Court No. - 6 **A.F.R.**

Case :- WRIT - C No. - 1005250 of 1990

Petitioner :- Prabhagiya Nideshak Van
Respondent :- Van.Evam Sangik Vanki Karmachari
Counsel for Petitioner :- C.S.C.
Counsel for Respondent :- C.S.C.,J.N.Srivastava,Ramesh Kumar Srivastava

Hon'ble Alok Mathur,J.

1. Heard learned Standing counsel on behalf of the petitioner and Sri Ramesh Kumar Srivastav for respondent No.1

2. By means of the present writ petition the petitioners have challenged the award passed by Industrial Tribunal (II), U.P. at Lucknow whereby the claim preferred by the workmen has been allowed and the petitioner who is employer has been directed to pay the same wages to all 15 workmen with effect from 1.1.1985 and three workmen who were terminated from employment during pendency of the conciliation proceedings have been directed to be reinstated.

3. It has been submitted by learned counsel for the petitioner that the workmen for whose benefits the claim was filed by respondent No.1 are working on daily wages in Biswan Range of Sitapur Forest Department. It was stated that some of the casual employees working in that division were made permanent but the 15 workmen were not considered or made permanent and accordingly the Employees' Union raised industrial dispute. Reference was made by the State Government which was referred to Industrial Tribunal. Before the Tribunal notices were issued to the petitioner who initially did not appear and participate in the proceedings but subsequently sought adjournments on various dates and also did not comply with the order of the Tribunal directing them to produce evidence. The workmen, on the other hand, produced five witnesses in their support but the petitioner did not produce either any written or oral statement but only submitted that Forest Department was not an industry within the meaning of Industrial Disputes Act and consequently stated that the Tribunal did not have any jurisdiction to decide the controversy.

4. The Tribunal duly considered the objections raised by the petitioner and held that the petitioner would fall within the definition of industry and accordingly proceeded to decide the claim preferred by the workmen wherein they were able to demonstrate that they have been working for four years and

accordingly have worked for 240 days in a calendar year. They were also able to establish that they are being paid lesser wages than regular employees and consequently for the same work they are able to demonstrate that they were being paid the lesser wages than which are being paid to the regular employees. It is in aforesaid circumstances that the industrial tribunal allowed the claim and directed the petitioner to pay the same amount of wages which are being paid to regular employees. The other aspect which has been noticed by the Tribunal in the impugned order is the fact that during pendency of conciliation proceedings three of the employees were dismissed which was illegal and arbitrary and contrary to the statutory provisions contained under Section 6 E of U.P. Industrial Disputes Act, 1947 and accordingly directed the petitioner to reinstate the three persons whose services have been terminated during pendency of the said proceedings.

5. Learned Standing counsel while assailing the impugned order passed by the Industrial Tribunal has canvased only one issue regarding maintainability of the proceedings before the Industrial Tribunal on the ground that Forest Department is not an industry within the meaning of Section 2 (k) and accordingly the award is illegal, arbitrary and without jurisdiction and the impugned order should be set aside. He has relied upon Supreme Court judgements in the case of ***State of Gujrat Vs. Pratamsingh Narsinh Parmar, (2001) 9 Supreme court Cases 713*** where the Hon'ble Supreme Court was examining the order of the High Court which held that Forest Department of Gujarat was an industry and the Supreme Court while setting aside the judgment of the Gujarat High Court held that Single Judge did not examine the nature of the job of the organization and had merely followed the judgment of Supreme Court in the case of ***Bangalore Water Supply & Sewerage Board v. A. Rajappa, 1978 (2) SCC 213*** Supreme Court held that whenever such a question arises it would be incumbent upon the High Court to go into the nature of the work do be done in that particular organization on the basis of positive delineation of 'industry' and only thereafter one can conclude whether the concerned unit is a industry or not. Accordingly it was stated that interference is required in the impugned award.

6. Sri Ramesh Kumar Srivastava, on the other hand, has opposed the writ petition. He submits that the question as to whether U.P. Forest Corporation is an industry or not was specifically raised on numerous occasions before this High Court as well as Supreme Court and after examining this issue it has been held that U.P. Forest Corporation is an industry within the meaning of U.P. Industrial Disputes Act, 1947. It is undisputed fact that the respondent was working as a casual

worker in Social Forestry Scheme of Uttar Pradesh Government. They were involved in programme pertaining to tree plantation in the forest. It is on these facts that the Tribunal held that they were functioning in systemic activities, planting nurseries, selling plants and distributing the plants and forest produce.

7. In the case of ***State of U.P. Forest Department, U.P., Lucknow Vs. Presiding Officer, Industrial Tribunal, U.P., Lucknow (1996) 3 UPLBEC page 1984,*** this Court had examined as to whether Kanpur Prani Udyan which is established by Forest Department of State of U.P. would be an industry or not. In paragraph 6 and 8 it has been held as under:-

"6. That the Udyan is an industry and the respondent No.3 in each of these petitions are workmen covered by the Industrial Disputes Act, 1947, is concluded by the principles laid down by the Supreme Court in Chief Conservator of Forests and another Vs. Jagannath Maruti Kendhare, reported in 1996 Lab IC 967. In the said case also relating to the Forest Department, while executing a scheme framed as per Government resolution for creation of a park under bio-aesthetic development for the benefit of urban population, the Pune Forest Divisions function was held not to be a part of sovereign function of the State, and the Forest Department qua the scheme was held to be an 'industry' within the meaning of Section 2 (j) of the Industrial Disputes Act, 1947".

"8. Now as to next contention, reliance has been placed on behalf of the petitioner by the learned Standing Counsel on a decision of a Bench comprising Hon'ble the Chief Justice and Hon'ble Sudhir Narain, J. in Special Appeal No.371 of 1995-State of U.P. V. Sheo Babu Garg, decided on 24.5.1966 wherein based on the decision of the Supreme Court on the subject of regularisation of ad hoc / daily wage employees, it has been held that such regularisation could not be ordered by a Court, rather would have to be done by the concerned appointing authority on a consideration of validity of appointment, eligibility, conduct, availability of posts and funds, an although in suitable cases direction can be given to consider such regularization, the same cannot be done by the court or Tribunal itself. This contention however loses sight of the fact that Tribunal in these cases has not undertaken the exercise of nor ordered, regularization of the respondents, nor has it allowed them a running time scale, or other benefits like confirmation or promotion. It has merely acted upon the principle of equal pay for equal work, and finding that the respondents concerned are performing similar job as the regular employees, has awarded them only an amount equal to

the minimum of the time scale with addition of D.A. and other allowances. It has not put them in any running scale. The impugned awards thus are not obnoxious even on this ground. These writ petitions thus being devoid of force are liable to be dismissed."

8. Hon'ble Supreme Court had also examined this issued in the case of ***Chief Conservator of Forest Vs. Jagannath Maruti Kondhare, 1996 Lab IC page 967*** where also the workers engaged in the social forestry by the Forest Department of State Government of Maharashtra had made similar claims and in that circumstances it was held in para 15, 16 and 17 and 30 as under:-

"15. A perusal of the affidavit filed by the Chief Conservator of Forests on 5.12.1992, pursuant to our order of 6.11.1992 shows that the Pachgaon Parwati Scheme was framed as per the Government Resolution based on the policy decision taken in April 1976. The Scheme was to be initially for a period of 5 years and an area of about 245 hectares situated on a hill plateau on the southern outskirts and within easy access of Pune City was selected for creation of a park under bio-aesthetic development for the benefit of the urban population. It is further stated that the scheme was "primarily intended to fulfil bio-aesthetic, recreational and educational aspirations of the people which will have inestimable indirect benefit of producing enlightened generation of conservationists of nature inclusive of forests and wild life for the future". (Page 137) The affidavit goes on to state (at page 138) that the Pune Forest Division is also doing afforestation for soil/moisture conservation under various State level schemes as well as Employment Guarantee Schemes all of which are for a period of 5 years.

16. The aforesaid being the crux of the scheme to implement which some of the respondent were employed, we are of the view that the same cannot be regarded as a part of inalienable or inescapable function of the State for the reason that the scheme was intended even to fulfil the recreational and educational aspirations of the people. We are in no doubt that such a work could well be undertaken by an agency which is not required to be even an instrumentality of the State.

17. This being the position, we hold that the aforesaid scheme undertaken by the Forest Department cannot he regarded as a part of sovereign function of the State, and so, it was open to the respondents to invoke the provisions of the State Act. We would say the same qua the social foresting work undertaken in Ahmednagar district. There was, there-fore, no threshold bar in

knocking the door of the Industrial Courts by the respondents making a grievance about adoption of unfair labour practice by the appellants.

30. For the reasons aforesaid, we find no ground to interfere with the impugned order of the Industrial Courts. The appeals are, therefore, dismissed. In the facts and circumstances of the case, we, however, make no order as to costs."

9. The argument of the petitioner is that the departments of the State Government undertake sovereign functions and, hence, they cannot be declared as industry. This argument has not been accepted by the Supreme Court in the above cases. In the case of ***Fisheries Department Vs. Charan Singh (2015) 8 SCC page 150*** it has held to be an industry within the meaning of Section 2 of Industrial Tribunal Act. The relevant paragraph is being reproduced as under:-

"*13. In support of the above-said conclusions arrived at by us, we record our reasons here-under: it has already been rightly held by the Industrial Tribunal that the Department of Fisheries is covered under the definition of "industry" as defined under Section 2 (k) of the Act and also in accordance with the statement of RW1 and EW1, Shri R. B. Mathur, on behalf of the appellant before the Industrial Tribunal, because the object of the establishment of the appellant Department is fulfilled by engaging employees and that the Department is run on a regular basis. Thus, the matter of termination of the services of the workman of the said Department can be legally adjudicated by the Industrial Tribunal as the matter is covered under the provisos of the Act read with Schedule II Entry 10. Thus, it has been rightly held by the courts below that the dispute raised by the workman in relation to the termination of his services by the appellant is an industrial dispute."*

10. He has also relied upon the judgment in the case of ***State of U.P. Vs. Presiding Officer, Labour Court, U.P., and another, (2023) 4 ALJ 73*** decided by this Court in Writ C No.25182 of 2016 wherein in paras 19 and 21 it has been held as under:-

"19. The submission of the learned counsel for the respondent-workman, therefore, is that once the Supreme Court as well as this Court have already held in the aforesaid authorities that Irrigation Department and also the departments of the like nature depending upon the services rendered by the said departments, shall be covered by definition of "Industry' and, further, once the respondent was treated as an employee in the petitioner establishment, no error can be pointed out in adjudication of the dispute by the Labour Court and the

provisions of U.P. Industrial Disputes Act, 1947 were fully applicable.

....

21. In view of above discussions, the first contention of the State to the effect that Irrigation Department does not fall within the definition of "Industry" or that provisions of Act of 1947 are not applicable, does not have any force and is hereby rejected. Even, the Labour Court, in the impugned award has also given the same interpretation after relying upon the judgments in the case of Des Raj and etc. (supra) and other authorities. I do not find any error in the view taken by the Labour Court in this regard."

11. Considering the aforesaid judgments and also nature of the work involved in the present case where the workmen were working on the post of Mali and were involved in the task of plantation in the forest and distribution of forest produce, the said exercise was definitely a systematic activity and they have been working for four years continuously, it cannot be said that they were daily or casual employees engaged only intermittently. Accordingly the arguments of the petitioner cannot be accepted. Hon'ble Supreme Court in the case of ***Fisheries Department (supra)*** has held U.P. Forest Corporation to be an industry and accordingly we do not find any infirmity with the impugned order.

12. In view of the above, this Court is of the considered view that there is no merit in the writ petition and no infirmity is found in the order of the Industrial Tribunal which is affirmed and the writ petition is accordingly **dismissed.**

(Alok Mathur, J.)

Order Date :- 11.1.2024
RKM.