

CASE NO.:
Appeal (civil) 513 2000

PETITIONER:
RUTH SOREN

Vs.

RESPONDENT:
MANAGING COMMITTEE, EAST I.S.S.D.A. & ORS.

DATE OF JUDGMENT: 30/11/2000

BENCH:
S R Babu, S N Variava

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T...J

J U D G M E N T

RAJENDRA BABU, J. :

The services of the appellant employed in the establishment of respondent No.1 were terminated on 25.8.1980. She made an application under Section 26(2) of the Bihar Shops & Establishments Act, 1953 [hereinafter referred to as the Act] before the Labour Court, Ranchi questioning the correctness of the same. The Labour Court allowed the same by directing her reinstatement in service with full back wages and continuity in service. This order made by the Labour Court was called in question in a writ petition, which on dismissal by a learned Single Judge, was carried in further appeal to the Division Bench of the High Court. Two contentions were put forth before the appellate court, firstly that respondent No.1 is not an establishment for the purposes of the Act and, therefore, the application filed by the appellant is incompetent and secondly that respondent No.1 terminated her services after giving salary for a period of three months as provided in the relevant rules and, therefore, was not liable to be interfered with by the Labour Court even if it were to be held that respondent No.1 is an establishment. The High Court, after adverting to several decisions, in particular to Unni Krishnan, J.P. & Ors. vs. State of Andhra Pradesh & Ors., 1993 (1) SCC 645, took the view that an establishment running an educational institution or imparting education and does not carry on a business, trade or profession and came to the conclusion that the Labour Court, therefore, had no jurisdiction to interfere with the order of respondent No.1 and allowed the appeal on the first contention after noticing that it was not necessary to deal with the second submission. For the conclusion the High Court reached, the High Court wholly depended on the observations made by this Court in Unni Krishnans case (supra). In that case, at para 66, Mohan, J., while concurring with the majority view, started the discussion by stating that in the cases before them, depending upon the statute, either occupation or

business has come to be defined and it cannot be contended that establishment of an educational institution could be business. Nor again, could that be called trade since no trading activities are carried on. Equally it is not a profession and it is one thing to say that teaching is a profession but, it is a totally different thing to urge that establishment of the category of occupation provided no recognition is sought from the State or affiliation from the University is asked on the basis that it is a fundamental right. However, while analyzing the decision in Bangalore Water Supply & Sewerage Board vs. A. Rajappa & Ors., 1978 (2) SCC 213, the learned Judge concluded that while considering as to what would constitute an industry under the Industrial Disputes Act, the observations made therein is that an educational institution is an industry and nothing could stand in the way of that conclusion and certainly that is very different from claiming a fundamental right under Article 19(1)(g) of the Constitution. To similar effect B.P. Jeevan Reddy, J. also stated that the context in which the observations were made in Bangalore Water Supply & Sewerage Board vs. A. Rajappa (supra) would have no application in the present case. A Bench of 7-Judge of this Court examined this question and held that we have to look at educational activity from the angle of the Act, and so viewed the ingredients of industry are fulfilled and education is, therefore, an industry and nothing could stand in the way of that conclusion. The basis upon which this conclusion is reached is that an educational institution renders service and, therefore, falls within the concept of industry, as was noticed by Isaacs, J. in an Australian case, Federated Municipal & Shire Employees Union of Australia v. Melbourne Corporation, 26 CLR 508. An establishment for the purposes of the Act means an establishment which carries on any a business, trade or profession or any work in connection with, or incidental or ancillary thereto. Concept of industry, as defined under the Industrial Disputes Act, would include any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen. There is an organised activity between employers and employees to impart education. Such an activity, though may be industry will not be a profession, trade or business for the purposes of Article 19(1)(g) of the Constitution, would not be one falling within the scope of establishment under the Act. Therefore, the view taken by the Division Bench of the High Court is unexceptionable. The High Court did appreciate that Unni Krishnans case (supra) itself made a distinction between what was stated in Bangalore Water Supply & Sewerage Board vs. A. Rajappa (supra).

In Corporation of City of Nagpur vs. Its Employees, [1960] 1 LLJ 523 (540), this Court held that Education Department of the Corporation to be an industry. The reason given is that imparting education amounts to service and can be done by a private person also. In University of Delhi vs. Ramnath (1963) 2 LLJ 335, this Court held that imparting education is not industry as the work of the University cannot be assimilated to the position of trade, calling, business or service and hence cannot be industry. The majority view in Bangalore Water Supply & Sewerage Board vs. A. Rajappa (supra) a decision of seven-Judge Bench, is that in the case of an educational institution, the nature of activity is ex hypothesi and imparting education being service to community is an industry. Various other

activities of the institution such as printing press, transport department, clerical, etc. can be severed from teaching activities and these operations either cumulatively or separately form an industry. Even so, the question for consideration is whether educational institution falls within the definition of establishment carrying business, trade or profession or incidental activities thereto. Establishment, as defined under the Act, is not as wide as industry as defined under the Industrial Disputes Act. Hence reliance on Bangalore Water Supply & Sewerage Board vs. A. Rajappa [supra] for the appellant is not of any help.

Thus the order made by the High Court is correct and calls for no interference and hence the appeal is dismissed. No costs.

JUDIS