

All India Radio

Vs

Santosh Kumar and Another

Civil Appeals No. 2423 of 1989

(S. B. Majmudar, M. Jagannadhar Rao JJ)

05.02.1998

ORDER

1. Leave granted in the SLPs.

2. In this group of appeals, the common question which arises for our consideration is to the effect whether the appellant-All India Radio and Doordarshan, as the case may be, are "industries" within the meaning of the said term as defined by Section 2(j) of the Industrial Disputes Act, 1947 ("the Act" for short).

3. The respondent-employees were either clerks or linemen/watchmen and other casual workers working at the relevant time as employees of either All India Radio or Doordarshan Kendras. In Civil Appeal No. 2423 of 1989 Respondent 1 was Grade II Clerk in Chattarpur Station of All India Radio. In Civil Appeal No. 2135 of 1993 respondent-workman was casual Fitter-cum-Watchman working at Doordarshan Kendra T.V. Relay Centre, Dwarka, Gujarat, while the contesting respondents in civil appeals arising out of SLPs (C) Nos. 7722-7722-A of 1993 were daily-rated workmen working at Doordarshan Kendra, Ranchi. They had challenged their orders of termination or non-regularisation before the authorities constituted under the Act. Their termination orders were set aside and regularisation was granted, as the case may be, to the respondents concerned with consequential benefits. The writ petitions filed before the High Court by All India Radio or Doordarshan Kendra, as the case may be, were dismissed and that is how they are before us in these appeals.

4. The solitary contention canvassed before us by the learned Senior Counsel for the appellants is to the effect that All India Radio and Doordarshan Kendra discharge sovereign functions of the State and they are not industries within the meaning of Section 2(j) of the Act. Now, it has to be kept in view that as held by a Constitution Bench of this Court consisting of seven learned Judges in the case of Bangalore Water Supply and Sewerage Board v. A. Rajappa ((1978) 2 SCC 213 : 1978 SCC (L&S) 215) save and except the sovereign functions, all other activities of employers would be covered within the sweep of term "industry" as defined under Section 2(j) of the Act. The functions which are carried on by All India Radio and Doordarshan cannot be said to be confined to sovereign functions as they carry on commercial activity for profit by getting commercial advertisements telecast or broadcast through their various kendras and stations by charging fees. Looking to the functions of Doordarshan and its set-up, as seen from Annexure 1 [annexed to SLPs (C) Nos. 7722-7722-A of 1993], being the extracts from Doordarshan Manual Vol. I, it cannot be said that the functions carried on by them are of a purely sovereign nature. Day in and day out advertisements are being telecast and a even serials are being telecast on payment of appropriate charges and on which there cannot be any dispute. Same is the position with All India Radio. However, learned

Senior Counsel for the appellants vehemently relied upon a decision of this Court in the case of Bombay Telephone Canteen Employees' Assn., Prabhadevi Telephone Exchange v. Union of India ((1997) 6 SCC 723 : 1998 SCC (L&S) 386). It is true that in that case a Bench of two learned Judges took the view that the telephone exchanges run by the Central Government were discharging sovereign functions and, therefore, the employees working in the canteen run by such telephone exchanges cannot be said to be working in an "industry" as defined under Section 2(1) of the Act. However, the said decision has been expressly overruled by a judgment of a three-Judge Bench of this Court in the case of G.M., Telecom v. A. Srinivasa Rao ((1997) 8 SCC 767 : 1998 SCC (L&S) 6). In that case, Chief Justice Verma speaking for the three-Judge Bench in para of the Report has expressly overruled the said decision. In that decision another decision in Sub-Divisional Inspector of Post v. Theyyam Joseph ((1996) 8 SCC 489 : 1996 SCC (L&S) 1012) is also overruled. It has been held in the said decision that the ratio of the Constitution Bench judgment in Bangalore Water Supply ((1978) 2 SCC 213 : 1978 SCC (L&S) 215) holds the field and the amendment to the definition of Section 2(1) as made in 1982 is not yet brought in force and so long as the amending definition does not come into force the decision in Bangalore Water Supply ((1978) 2 SCC 213 : 1978 SCC (L&S) 215) will hold the field. Consequently, it must be held that the appellant-All India Radio as well as Doordarshan are industries within the meaning of Section 2(1) of the Act and the said definition is operative being applicable at present and as existing on the statute-book as on date.

5. We may mention that so far as the question of illegality of the orders of termination is concerned, on the facts found by the authorities below it is to be held that the termination orders were violative of Section 25-F of the Act and on which, in fairness to the learned Senior Counsel for the appellants, no submission was raised before us for consideration. Similarly regularisation of services was also not challenged on merits. As a result of this discussion the appeals are dismissed. Interim stay orders are vacated. The respondents concerned will be reinstated in service with all the benefits available to them under the impugned orders. The appellants shall reinstate the respondents concerned within six weeks from today and implement the orders passed by the authorities below within that time. It is obvious that the reinstatement will be on the same post in which the respondents were working prior to the impugned termination orders.