

*Before Surya Kant, J.*

**PUNJAB POLICE HOUSING CORPORATION  
LIMITED—Petitioner**

*versus*

**SURESH KUMAR AND ANOTHER—Respondents**

**CWP No. 5393 of 2010**

December 5, 2011

*Constitution of India, 1950 - Art. 226 - Industrial Disputes Act, 1947 - Ss. 2(j), 25-F, 25-G, 25-H, 25-N - Respondent, a work-charge helper, challenged his termination from service on account of violation of Sections, 25-F, 25-G and 25-N and also challenged fresh appointments made allegedly in violation of S.25-H - Petitioner in the writ petition set up a plea before the Labour Court that they are not "Industry" within the meaning of S.2(j) because they are essentially performing welfare activities without any profit motive - Labour Court came to the conclusion that services of the respondent-workman were terminated in violation of provisions of Section 25-F and 25-N of the Act, and the alleged violation of Sections 25-G and 25-H could not be proved - Tribunal further held that since the workman was not employed in accordance with rules, and that it was a case of back door entry, he was not entitled to reinstatement in service but only grant of compensation - In the writ petition before the High Court, the petitioner Corporation raised a plea that it was not "industry" within the meaning of Section 2(j) of the Act because it was a statutory corporation engaged in welfare activities for and on behalf of the Police Department, and since there was no profit earning motive, and the corporation being an extended arm of the Police Department, its activities were akin to sovereign functions of the State - High Court repelled the above plea of the Corporation holding that it is the nature of activities which will determine whether the Corporation is an "industry" or not and, who the end user was, is not important - High Court further held that construction activities undertaken by the petitioner Corporation are not free from*

*indirect profit oriented considerations and further it was not performing any constitutional obligation which could be termed as sovereign function - Petitioner Corporation is an industry within the meaning of S.2(j) - Writ petition dismissed.*

*Held*, that having heard learned counsel for the parties at some length and on perusal of the material on record, I am of the considered view that there is no merit in the contention raised on behalf of the petitioner Corporation and it must fail. The expression 'industry' as defined in Section 2[j] of the 1947 Act is of wide amplitude and it includes any business, trade, undertaking, Manufacture or calling of employees and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen. The aforesaid definition has been given an expansive meaning by the Hon'ble Supreme Court in Bangalore Water Supply and Sewerage Board v A.Rajappa and Ors., 1978 [2] SCC, 213. If one applies the twin tests of [i] primary and predominant activity and [ii] the integrated activity, the petitioner Corporation has to be held to be an 'industry' for the purposes of the 1947 Act. The undisputed fact is that the petitioner-Corporation undertakes construction activities in a systematic manner by engaging the skilled and unskilled workers. The net end-user of the constructed buildings, whether the police or any other Department, is wholly inconsequential as it is the nature of 'activity' undertaken by the Corporation that would determine whether such an activity is an industry or not. The plea that the construction activities are undertaken by the Corporation without having any profit making motive though appears to be attractive yet does not stand on facts or substance. If the construction activities were to be handed-over to private contractors or agencies, there was a probability of the Police Department having been burdened with higher monetary liability due to profit element etc. The fact is that the Corporation has been set up to undertake construction activities in order to save the additional monetary burden which would have otherwise gone into private hands.

(Para 7)

*Further held*, that the construction activities undertaken by the petitioner Corporation are thus not free from indirect profit oriented considerations. Suffice it to observe that the construction of houses or buildings for the Police Department or police personnel is not the constitutional

or an otherwise obligation of the State, to term it as a 'sovereign function'. The plea taken by the petitioner Corporation that it is not an industry, thus, has no factual or legal basis.

(Para 8)

P.S.Thiara, Advocate, *for the petitioner.*

Shri Vikas Bahl, Advocate, for the workman-respondent

### **SURYA KANT, J.**

(1) This order shall dispose of CWP Nos. 5393, 8599, 8600, 8601, 8605, 8606, 8609, 8615, 13113, 13115, 13125, 13126, 13131 and 13137 of 2010 which have been filed by the petitioner Corporation challenging the award of the Industrial Tribunal-cum- Labour Court, Chandigarh, granting monetary compensation in lieu of reinstatement to the workmen. The solitary issue raised on behalf of the petitioner – Corporation in all the cases is whether or not the petitioner Corporation is an 'Industry' within the meaning of Section 2 [j] of the Industrial Disputes Act, 1947 [in short 'the 1947 Act'], hence all the cases are being disposed of by a common order. For the brevity, the facts are being taken from CWP No. 5393 of 2010.

(2) The first respondent [in short 'the workman'] was appointed as a Helper on work-charge basis on 14.10.1998 and he worked as such till 01.04.2003, though allegedly with intermittent breaks. The workman raised an industrial dispute alleging that his services were terminated w.e.f. 01.04.2003 in violation of Section 25-F of the 1947 Act, hence he was entitled for re-instatement with continuity of service. The workman further averred that he was a member of the EPF Scheme and was availing leave benefit also. He was allegedly employed to do the work of regular nature and while terminating his services, Section 25-G of the 1947 Act was not followed. He also alleged that after termination of his services, fresh appointments were made in violation of Section 25-H of the 1947 Act.

(3) The petitioner Corporation contested the workman's claim mainly on the plea that it was engaged in construction of the houses for the police personnel without earning any profit and essentially performs welfare activities, hence is not an 'industry' within the meaning of Section 2[j] of the 1947 Act. It was also claimed that the workman was hired on work-

charge basis keeping in view the work available but on completion of construction and/or when no construction work could commence due to non-allotment of funds by the Government, that his services automatically came to an end.

(4) In addition to the question referred to by the appropriate Government for adjudication, the Tribunal also framed issue No. 2 as to whether the Management is not industry and the workman is not covered under the definition of 'workman' under the 1947 Act. The Tribunal while deciding Issue No. 1, namely, whether services of workman were illegally terminated, came to a firm conclusion that his services were terminated in violation of the provisions of Sections 25-F and 25-N of the 1947 Act though the allegation of violation of Section 25-G and 25-H could not be proved. The Tribunal further held that since the activities of the Corporation depended on several factors and the workman was not employed in accordance with Rules and it being a case of back-door entry, he was not entitled to reinstatement in service and the appropriate recourse would be to grant compensation, which the Tribunal directed.

(5) As regard to Issue No. 2, the Tribunal held that the Corporation was not engaged in a sovereign act of the State, hence it falls within the ambit of 'industry'. On this premise and keeping in view the length of employment of the workman, that the Tribunal awarded compensation of Rs. 1 lac in lieu of his reinstatement.

(6) The petitioner Corporation—the Management feeling aggrieved, has approached this Court. Relying upon the annual report of the Corporation for the year 2007-08 [Annexure P-5] and the terms and conditions imposed by the State Government while releasing funds [Annexure P-6], it is vehemently contended that the petitioner is a statutory Corporation and being a welfare organisation who is engaged in welfare activities for and on behalf of the police Department, it is not an 'industry'. It was contended that there is no profit earning motive behind the construction activities undertaken by the petitioner Corporation and it being an extended hand of the Police Department which discharges the State's obligation of maintenance of law and order, the activities of the Corporation are akin to 'sovereign functions of the State'. It is also urged that the onus was on the workman to prove that the petitioner Corporation is an industry but no such

evidence has been led by the first respondent. Reliance is placed on a decision of the Hon'ble Supreme Court in *State of Gujarat versus Pratamsing Narsing Parmar (1)*, as well as a decision of this Court in *Swaran Singh versus District Food and Supplies Controller, Kapurthala (2)*.

(7) Having heard learned counsel for the parties at some length and on perusal of the material on record, I am of the considered view that there is no merit in the contention raised on behalf of the petitioner Corporation and it must fail. The expression 'industry' as defined in Section 2[j] of the 1947 Act is of wide amplitude and it includes any business, trade, undertaking, manufacture or calling of employees and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen. The aforesaid definition has been given an expansive meaning by the Hon'ble Supreme Court in *Bangalore Water Supply and Sewerage Board versus A. Rajappa and Ors. (3)*. If one applies the twin tests of [i] primary and predominant activity and [ii] the integrated activity, the petitioner Corporation has to be held to be an 'industry' for the purposes of the 1947 Act. The undisputed fact is that the petitioner-Corporation undertakes construction activities in a systematic manner by engaging the skilled and unskilled workers. The net end-user of the constructed buildings, whether the police or any other Department, is wholly inconsequential as it is the nature of 'activity' undertaken by the Corporation that would determine whether such an activity is an industry or not. The plea that the construction activities are undertaken by the Corporation without having any profit making motive though appears to be attractive yet does not stand on facts or substance. If the construction activities were to be handed over to private contractors or agencies, there was a probability of the Police Department having been burdened with higher monetary liability due to profit element etc. The fact is that the Corporation has been set up to undertake construction activities in order to save the additional monetary burden which would have otherwise gone into private hands.

(8) The construction activities undertaken by the petitioner Corporation are thus not free from indirect profit oriented considerations.

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- (1) (2001) 9 SCC 713
  - (2) 2005 (7) SLR 470
  - (3) (1978) 2 SCC 213

Suffice it to observe that the construction of houses or buildings for the Police Department or police personnel is not the constitutional or an otherwise obligation of the State, to term it as a 'sovereign function'. The plea taken by the petitioner Corporation that it is not an industry, thus, has no factual or legal basis.

(9) In *Chief Conservator of Forests versus Jagannath Maruti Kondhare (4)*, the Hon'ble Supreme Court ruled that only "*the functions which are inalienable from the functions of the State are called sovereign functions of the State*".

(10) In *Executive Engineer [State of Karnataka] versus K.Somasetty & Ors. (5)*, the Public Works Department of the State was held to be an industry. This view was reiterated in *State of Haryana versus Vijender Singh (6)*.

(11) In *General Manager, Telecom versus S.Sirinivasa Rao (7)*, the Telecom Department of Union of India was held to be an industry as it was engaged in a commercial activity and not discharging any one of the sovereign functions of the State.

(12) In *All India Radio versus Santosh Kumar (8)*, All India Radio and Door-Darshan Kendras were held to be not carrying sovereign functions only and were found to be within the meaning of Section 2[j] of the 1947 Act.

(13) In *Samishta Dube versus City Board Etawah (9)*, the General Administration Department of the Municipal Board was held to be an industry.

(14) The Public Health Department, Haryana was held to be an industry by this Court in *Baljit Singh versus State of Haryana (10)*, and the argument that there was no profit motive behind its activities was rejected.

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- (4) (1996) 2 SCC 293  
(5) AIR 1997 SC 2663  
(6) (2005) 10 SCC 488  
(7) (1997) 8 SCC 767  
(8) (1998) 3 SCC 237  
(9) (1999) 3 SCC 14  
(10) 1995 (3) SCT 154

(15) In *Management of Haryana Urban Development Authority versus Neelam Kumari (II)*, a Division Bench of this Court held the HUDA - a statutory authority an industry.

(16) Following the cited decisions and keeping in view the nature of functions assigned to the petitioner Corporation, I have no reason to doubt that the petitioner fulfils the ingredients of an 'industry' within the meaning of Section 2[j] of the 1947 Act even if there is no profit-motive behind its activities.

(17) No other point has been urged.

(18) For the reasons aforesaid, I do not find any merit in these writ petitions which are accordingly dismissed.