Gopal

Vs.

Administrative Officer, Madhya Pradesh Khadi and Village Industries Board and Others,

Civil Appeal No. 617 (NL) of 1975

(V.B. Khalid, V. Khalid JJ)

19.08.1985

JUDGMENT

KHALID, J. -

1. This is an appeal by certificate, issued by the High Court of Madhya Pradesh under Article 133(1) of the Constitution of India against the Judgment of a Division Bench of that Court setting aside the order passed by the Labour Court, Ujjain, confirmed in revision by the Industrial Court, Madhya Pradesh, allowing an application filed by the appellant under Section 31 of the Madhya Pradesh Industrial Relations Act, 1960 (hereinafter referred to as the Act) in which he had challenged his termination which challenge was accepted and his reinstatement was ordered. The facts in brief, necessary for disposal of this appeal are as follows :

2. The appellant was appointed as Storekeeper-cum-Accountant on February 14, 1957, in the Madhya Pradesh Khadi and Village Industries Board, Budhwara, Bhopal. This Board is a body corporate constituted under the M.P. Khadi and Village Industries Act 1959 and is engaged among others, in activities of encouraging production of khadi and helping other village industries. It has different branches in the State of Madhya Pradesh. One such centre was established at Berdi in Chhindwara district. The Board supplied raw wool to the cooperative societies and after getting them woven by the societies into blankets, received back blankets as finished goods. The service of the appellant were terminated as per order dated September 23, 1964, after giving one month's notice. He challenged this order of termination as one amounting to retrenchment and having been passed without complying with the provisions of the Act that govern his relationship with the Board. He stated that a charge-sheet was given to him on April 27, 1964, based on false and baseless grounds and that there was no enquiry held into the said charges before his removal. The appellant thereupon moved the Labour Court at Ujjain on June, 7, 1975, for his reinstatement with full wages.

3. The Board contested the application contending inter alia that the Board was not an industry and that neither the M. P. Industrial Relations Act, 1960 nor the Industrial Disputes Act, 1947 applied to it. The Labour Court, Ujjain framed necessary issued on the rival contentions and after recording evidence, held that the termination of the appellant amounted to retrenchment, set aside the order of termination and directed the Board to reinstate him with half salary from the date of the order till reinstatement.

4 Aggrieved by this order the Board preferred a revision before the Industrial Court in Madhya Pradesh, Indore, repeating the contentions raised before the Labour Court. The Industrial Court by its order dated February 3, 1967, affirmed the order of the Labour Court and dismissed the revision petition.

5. The Board pursued the matter further by moving the Madhya Pradesh High Court by a petition under Articles 226 and 227 of the Constitution of India. The High Court by its order dated December 19, 1969, allowed the writ petition, quashed the order of the Industrial Court and remitted the case to it to decide the facts afresh with due regard to the relevant provisions of the M.P. Industrial Relations Act, 1960. After remand, the Industrial Court proceeded to decide the question itself after taking fresh evidence and again held in favour of the appellant and against the Board, reaffirming its previous decision to reinstate the appellant. The matter was taken to the High Court again by the Board by means of a writ petition. The High Court set aside the orders of the Industrial Court and the Labour Court, on the ground that they acted without jurisdiction. However, since the High Court felt that the matter was not free from doubt and was debatable, granted certificate to the appellant to appeal to this Court. It is thus that the matter is before us.

6. In the State of Madhya Pradesh there is a separate Act to regulate the relations of employees in certain matters and to make provisions for settlement of industrial disputes and other connected matters. This Act is called the Madhya Pradesh Industrial Relations Act, 1960. Section 2(19) defines Industry as under :

> 'Industry' means -
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> (a) any business, trade, manufacture, undertaking or calling of employers;
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> (b) any calling, service, employment, handicraft or industrial occupation or a vocation of employees; and includes -
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> (i) agriculture and agricultural operations;
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> (ii) any branch of any industry or group of industries which the State Government may, by notification, declare to be an industry for the purpose of this Act.
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> Section 2(33) defines undertaking as follows :
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> 'Undertaking' means a concern in any industry.

7. Thus, any concern to become an industry, has to satisfy the above definitions, to attract the provisions of the Act. Such concerns have to satisfy another condition to attract the provisions of the Act and that is about the number of employees the concern employs. This is provided in a notification issued under the Act which reads as follows :

> No. 9952-XVI, dated December 31, 1960. - In exercise of the powers conferred by sub-section (3) of Section 1 of the Madhya Pradesh Industrial Relations Act, 1960 (27 of 1960), the State Government hereby directs that all the provisions of the said Act other than Sections 1 and 112 thereof shall come into force on December 31, 1960, in respect of undertaking in the industries specified in the Schedule below wherein the number of employees on any date during twelve months preceding or on the date of this notification or any day thereafter was or is more than one hundred :
>
> Schedule
>
> 1. Textile including cotton, silk, artificial silk, staple fibre, jute and carpet.

#2. * * *##

This notification, thus, makes the provisions of the Act applicable only to undertaking in the industries specified in the Schedule, where the number of employees, on the date mentioned therein was or is more than 100. We are concerned here only with item No. 1 in the Schedule and therefore, have left out the other items.

8. Before considering the rival contentions raised before us, we may extract the relevant sections of the Act under which the Board was constituted, to understand the functions and duties of the Board. For our purpose it is enough to quote Sections 14(1) and 14(2)(a) alone. Clause (b) to (m) are not necessary for the resolution of the dispute involved in this case and hence are omitted.

14. Functions of Board. - (1) It shall be the duty of the Board to organise, develop and reagitate khadi and village industries and perform such functions as the State Government may prescribed.

(2) Without prejudice to the generality of the provisions of the sub-section (1), the Board shall also in particular discharge and perform all or any of the following duties and functions, namely :

(a) to start, encourage, assist and carry on khadi and village industries and in the matter incidental to such trade or business.

With this background we will advert to the facts of the case.

9. The Board resisted the appellant's case on two grounds : (i) that it is not an industry within the meaning of the Act and (ii) that it does not employ more than 100 persons. It is necessary to note at this stage that the Board had not originally urged any plea that it did not employ sufficient employees to attract the Act. It was during the course of argument that this plea about the number of appointees was urged by the Board. However, both the Labour Court and the Industrial Court considered the two jurisdictional questions as to whether the Board was industry and as to whether it had employed more than 100 persons.

10. We have gone through the orders passed by the Labour Court and the Industrial Court, carefully. According to us a close examination of the evidence adduced in the case and the discussions bearing on them by the Labour Court in particular and the Industrial Court, admits of no doubt that the Board employed more than 100 persons. For this purpose, we content ourselves by extracting the following paragraph from the order of the Labour Court while considering the first point namely whether the provisions of the Act are applicable to the Board :

Thus the applicant's contention that the Parishad's cloth weaving centres were in existence till 2 years before and his contention in respect of the number of workers engaged at Mandsaur, Gwalior, Anjad entries etc. have not been refuted by the non-applicant. It is therefore concluded them at (sic) 60, 40, 4 and 3 workers were working at Parishad's centres situated at Mandsaur, Gwalior, Anjad and Parsinga. Besides this there were officials working at Chanderi and Baneshwar weaving centres. The non-applicant who is in possession of the records of appointment and who is also not disclosing the exact figures (of the workers), therefore the conclusions go against the non-applicant.

11. This finding on the appreciation of the evidence given by the witnesses concludes the parties according to us, regarding the number of the employee employed by the Board. Even so, when the

matter went before the High Court, the High Court felt that the jurisdictional question was not properly considered by the Labour Court. Therefore, in the first round the matter was remanded by the High Court, and the High Court made the following observations :

> The relevant notification applied the provisions of the Act to undertaking in the industries specified in the Schedule wherein the number of employees, was or is more than one hundred. Evidently, it had no application to smaller establishments of notified industries that employed less than 100 persons. That being so, it is plain enough that the courts below misdirected themselves by taking into account the total number of the employees of the Board without regard to the consideration whether they were employed or not in the establishment relating to textiles and the findings recorded by them on the jurisdictional facts do not bear examination and cannot be sustained. Since the facts bearing on the question have not been properly ascertained it would be right to set aside the order of the Industrial Court and leave it to that Court to decide these facts afresh with due regard to all the relevant provisions of the M.P. Industrial Relations Act, 1960 and then to dispose of the claim made by respondent 3 on merits.

12. We may, even at this stage, point out that the High Court could have set aside the order of the Labour Court and the Industrial Court, on the ground that the Board did not, according to it, satisfy the definition of industry without remanding the case to the Industrial Court to determine the number of employees. We are making this statement in view of an objection taken by the appellant's counsel before us that the respondent cannot, in this appeal, reagitate that question, he having been concluded by the remand order which was restricted only to the number of employees in the Board.

13. After remand, the Industrial Court considered the question again. The Industrial Court understood the remand order and, according to us, rightly, as follows :

> After the remand the parties have adduced evidence which is common in both cases. The exact question I am called upon to answer is, the number of employees employed by the Parishad in its textiles activity and not all other activities such as oil, paper, carpentry, gur, tannery, pottery etc. The best evidence will be the record kept with the Parishad. The oral evidence will not be of much help, though it may have some additional value.

14. After discussing the evidence in detail, the Industrial Court came to the conclusion thus :

> For all these reasons, I hold that in the textile activity of the Board (Parishad) the number of employees is or has been over and ore than 100 from December 1, 1959 to December 31, 1960, vide Ex. D-1 and, therefore the employees had a right to file the application under the Act.

15. The Industrial Court again held in favour of the appellant. The matter went to the High court again in the second round, at the instance of the Board. On the question of number of employees in the Board, in paragraphs 10 and 11 of the Judgment, the High Court observed thus :

> .... Thus from the statement of this witness, there can be no doubt that there were more than 100 persons in all at the wool weaving centres in the State and at some of the centres the number was more than 100. The witness further stated that there are 16 industries under the Board, such as paper industry, soap industry, khadi industry, wool industry and so on.
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> Similarly, in the connected case, namely M.P. 713 of 1971, in pursuance of the remand

order, the statements of Guandeo Patil (petitioner's Annexure F) and the other witness, Sadashiv Patil (petitioner's Annexure F 1) were recorded. The statements of these two witnesses were similar to the statements in the main case.

(The High Court was dealing with the case of two employees in Miscellaneous Petition 712 of 1971 and 713 of 1971 and that is why mention is made about the connected case.)

16. After holding thus, the High Court spent considerable part of the Judgment for considering the Kindred question whether the Board was an industry or not. In our view, the objection raised by the appellant's counsel that the consideration of this question was unnecessary since the Board was concluded by the remand order which was confined only to the number of employees employed by the Board has to be upheld. According to us, the appellant is entitled to succeed on this ground alone. However, we would like to answer the other question also for the purpose of completion of this Judgment and to set at rest possible future controversies on the subject.

17. The definition clause in the Act is far from satisfactory. The definition of the word 'industry' in Section 2(19) and the word 'undertaking' in Section 2(33) does not make happy reading but this unhappy phraseology need not vex us. If from the evidence available, we can say, that the Board carried on trade or business, it would straightaway become an industry under the Act. We have already seen that one of the functions of the Board is "to start, encourage assist and carry on khadi and village industries and in the matters incidental to such trade or business". What the Board does is to supply raw wool to cooperative societies, so that the societies can engage themselves in useful work. The societies after weaving raw wool, convert them into spun blankets and supply them to the Board. The blankets to spun are not the properties of the societies. They have to be given back to the Board. The blankets so supplied from various centres to the Board, have necessarily to be sold in the open market. This act of sale would clearly come within the definition of the word trade or business as contemplated in Section 2(19) of the Act. This finding of ours is supported by the evidence in the case also. The appellant in his evidence stated that at the centre where he was posted, weaving of woollen blankets was done by the societies and other centres constituted at various places and the woven blankets were supplied back to the Board. Three witnesses were examined on behalf of the Board. Sh. Chaudhary, the first witness and Sh. Patil the next witness, admitted that the spinning and weaving work of cotton and woolen cloth was got done by the Board through various societies. These two said witnesses admitted that the looms belonged to the Board and the Board supplied wool and other materials and implements and sold manufactured goods after obtaining them from the societies. They also made an important admission that the society could not sell the goods prepared out of the wool supplied by the Board to anybody else. The third witness also supported this case though differed from the second witness and stated that the Board extended marketing facilities to the societies.

18. We thought it necessary to refer to the evidence in the case to disabuse an impression attempted to be created that the Board did not sell the blankets it got from the various societies spun out of the wool supplied to them. There is a clear admission by one witness that the societies cannot sell the blankets prepared out of the wool supplied by the Board to anyone else. No argument is necessary to hold that the blankets received by the Board from various centres have only to be sold and not used by the Board for its own purpose. On this evidence the conclusion is irresistible that the Board engages itself in the business of selling blankets. It has therefore to be held that the Board is an industry within the meaning of the Act.

19. The appellant is entitled to succeed on both the grounds. We set aside the order passed by the

High Court and restore the orders passed by the Labour Court and the Industrial Court. The appellant will get his cost from the first respondent quantified at Rs. 2500.

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