institution discharging governmental functions and a

domestic enterprise than a commercial enterprise. The Apex Court held that Physical Research Laboratory is therefore not an ""industry"" even

though it is carrying on the activity of the research in a systematic manner with the help of its employees. Similarly here also sovereign functions of

the Board to Register Ayurvedic and Unani practitioners and nothing more and, therefore, the Board is discharging governmental function and,

therefore, it can be said to be domestic enterprise than a commercial enterprise and hence Board is not an ""industry"".

14. The decision of Bangalore Water Supply (supra) was explained and distinguished in the decision of Physical Research Laboratory (supra) and

similarly said case is distinguished and explained in the present case also.

15. In this view of the matter, petitioner-Board cannot be said to be an ""industry"" as envisaged u/s 2(j) of the Act of 1947. Since the petitioner is

not an industry, therefore, Labour Court was not having any jurisdiction to pass any award.

16. Resultantly, this petition succeeds and is hereby allowed. The impugned award passed by the Labour Court dated 14.7.1997 (Annexure- P-8)

is hereby quashed. Parties are directed to been this own cost.