Madurai Children Aid Society, Represented by Its President Vs. the Labour Court and anr.

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Court : Chennai

Decided On : Nov-09-1995

Reported in : (1996)1MLJ357

Appellant : Madurai Children Aid Society, Represented by Its President

Respondent : The Labour Court and anr.

Judgement :
ORDER

AR. Lakshmanan, J.

1. The petitioner, who claims to be a voluntary service organisation and registered as a Society under the provisions of the Tamil Nadu Societies Registration Act, filed the above writ petition to quash the award passed by the 1st respondent in I.D. No. 353 of 1991 dated 27.3.1993.

2.The facts of the case in brief are as follows:

The main objects of the petitioner-society are as under:

(a) To establish a non-official agency for carrying on the provisions of the Madras Children Act, 1920, and such other laws as may be in force from time to time for

the prevention of juvenile crime and promotion of the welfare of children in Madurai District and more particularly;

(b) To provide a Home of shelter for the reception of juvenile offenders during enquiry into their cases, and for the proper care of juveniles who may be placed under the supervision or committed to its custody by the court;

(c) To work the probation system as far as possible in dealing with juvenile delinquents;

(d) To provide a Home or Homes for the reception of destitute or uncared for children and prevent them from falling into crime vagrancy;

(e) To assist in the administration of the Madras Borstal Schools Act and especially the probation works, obtaining employment of adolescent released on licence and in such other ways as may be found expedient; and

(f) Generally to arouse public interest in the case of children and to help in the promotion of their physical, mental and moral welfare.

3. According to the petitioner, the functions of the society also encompass the administration of the day-to-day affairs of the society, mobilisation of funds by donation and subscription from well-wishers, arrangement of moral lessons, literacy programmes and other decent practices. The petitioner-society is purely run on philanthropic terms and does not have any business or profit motive. The society consists mainly of honorary members with means and status, who supervise the affairs of the society on an honorary and voluntary basis. The society claims that it carries out the functions which would normally be carried out by the Government with reference to juvenile delinquents as well as neglects.

4. The petitioner submits that in order to run the society, it was constrained to engage a few persons like watch and ward staff, cooks and matrons. The 2nd respondent was engaged temporarily as an Assistant Matron. According to the petitioner, she was not properly discharging her duties and was quarrelling with others and preferring false complaints against the co-employees. One such complaint was made to the President of the society on 18.6.1990 and after a

thorough enquiry it was found that she filed a false complaint. In view of her such serious mischief, it was decided to award the punishment of suspension of 15 days from 30.6.1990 and passed an order to that effect on 28.6.1990. She also absented from duty unauthorisedly on 27th and 28th June, 1990. Even after the expiry of the period of suspension, she failed to report for duty. Therefore, another memo dated 20.7.1990 was issued to the 2nd respondent for absence as well as on the basis of numerous other reports received against her. Since her explanation was not satisfactory and revealed gross arrogance, the petitioner-society had no other option except to terminate her services and accordingly by order dated 18.9.1990, her services were terminated.

5. Aggrieved by the order of termination, the 2nd respondent raised a dispute under the provisions of the Industrial Disputes Act (hereinafter referred to as the Act) and on failure of conciliation, the 2nd respondent filed a claim statement and the dispute was taken on file by the 1st respondent as I.D. No. 353 of 1991. On behalf of the petitioner, a detailed counter statement had also been filed. In the counter-statement, the petitioner took a preliminary objection that the petitioner was not an industry within the meaning of the Act. The petitioner also requested the 1st respondent to take this issue as a preliminary issue since it will go to the root of the jurisdiction of the 1st respondent to entertain the claim on merits. Arguments were advanced and written submissions were also filed by the parties before the 1st respondent. The 1st respondent passed orders holding that the petitioner is an industry. Aggrieved by the said order, the petitioner has filed the present writ petition.

6. The 2nd respondent filed a counter affidavit by way of vacate stay petition in W.M.P. No. 17012 of 1995 objecting to the maintainability of the writ petition against preliminary issues and thereby stalling the hearing of the main matter by the Labour Court.

7. I have heard the arguments of Mr. Vijay Narayan for the petitioner and Mr. V. Prakash for the 2nd respondent.

8. Mr. Vijay Narayan drew my attention to the main objects of the petitioner-society. According to him, the society carries out the functions which would

normally be carried out by the Government in relation to the juvenile delinquents as well as neglects and that the predominant object is to protect and maintain the juvenile delinquents and neglected juvenile offenders who are remanded to judicial custody pending trial of criminal cases against them. The functions of the society, according to the learned Counsel for the petitioner, also encompasses the administration of the day-to-day affairs of the society, mobilisation of funds by donation and subscription from well-wishers, arrangement of moral lessons, literacy programmes, etc. Mr. Vijay Narayan contended that to run the society, the society is constrained to engage a few persons like watch and ward staff, cooks and matrons. According to him, the petitioner-society is a voluntary service organisation and such an organisation cannot be considered to be an industry by applying the test laid down by the Supreme Court in Bangalore Water Supply and Sewerage Board v. A. Rajappa : (1978)ILLJ349SC . He also cited the following decisions in support of his contention reported in Tube Products of India v. First Additional Labour Court, Madras (1994) 2 L.L.N. 203 and Pappammal Anna Chatram v. The Labour Court, Madurai : (1964)ILLJ493Mad besides Bangalore Water Supplyand Sewerage Board v. A. Rajappa : (1978)ILLJ349SC cited supra. On the other hand, Mr. V. Prakash, learned Counsel for the 2nd respondent relied on the following two decisions reported in Sadhu Ram v. Delhi Transport Corporation : (1983)IILLJ383SC and D.P. Maheswari v. Delhi Administration : (1983)IILLJ425SC .

9. The only question that arises for consideration is, whether the petitioner-society is not an industry within the meaning of Section 2(j) of the Act. We have already seen the main objects and functions of the society. The petitioner-society is a voluntary service organisation and whether such an organisation can be considered to be an industry by applying the test laid down by several judgments cited by both parties is the only question that arises for consideration.

10. Before applying the test laid down by various judgments, it is useful to see the order of the Labour Court which is impugned in this writ petition. It is the specific case of the petitioner that the petitioner-society is not having any object of business motive or reward and that the functions of the society are to look after the administration of the day-to-day affairs of the society, mobilisation of funds by

donation and subscription from well-wishers, arrangement of moral lessons, literacy programme, etc., to the persons at home. It is purely run on philanthropic terms and is giving totally, rather exclusively, a philanthropic service to such destitutes and circumscribed minor children. It is contended that the society just consists of honorary members who supervise the affairs of the home. It was going on smoothly and the purpose and funds are utilised efficiently. For the said purpose, the society is engaging a few persons like watch and ward, cooks and matrons. The purpose of appointing matrons is to observe the persons at Home closely and to look after their basic needs like clothing bed, cleanliness, discipline, etc.

11. It is contended by Mr. Vijay Narayan, learned Counsel for the petitioner, that the 2nd respondent was engaged temporarily as Assistant Matron for some time. The petitioner raised a preliminary objection before the Labour Court at the first instance before embarking upon the merits of the case. According to the learned Counsel for the petitioner, the purpose of the society is more philanthropic in nature with no air of rendering profit or service either to its members or to the public. Moreover, the society, is acting only as an agent of the State Government and having limited powers of supervising the affairs. In view of the above position, Mr. Vijay Narayan contended that it cannot be said that the society had financial control and there exists matter and servant relationship between the society and the persons engaged at the home. Apart from that, in view of the objects and practice, the petitioner-society cannot be construed as an industry as defined in Section 2(j) of the Act. Secondly, it is contended that the 2nd respondent was appointed as an Assistant Matron temporarily and by the nature and the functions discharged by her, she cannot be construed as doing skilled or unskilled manual or technical or supervisory or clerical work and thereby she cannot be construed as a workman as defined under Section 2(s) of the Act.

12. My attention was drawn to the award of the 1st respondent and I have carefully gone through the same. The reasoning of the Labour Court that the petitioner provides some vocational training to the children and therefore, it would be an industry since the children who leave the Home are in a position to do some work, is clearly an erroneous finding in law. As rightly pointed out by the learned Counsel

for the petitioner, the question before the Labour Court was not whether the children who leave the Home would be competent to work in an industry, but the question was, whether the petitioner, which is doing some voluntary service, is an industry or not. The Labour Court, in my opinion, has misdirected itself in law and hence, as rightly pointed out by the learned Counsel for the petitioner, the impugned order is liable to be interfered with.

13. It is further seen that the petitioner is discharging certain sovereign functions of the Government. The Apex Court has held that if an organisation discharges sovereign or governmental functions, that organisation would not be an industry within the meaning of the Act. It has also held that a restricted category of profession, clubs, co-operatives, research labs and even gurukulas may qualify for exemption if going by the dominant nature criterion, no employees are entertained by in minimal matters, marginal employees are hired without destroying the non-employees character of the unit. In the instant case, it is to be noted that the petitioner is a society which looks after the administration of a Children's Home and therefore, such an institution industry, in my opinion, cannot be termed as an industry. It is also not the case of the 2nd respondent, as rightly pointed out by the learned Counsel for the petitioner, that in the instant case there is production of goods or service, which are sold for a consideration.

14. Mr. V. Prakash, learned Counsel for the 2nd respondent, strongly relied on the judgment of the Supreme Court reported in D.P. Maheswari v. Delhi Administration : (1983)IILLJ425SC to show that the Tribunal should decide all issues in dispute at the same time without trying some of them as preliminary issues. The Supreme Court observed as follows:

It is better that tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution or the jurisdiction of the Supreme Court

under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill-afford to wait by dragging the latter from court to court for adjudication of peripheral issues, avoiding decision on issues moral vital to them. Article 226 or Article 136 are not to be used to break the resistance of workman in this fashion. Tribunals and courts who are requested to decide preliminary question must therefore ask themselves whether such threshold part adjudication is really necessary and whether it will not lead to other woeful consequences. After all tribunals like Industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeyings up and down.

15. The above judgment of the Supreme Court, in my opinion, is not applicable to the case on hand and is distinguishable in facts. In the case before the Supreme Court, an employee raised an industrial dispute and the Lt. Governor of Delhi referred the dispute for adjudication to the Additional Labour Court, Delhi, under Sections 10(1)(c) and 12(5) of the Act. The dispute referred to the Labour Court was, whether the termination of services of D.P. Maheswari is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect. The management straightaway questioned the reference by filing a writ petition in the Delhi High Court, which was dismissed. Thereafter, the management raised a preliminary contention before the Labour Court that D.P. Maheswari was not a workman within the meaning of Section 2(s) of the Act and the reference was, therefore, incompetent. The Labour Court tried the question as a preliminary issue. The Labour Court, after referring to the evidence of the employee's witnesses, said that the claimant was employed mainly for clerical duties and he did not discharge the same. The Labour Court held that the nature of the main duties being discharged by the claimant was clerical and not supervisory or administrative despite his designation as officer, and therefore he has to be held to be a workman under Section 2(s) of the Act.

16. Dissatisfied with the decision of the Labour Court oh the preliminary issue, the management invoked the High Court's jurisdiction under Article 226 of the Constitution. A learned single Judge of the Delhi High Court allowed the writ

petition and quashed the order of the Labour Court and the reference made by the Government. A Division Bench affirmed the decision of the single Judge. The matter was thereupon taken to the Supreme Court at the instance of the workman who obtained special leave to appeal. The Supreme Court, on the facts and circumstances of the case, held that the High Court was totally unjustified in interfering with the order of the Labour Court under Article 226 of the Constitution and therefore, set aside the judgments of the learned single Judge and a Division Bench and restored the order of the Additional Labour Court and directed the Additional Labour Court to dispose of the reference.

17. In the instant case, a pertinent question which goes to the root of the matter viz., jurisdiction, was raised by the petitioner-society, that the petitioner-society is, not an industry within the meaning of Section 2(j) of the Act. No objection seems to have been taken by the 2nd respondent before the Labour Court in considering the objection taken by the petitioner-society as a preliminary issue. While considering the preliminary issue, as pointed out by me in paragraphs supra, the Labour Court has misdirected itself in law. The reasoning given by the Labour Court, as already seen, is clearly erroneous. As pointed out by the learned Counsel for the petitioner, the question before the Labour Court was not whether the children who leave the Home would be competent to work in an industry but the question was, whether the petitioner-society, which is doing some voluntary service, is an industry. Since the preliminary objection raised by the petitioner goes to the root of the matter, such a preliminary objection taken by the petitioner cannot be construed as an abuse of the process of law. This Court has already entertained the writ petition and issued rule nisi to the 2nd respondent. It is settled law that question of jurisdiction, if raised by any party to the proceedings, should be decided as a preliminary issue. Therefore, I am of the opinion, that the preliminary issue raised by the petitioner-society is in order and the order passed by the Labour, Court is amenable for writ jurisdiction.

18. The next decision relied on by Mr. V. Prakash is reported in Sadhu Ram v. Delhi Transport Corporation : (1983)IILLJ383SC . That was a case by an employee who was a probationer Bus Conductor whose services were terminated by the management of Delhi Transport Corporation. On the failure of the

conciliation proceedings, the conciliation officer submitted his report to the Delhi Administration under Section 12(5) of the Act whereupon the Delhi Administration referred the dispute to the Labour Court, Delhi, for adjudication as to whether the termination of service of Shri Sadhu Ram, conductor, is illegal and unjustified and if so, what directions are necessary in this respect. The Labour Court held that the Union had raised a valid demand with the management. Consequently, the management was directed to re-instate the workman with full wages and benefits. The management filed a writ petition under Article 226 of the Constitution in the High Court, Delhi, questioning the award of the Labour Court. The High Court quashed the award of the Labour Court. The decision of the learned single Judge was affirmed by a Division Bench of the Delhi High Court. The workman filed a Special Leave Petition under Article 136 of the Constitution. The Supreme Court allowed the appeal, set aside the judgments of the High Court and restored the award of the Labour Court. The Supreme Court was of the opinion that it is not for the High Court to constitute itself into an appellate court over tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to readjudicate upon questions of fact decided by those Tribunals and that the questions decided pertain to jurisdictional facts does not entitle the High Court to interfere with the findings on jurisdictional facts which the tribunal is well competent to decide.

19. This judgment is also not applicable to the facts and circumstances of the case on hand. In the Supreme Court case, firstly, the question before the Labour Court was, whether the termination of service of an employee was illegal and unjustified and if so, what directions are necessary in that respect. The Labour Court directed reinstatement with full backwages and benefits, which was interfered with by the High Court. The Supreme Court has interfered with the finding of the High Court and allowed the appeal filed by the workman and restored the award of the Labour Court only on the ground that the High Court has acted as an appellate court over the tribunals constituted under special legislations and that the High Court has no authority to readjudicate upon questions of fact decided by the Tribunals and that the questions decided pertain to jurisdictional facts does not entitle the High Court to interfere with the findings on jurisdictional facts which the tribunal is well competent to decide. It is thus seen, the Supreme Court has set aside the orders

of the High Court on the peculiar-acts and circumstances of the said case. This apart, that writ petition was filed by the management against the final order of adjudication by the Labour Court and not against a preliminary issue. Therefore, this judgment will be of no assistance to the 2nd respondent. It is pertinent to notice at this stage that the Supreme Court in the above two decisions has not said as an absolute rule that no writ petition is maintainable against the interim award.

20. The first decision cited by Mr. Vijay Narayan, learned Counsel for the petitioner, in support of his contention is reported in Tube Products of India v. First Additional Labour Court, Madras (1994) 2 L.L.N 203 rendered by S. Govindaswami, J. while dealing with an identical case, the learned Judge has held as follows:

There would be a possibility of cases in which the final finding on issue, like the issue in the instant case, affects the parties prejudicially and, therefore, it cannot be considered that there is total impediment on the jurisdiction of the High Court vested under Article 226 of the Constitution of India to entertain the writ petition as against the interim award. Maintainability of the writ petition, as against the interim award, depends upon various factors and there is no total bar for the High Court to entertain writ petition under Article 226 of the Constitution against an interim award and the Supreme Court also has not held so. But the Supreme Court has considered that various aspects has considered that various aspects have to be looked into before entertaining the writ petition as against interim award. The Supreme Court has not held that in all circumstances of all cases, the High Court cannot exercise the jurisdiction available under Article 226 of the Constitution and if that be so, it would amount to depriving the jurisdiction of the High Court to entertain any writ petition as against the interim award. It is only for the reasons stated in the said judgment, the Supreme Court held that normally the writ petition not being entertained as against the interim award, having due regard to the facts and circumstances of the case. It is not an absolute embargo for the High Court to entertain the writ petition in cases where the High Court feels that there is a justification to entertain the writ petition. In the instant case, considering the facts and circumstances of the case, it cannot be said that the writ petition is not

maintainable.

21. In the second decision cited by Mr. Vijay Narayan, reported in Bangalore Water Supply and Sewerage Board v. A. Rajappa : (1978)ILLJ349SC , the Supreme Court has observed as follows:

Can charity be 'industry'? This paradox can be unlocked only by examining the nature of the activity of the charity, for there are charities and charities. The grammar of labour law in a pluralist society tells us that the worker is concerned with wages and conditions of service, the employer with output and economies and the community with peace, production and stream of supply. This complex of work, wealth and happiness, firmly grasped, will dissolve the dilemma of the law bearing on charitable enterprises. Charity is free; industry is business. Then now? A lay look may scare; a legal look will see; a social look - will see through a hiatus inevitable in a sophisticated society with organisational diversity and motivational dexterity.

If we mull over the major decisions, we get a hang of the basic structure of 'industry' in its legal anatomy. Bedrocked on the ground norms, we must analyse the elements of charitable economic enterprises, established and maintained for satisfying human wants. Easily, three broad categories emerge; more may exist. The charitable element enlivens the operations at different levels in these patterns and the legal consequences are different, viewed from the angle of 'industry'. For income-tax purposes, Trusts Act or company law or registration law or Penal Code requirements the examination will be different. We are concerned with a benignant disposition towards workmen and a trachotomy of charitable enterprises run for producing and/or supplying goods and services, organized systematically and employing workmen, is scientific.

The first is one where the enterprise like any other, yields profits but they are siphoned off for altruistic objects. The second is one where the institution makes no profit but hires the services of employees as in other like businesses but the goods and services which are the output, are made available, at low or no cost, to the indigent needy who are priced out or the market. The third is where the establishment is oriented on a humane mission fulfilled by men who work, not

because they are paid wages, but because they share the passion for the cause and derive job satisfaction from their contribution. The first two are industries, the third not. What is the test of identity whereby these institutions with eleemosynary inspiration fall or do not fall under the definition of industry?

All industries are organised, systematic activity. Charitable adventures which do not possess this feature, of course, are not industries. Sporadic of fugitive strokes of charity do not become industries. All three philanthropic entities, we have itemised, fall for consideration only if they involve co-operation between employers and employees to produce and or supply goods and/or services.

If, in a pious or altruistic mission many employ themselves, from or for small honoraria or like return, many drawn by sharing the purposes or cause such as lawyers volunteering to run a free legal services, clinic of doctors serving in the spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality and the service or supplied free or at nominal cost and those who serve or not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry, even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

22. Last in the series is the judgment of a Division Bench of this Court in Pappammal Anna Chatram v. The Labour Court, Madurai (1995) 1 M.L.J. 100. That writ appeal was directed against the judgment of K. Veeraswami, J., as he then was, which was filed by Pappammal Anna Chatram by its Trustee T.K. Subramania Pillai, to quash the order of the Labour Court, Madurai. A lady by name Pappammal endowed certain lands as well as a chatram several years ago for the express object of feeding poor pilgrims from distant places. Subsequently, the charity was extended to give free boarding and lodging for about 225 poor students. The establishment of the chatram is a small one and consists of three clerks and three cooks. The 3rd respondent in the writ petition was one of these clerks. He was dismissed by the trustees on certain charges of misfeasance and misconduct. The State Government referred the question of dismissal to the

Labour Court, Madurai, for adjudication treating it as an industrial dispute. Before the Labour Court, the trustees of the chatram raised a specific plea that the Labour Court had no jurisdiction to entertain the claim and that there was no industrial dispute within the meaning of the Act. The Labour Court held that it had jurisdiction to decide the dispute and that the dismissal of he 3rd respondent Sivaswami was illegal and directed that he should be-restored to his employment and paid a portion of the back wages due to him. Against the said order, the trustee filed the writ petition before this Court for a writ of certiorari. Three points were raised before K. Veeraswami, J., as he then was. They were: (i) The chatram is not an industry and the dispute in question is not an industrial dispute, as defined in the Industrial Disputes Act, 1947; (ii) in any event, the dispute is an individual dispute, and not collective dispute; and (iii) the Labour Court was in error in holding that the order of discharge was violative of the principles of natural justice. K.Verraswami, J., as he then was, upheld the decision of the Labour Court and over-ruled the third point. In regard to the second point, the learned Judge was not prepared to take the objection into account because the Labour Court had no opportunity to deal with it. So far as the first point is concerned, the learned Judge was of the view that the activity conducted by Pappammal Anna Chatram was an industry as defined in Section 2(j) of the Act. He, therefore, dismissed the writ petition filed by the chatram.

23. The trustees of the chatram have filed the writ appeal under the Letters Patent. On the first point as to whether the activity of the chatram is an industry as defined in Section 2(j) of the Act. after referring to the various judgments, the Division Bench has observed as follows:

In the tests laid down by the several decisions of the Supreme Court, already extracted, one important item is that the activity must be organised or arranged in a manner in which trade or business is generally organised or arranged. In some of the decisions of the Supreme Court they had to deal with a municipality in D.N. Banerji v. P.R. Mukerjee and Ors. : [1953]4SCR302 , a chain of hospitals which were organised as a trade or business in The State of Bombay v. The Hospital Mazdoor Sabha : (1960)ILLJ251SC and finally a University of vast dimensions in University of Delhi v. Ram Nath : (1963)IILLJ335SC . There is absolutely nothing

to show that the activity in this chatram, which involves the simple task of cooking and serving food and which required no more than the service of three cooks, could be equated to organisation as a business or trade. The three clerks probably had a great deal to do with the general supervision of the lodging and boarding arrangements of the hostel, which had a large strength of 225 students. In this connection one can think of a well-to-do and pious Hindu deciding to feed a specific number of persons on particular days. He could have engaged regularly extra cooks for the purpose. But his activity will not be a business or trade. If he decides, instead of feeding people in his house, to feed them in a separate building set apart for the purpose, and makes the cooks work there, instead of in his house, that would not make it an industry or a business. No doubt, the activity of preparing and serving food is involved in a catering business, but it is well-known that cooking and serving food form only one part of its activity, whose overall scope makes it one of the recognised business activities sometimes with large scale organisation. But by no stretch of imagination can such a type of activity be inferred in the case of the annadana chatram in the instant case. The learned Judge himself clearly felt that the result of treating the annadana chatram as an industry would be a surprising one, but it would appear that in his view, such a result was inescapable bearing in mind the law on the subject. But with due respect, on account of the reasons enumerated above, we hold that Pappammal Anna Chatram is not an industry.

24. In a similar case, a Division Bench of the Gujarat High Court in RajRatna Seth v. Ashok Bhasin 1982 Lab. I.C. 338 held as follows:

Now, in view of the fact that the petitioner-Gurukul is running a simple venture substantially and going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit, would be exempt from the operation of the definition of the word 'industry' as explained in this judgment. It is obvious that wide though may be the sweep of the definition of the word 'industry', yet, institutions like the one before us, would be exempt from the definition of the word 'industry', because, here, we find that most of the work which is required for these Gurukulas is done by the students themselves barring heavy

work of lifting heavy things, cleaning big utensils, sweeping vast area of campus, etc., and in Gurukul more than 700 students in the school and 250 in the College serve themselves and also assist a great deal in keeping the premises clean and tidy. Under these circumstances, since the employment of outside help, i.e., help other than those of the students themselves, is in minimal matters and the employees are marginal employees without destroying the non-employee character of the institution, this particular institution falls squarely within the exception carved out in Clause (b) of para (161) III at page 596 of the report. Since this is the view of the Supreme Court, it is obvious that, in the instant case, the institution run by the petitioner-trust cannot be said to be an 'industry' within the meaning of the definition set out in the Industrial Disputes Act, 1947, and hence the provision of conciliation machinery and still less the provision for an industrial adjudication under the provisions of the Industrial Disputes Act would not apply to the employees of this particular institution since this institution is not an 'industry' within the definition of that word as explained in Bangalore Water Supply's case 1978 Lab. I.C. 467.

25. As already seen, there is neither production of goods nor service, which are sold for a consideration by the petitioner-society. Therefore, applying the test laid down in the above cited rulings, I hold that the petitioner-society is not an industry within the meaning of the Act.

26. For the fore-going reasons the writ petition is allowed and the impugned award of the 1st respondent is quashed. However, there will be no order as to costs.