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HUSSAN MITHU MHASVADKAR

v.

BOMBAY IRON AND STEEL LABOUR BOARD AND ANR.

SEPTEMBER 7, 2001

B

[S. RAJENDRA BABU AND DORAISWAMY RAJU, JJ.]

*Labour Laws :*

*Industrial Disputes Act, 1947*

C

*Sections 2(j), 2 (s) & 10 (1)*

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*Termination of service—Reference filed before Labour Court—Status as workman—Section 2(j)—Scope of—Held reference not maintainable—Board not an industry and appellant not workman—High Court rejected the appeal—On appeal held: No error in the decision of the High Court that larger issue as to whether Respondent Board is an industry should have been entertained for consideration only in case where it is absolutely necessary when the claim could have been disposed of otherwise.*

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**Appellant was working as an Inspector in the Bombay Iron and Steel Labour Board and placed on probation for 3 months but his services were terminated after saving the Board for 21 months. The appellant claimed that his duties were of supervision, detection of defaulter and work of clerical nature. On dispute, a reference was made to the Labour Court u/s.10(1) and Section 12(5) of the Industrial Disputes Act. The reference was rejected as not maintainable on the ground that the Board was not an Industry and therefore appellant was not a workman and he could not claim any deemed confirmation. Aggrieved, the appellant approached the High Court by filing writ petition and thereafter a writ appeal, but was not successful. Hence this appeal. The issues before this court are (a) whether Bombay Iron & Steel Labour Board is an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947; and (b) whether the appellant, who was working as Inspector is a workman as defined in Section 2(s) of the I.D. Act, 1947.**

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**It was contended on behalf of appellant that it would be futile for anyone either to contend or countenance the plea that the Respondent Board was not an Industry so as to attract the provisions of the Industrial Disputes Act and**

accordingly the High Court should have held in favour of the appellant and remitted the matter to Labour Court for an adjudication on merits of the claim of the appellant as workman since Labour Court in its finding did not consider the same solely on the ground that that appellant was not employed in an Industry within the meaning of Section 2(j) of the Industrial Disputes Act.

It was contended on behalf of the respondents that since the Labour Court and the High Court had thoroughly examined the facts correctly as per relevant principles of law and rejected the claim of the appellant for cogent and convincing reasons, no interference is called for in this appeal.

Dismissing the appeal, the Court

HELD : 1.1. Where Labour Court as well as High Court entertained doubts about the status of appellant as workman within the meaning of Section 2(s) of the Industrial Disputes Act instead of adjudicating on the issue as to whether the respondent-Board is an industry or not, ought to have refrained from doing so and taken up the question about the status of the appellant for adjudicating at the threshold and if only the finding recorded was against the appellant refrained from adjudicating on the larger issue. The larger issue should have been entertained in case where it is absolutely necessary and not when the claim before it could have been disposed of otherwise. Accordingly, this Court has to deal with the status of the appellant as to whether he is a workman or not in the first instance. Further in order to examine, what constitutes an industry as per Section 2(j) of the Act, the principle has been laid down authoritatively in several decisions of the Court including the decision of this Court in *Bangalore Water Supply* case.

[630-E, F, G; 631-A, B]

*Bangalore Water Supply and Sewerage Board, etc. v. A. Rajappa and Ors. etc.*, [1978] 2 SCC 213, relied on.

1.2. No doubt in deciding about the status of an employee his designation alone cannot be said to be decisive and what really should go into consideration is the nature of duties and the powers conferred upon as well as function assigned to him. It is the predominant nature of the services that will be the true and proper test, the powers of Inspector and duties and obligation cast upon him as such are identical and also on par with a prosecuting agency in the public law field. Hence appellant cannot be considered to be engaged in doing any manual, skilled, unskilled, technical, operational, clerical or

A supervisory work and the mere fact that in the course of performing his duties incidentally he had to maintain records of evidence, the duties performed by him cannot result in conversion of post of 'Inspector' and cannot fall into the definition of workman. [633-D, E; 634-A, B]

B *H.R. Advanthaya and Ors. v. Sandoz (India) Ltd. and Ors.*, [1994] 5 SCC 737, followed.

C 1.3. In the instant case one of the issues as formulated by the Labour Court was whether the appellant was workman u/s. 2(j) of the Act. While answering in the affirmative and holding against the appellant, the Court stated that appellant had admitted that his main duty was to prosecute the employee and had not stated any clerical duties except maintaining of registers. Therefore it cannot be said that appellant who was appointed as Inspector was doing clerical work. Hence it cannot be said that the appellant was a workman. [632-G; 633-A, B]

D 2. The finding of Labour Court that the appellant was workman was upheld by the Single Judge as well as Division Bench of the High Court. Therefore there is no justification for this Court to direct Labour Court/High Court to re-adjudicate the issue as this aspect was already considered by them. [633-C]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11189 of 1995.

From the Judgment and Order dated 24.4.91 of the Bombay High Court in A.No. 337/91 in W.P. No. 1808 of 1987.

F Ms. Indira Jaisingh, Sanjoy Ghose, Ms. Jayna Kothari, Chirag M. Shroff and M.N. Shroff for the Appellant.

S.S. Naphde, Ms. Lata Desai, S.N. Singh and Vimal Dave for the Respondents.

G The Judgment of the Court was delivered by

RAJU, J. The two important questions that are put in issue in this appeal are as to:

H “(a) Whether the Bombay Iron & Steel Labour Board constituted under the provisions of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969

hereinafter referred to as “the Act”, falls within the definition of “Industry” within the meaning of Section 2 (j) of the Industrial Disputes Act, 1947; and A

(b) Whether the appellant, appointed and working at the relevant point of time as an Inspector, discharging duties, powers and obligations envisaged under Section 15 answers the description of “workman” as defined in Section 2 (s) of the I.D. Act, 1947. B

The appellant was working as an Inspector in the Bombay Iron & Steel Labour Board [hereinafter referred to as “the Board”] from 13.3.79, having been appointed as such on 10.3.79. On such appointment, the appellant was placed on probation for a period of three months and after putting in a service of 21 months, an order of termination came to be made on 17.12.80. According to the appellant, he was doing the work of supervision, detection of defaulters, other work of clerical nature, maintenance of registers, files, preparation of reports etc. On a dispute being raised, a reference was made under Section 10 (1) and Section 12 (5) of the I.D. Act, to the First Labour Court, Bombay, for adjudication. By an Award dated 18.7.86, the reference was rejected as not maintainable, on the findings recorded that the Board is not an ‘Industry’ and since the appellant was not employed in an ‘Industry’, he cannot fall within the definition of ‘workman’, though the Labour Court also recorded a finding that the appellant was not a workman. It was also found by the Labour Court that the appellant could not claim any automatic or deemed confirmation and that being only a probationer his services were dispensed with on being found not suitable for the post of Inspector. C  
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The appellant pursued the matter by way of a Writ Petition before the learned Single Judge as also an appeal before a Division Bench of the Bombay High Court unsuccessfully, resulting in the filing of this appeal. Heard Ms. Indira Jaising, learned senior counsel for the appellant and Mr. S.S. Naphde, Senior Advocate, for the respondents. Strong reliance has been placed upon the decision of this Court reported in *Bangalore Water Supply and Sewerage Board, etc. v A. Rajappa and Ors. etc.*, [1978] 2 SCC 213], besides inviting our attention to the decisions reported in *D.N. Banerji v. P.R. Mukherjee and Ors.*, [1953] SCR 302 = AIR 1953 SC 58; *The Corporation of the City of Nagpur v. Its employees and Ors.*, [1960] 2 SCR 942 = AIR 1960 SC 675]; *Vizagapatnam Dock Labour Board v Stevedores Association, Vishakhapatnam and Ors.*, [1971] 2 SCR 303 = AIR (1970) SC 1626, *H.R. Adyanthaya and Ors. v. Sandoz (India) Ltd. and Ors.*, [1994] 5 SCC 737 and that of a learned Single Judge of the Andhra Pradesh High Court in *Management* F  
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A *of Dock Labour Board, Viskhapatnam v. Industrial Tribunal and Anr.*, (1996) 1 Labour Law Journal 5].

B The learned senior counsel for the appellant strenuously contended that after the decision of this Court in *Bangalore Water Supply & Sewerage Board's* case (supra), it would be futile for anyone either to contend or countenance the plea that the Board in question is not an industry so as to attract the provisions of the I.D. Act and that the High Court should have held in favour of the appellant on this issue and remitted the matter to the Labour Court for an adjudication on merits of the claim as to whether the appellant was a workman or not, since the Labour Court has chosen to record  
C a finding on the claim of the appellant as 'workman', against him solely on the ground that he was not employed in any 'industry' within the meaning of Section 2 (j) of the I.D. Act. The learned senior counsel for the respondent, with equal vehemence, urged that the Labour Court and the High Court (the learned Single Judge as well as the Division Bench) had made a thorough  
D examination of the facts of the case in the light of the correct and relevant principles of law governing the matter and rightly rejected the claim of the appellant, for cogent and convincing reasons and that, therefore, no interference is called for in this appeal at the instance of the appellant. Our attention was also drawn to the provisions of the Act and the scheme framed for the protection of Bombay Iron & Steel unprotected workers.

E On a careful consideration of the respective submissions of the learned counsel on either side, we are of the view that in a case of the nature where the Labour Court as well as the High Court entertained doubts about the status of the appellant as a workman within the meaning of Section 2(s) of the I.D. Act, instead of embarking upon an adjudication in the first instance  
F as to whether the respondent-Board is an Industry or not so as to attract the provisions of the Industrial Disputes Act, ought to have refrained from doing so and taken up the question about the status of the appellant for adjudication at the threshold and if only the finding recorded was against the appellant refrained from adjudicating on the larger issue affecting the various kinds of other employees, as to the character of the Board, as an industry or not. The  
G larger issue should have been entertained for consideration only in a case where it is absolutely necessary and not when the claim before it could have been disposed of otherwise without going into the nature and character of the Undertaking itself. For the said reason and also having regard to the submission made by the learned senior counsel for the respondents itself that  
H the question as to whether the appellant falls within the definition of 'workman'

may itself be considered on the supposition that the Board is an industry, we propose to deal with the status of the appellant as to whether he is a workman or not at the first instance and if necessitated on account of our decision on that issue, undertake the larger issue for our consideration and decision. The question as to what constitutes an industry for the purposes of the Industrial Disputes Act and what are those Undertakings or Establishments or activities, which answer the definition of 'industry' in Section 2(j), has been laid down authoritatively in several decisions of this Court, including the one in the *Bangalore Water Supply and Sewerage Board* case (supra) and what remains is to apply to individual cases, the principles laid down therein to adjudge the character of the activity or an undertaking or institution in a given case on the touchstone of the principles laid down therein. In view of this position in law, it becomes all the more necessary to first undertake an adjudication of the question as to status of the appellant.

The appellant indisputably was appointed and was working, at the relevant point of time, as an Inspector as envisaged under Section 15 to exercise powers conferred upon and duties and obligations enjoined on him under Section 15 of the Act. It is useful to extract the said provision, which reads as hereunder :-

"15. (1) The Board may appoint such persons as it thinks fit to be Inspectors possessing the prescribed qualifications for the purposes of this Act or of any scheme and may define the limits of their jurisdiction.

(2) Subject to any rules made by the State Government in this behalf, an Inspector may -

- (a) enter and search at all reasonable hours, with such assistants as he thinks fit, any premises or place, where unprotected workers are employed, or work is given out to unprotected workers in any scheduled employment, for the purpose of examining any register, record of wages or notices required to be kept or exhibited under any scheme, and require the production thereof, for inspection;
- (b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is an unprotected worker employed therein or an unprotected worker to whom work is given out therein;

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- A (c) require any person giving any work to an unprotected worker or to a group of unprotected workers to give any information, which is in his power to give, in respect of the names and addresses of the persons to whom the work is given, and in respect of payments made, or to be made, for the said work;
- B (d) seize or take copies of such registers, records of wages or notices or portions thereof, as he may consider relevant, in respect of an offence under this Act or scheme, which he has reason to believe has been committed by an employer; and
- C (e) exercise such other powers as may be prescribed:

Provided that, no one shall be required under the provisions of this section to answer any question or make any statement tending to incriminate himself.

- D (3) Every Inspector appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.”

- E Section 17B of the Act mandates that no Labour Court shall take cognizance of any offence punishable by or under the Act, except on a complaint in writing made by an Inspector or by a person specially authorized in this behalf by the Board or the State Government. Section 20 enables the Inspector appointed under the Act to be notified for being deemed to be the Inspector for the purpose of enforcement of the provisions of the Maternity Benefit Act, 1961. Section 3 of the Act empowers the State Government to
- F frame a scheme providing for registration of employers and unprotected workers in any scheduled employment or employments, and provide for regulating the terms and conditions of work of registered unprotected workers and also make provision for the general welfare in such employments and that as a matter of fact for the class or category of workers in question, a scheme known as Bombay Iron & Steel Unprotected Workers (Regulation of
- G Employment and Welfare) Scheme, 1970 came to be made and duly published.

- H The first issue out of the total number of five issues formulated by the Labour Court in this case as to whether the appellant was not a ‘workman’ under Section 2 (s) of the Industrial Disputes Act, was answered in the affirmative and against the appellant. In reaching this conclusion after advertng to the materials placed on record the Labour Court stated as follows:

“.....Hence, on facts, it can be said that Mr. Mhasvadkar has not stated any clerical duties except those of writing the registers. On the contrary, he has admitted his main duty is to prosecute the employers. Under these circumstances, it cannot be said that the Inspector appointed under the Mathadi Act is doing the clerical work mainly. He may be required to do some writing work but that is not the main duty of Mr. Mhasvadkar.....On facts, I do not agree with the argument of the learned advocate for Mr. Mhasvadkar that his duties were of clerical nature.” [para 13]

This finding of fact recorded by the Labour Court was affirmed by the learned Single Judge who stated, “I also uphold the finding of the First Labour Court that the petitioner is not a ‘workman’.” [para 16] In spite of all these, it cannot be stated that this aspect was not considered by the Labour Court or by the High Court in the writ petition and, there is any need or justification for this Court to direct the Labour Court or High Court, to go in to and decide this question, once over again.

No doubt, in deciding about the status of an employee, his designation alone cannot be said to be decisive and what really should go into consideration is the nature of his duties and the powers conferred upon as well as the functions assigned to him. Even if the whole Undertaking be an Industry, those who are not workmen by definition may not be benefited by the said status. It is the predominant nature of the services that will be the true and proper test. Operations of the Government which are pure and simpliciter administrative and of Governmental character or incidental thereto cannot be characterized to be ‘industrial’ in nature, be it performed by a department of the Government or by a specially constituted statutory body to whom anyone or more of such functions are delegated or entrusted with. When, as in this case, as disclosed from Section 15 of the Act as also the provisions of the scheme, the primary duties of an employee and the dominant purpose, aim and object of employment was to carry out only certain specific statutory duties in the matter of effective enforcement and implementation of the welfare scheme in order to ameliorate and rehabilitate a particular cross section of labour, and, if need be, on the basis of his own decision which calls for an high degree of discretion and exercise of power to prosecute the violator of the provisions of the Act, Rules and the provisions of the scheme, we are unable to accord our approval to the claim made on behalf of the appellant that he can yet be assigned the status of a ‘workman’, without doing violence to the language of Section 2 (s) and the very purpose and object of the I.D. Act, 1947. That apart, even judging from the nature of

- A powers and the manner of its exercise by an Inspector, appointed under the Act, in our view, the appellant cannot be considered to be engaged in doing any manual, unskilled, skilled, technical, operational, clerical or supervisory work and the mere fact that in the course of performing his duties he had to also maintain, incidentally, records to evidence the duties performed by him, day-to-day, cannot result in the conversion of the post of 'Inspector' into any one of those nature noticed above, without which, as held by a Constitution Bench of this Court in the decision in *H.R. Adyanthaya's* case (supra), the appellant cannot fall within the definition of 'workman'. The powers of Inspector and duties and obligations cast upon him as such are identical and akin to law enforcing agency or authority and also on par with a prosecuting agency in the public law field.
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Consequently, we find no error in the ultimate decision of the High Court denying relief to the appellant. In view of this, we are not called upon to decide the larger issue and the said question is left open for consideration in an appropriate case, as and when found to be necessary. The appeal fails and shall stand dismissed. No costs.

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S.K.S.

Appeal dismissed