

Subhas Bhaskar Gadre Vs. Second Labour Court and Others

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Court : Mumbai

Decided On : Feb-15-1993

Reported in : (1993)ILLJ1001Bom

Judge : M.L. Pendse, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 2, 10(1) and 12(5)

Appeal No. : Writ Appeal No. 838/1990

Appellant : Subhas Bhaskar Gadre

Respondent : Second Labour Court and Others

Advocate for Def. : Navin Parekh, Adv.

Advocate for Pet/Ap. : S.D. Puri, Adv.

Judgement :

Pendse, J.

1. There is no merit in this appeal filed to challenge legality of judgment dated June 8, 1990 delivered by learned single Judge in Writ Petition No. 2615 of 1987. By the impugned judgment the learned judge dismissed the petition and upheld the order dated April 29, 1987 passed by Presiding Officer, Second Labour Court, Bombay. The facts which gave rise to passing of the order by the Labour Court are

as follows :

2. The appellant was appointed as Assistant Librarian on December 7, 1968 in a Library which is run on the premises of the Central Railway at Victoria Terminus. The members of the Library are the gazetted and non-gazetted employees of the Central Railway. The non-gazetted members contribute Rs. 2/- every month, while the gazetted Officers Rs. 3/-. It is not in dispute that the Library is not run by the Railway Administration. It is also not in dispute that the Library is a Circulating Library in which magazines are circulated to the members. The library employs a clerk and a peon. The Appellant was promoted as Librarian with effect from December 30, 1972 and his services were terminated by letter dated March 30, 1984. The letter of termination, inter alia, recites that on stock verification it was noticed that several books missing. It was noticed that the appellant was habituated to unauthorised absenteeism and late in the regular attendance and the appellant was not complying with the instruction issued by the Management. The letter further recites that the function of the Library is deteriorating day by day due to inefficient and indifferent working and therefore the service stands terminated.

3. The appellant sought reference after conciliation proceedings ended in failure and the Commissioner of labour made reference under Section 10(1) read with Section 12(5) of the Industrial Disputes Act for adjudication to the Presiding Officer, 2nd Labour Court. The reference was resisted by the respondents claiming that the Library was not an Industry and consequently the appellant was not a workman and therefore it was not open for the Labour Court to adjudicate the dispute. The contention found favour with the Labour Court and the reference came to be rejected by order dated April 29, 1987. The appellant challenged legality of the order of the Labour Court by filing writ petition, but the learned single Judge dismissed the petition and concurred with the finding of the Labour Court.

4. Shri Puri, learned counsel appearing on behalf of the appellant, submitted, that the Labour court as well as the Learned single Judge were in error in holding that the library is not an Industry. The Learned counsel placed strong reliance upon the decision of the Supreme Court reported in : (1978)ILLJ349SC Bangalore Water Supply & Sewerage Board etc. v. A Rajappa and others etc. It is not possible to

accede to the submission of the learned counsel. Before advertng to the decision of the Supreme Court, few undisputed facts are required to be reiterated. The Library is run on the premises of the Central Railway, but the Library is not under the control of the Railway Administration and only the Senior Deputy Manager, is ex-officio Honorary Secretary of the Library. It is not in dispute that there are only two employees, a clerk and a peon, and their service conditions are not regulated in accordance with the service conditions of the Central Railway employees. There is no evidence to indicate that any rent is paid by the Library to the Central Railway, but there is positive evidence to indicate that the facilities of fans and water supply are given by the central railway. It is not in dispute that the subscribers are only the employees of the Central Railway and the Subscription collected is hardly Rs. 12,000/- per annum, out of which the wages of the two employees are paid and the rest of the amount is used for the purchase of magazines and books. With this background it is necessary to examine the contention of Shri Puri that the Library should be treated as Industry. The learned counsel submitted that in accordance with the test laid down by the Supreme Court in paragraph 131 of the judgment, the Library should be treated as an Industry. The Supreme Court observed that where (i) systematic activity, (ii) organised by co-operation between employer and employees and direct and substantial element is commercial, and (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes exists, then there is Industry in that Enterprise. We are unable to accede to the submission that on the facts and circumstances of the case any of the ingredients set out by the Supreme Court exist. It is difficult to conclude that there is a systematic activity undertaken by the enterprise of running circulating library. It is also difficult to accede to the submission that there is a cooperation between the employees and the management as contemplated by the Supreme Court. The element of production and distribution of goods and services calculated to satisfy human wants is also no strictly in existence. It is futile to suggest that when hardly two persons are employed in a circulating library run by the employees of an establishment, the library should be treated as an industry. We are not prepared to exercise our writ jurisdiction and disturb the order passed by the Labour Court and which was confirmed by the trial judge. In our judgment, the appeal is without any

merit and is required to be dismissed.

5. Accordingly, appeal fails and is dismissed, but there will be no order as to costs.

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