

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 6093 OF 2021
(Arising out of SLP (Civil) No. 4637 of 2021)**

THE STATE OF MADHYA PRADESH & ORS. APPELLANTS

v.

SOMDUTT SHARMA RESPONDENT

J U D G M E N T

ABHAY S. OKA, J.

1. Leave granted.
2. The first appellant - State of Madhya Pradesh and three others have taken an exception to the Judgment and Order dated 11th December 2019 passed by a Division Bench of High Court of Madhya Pradesh in a writ appeal preferred by the present appellants. The writ appeal was directed against the Judgment and Order dated 25th June 2018 passed by the learned Single Judge on a Writ Petition filed by the present appellants. In the Writ Petition, the challenge was to the award made by the Labour Court at Gwalior by which appellants were directed to reinstate the respondent in Rajghat Canal Project of the Irrigation Department of the first appellant. However, the Labour Court declined

to grant back wages. The said Order has been confirmed in the Writ Petition filed by the present appellants and by the impugned Judgment and Order dated 11th December 2019, the Division Bench confirmed the decision of the learned Single Judge in the Writ Petition.

FACTUAL CONTROVERSY

3. The respondent was initially appointed as a daily wage employee on the post of Helper in the Irrigation Department of the first appellant. His employment was terminated on 1st December 1995. On the directions of the Hon'ble the Chief Minister, the respondent was taken back in service on 11th August 2004. But his employment was again terminated by an Order dated 2nd July 2005. A dispute was raised by the respondent which was referred by the appropriate Government to the decision of the Labour Court. The Labour Court held that Chapter VB of the Industrial Disputes Act, 1947 (for short "ID Act") was applicable. It was held that as compliance with section 25N of the ID Act was not made by the appellants, the respondent entitled to reinstatement.

SUBMISSIONS OF THE LEARNED COUNSEL

4. Mr. Mukul Singh, the learned Deputy Advocate General of the State of Madhya Pradesh has taken us through the impugned

Judgments and Orders. He submitted that Irrigation Department of the first appellant is not an Industrial Establishment within the meaning of Section 25L of the ID Act. He submitted that as the Irrigation Department of the first appellant is not an Industrial Establishment, Chapter VB will have no application. He urged that though the Irrigation Department may be having more than hundred workers, it is not a factory within the meaning of clause (m) of section 2 of the Factories Act, 1948 (for short the "Factories Act") as it is not carrying on manufacturing process. He, therefore, submitted that as section 25N of the ID Act is a part of Chapter VB, it will not be applicable at all. He submitted that compliance with section 25F of the ID Act was made by the appellants as can be seen from Annexure P-1.

5. Mr. Prashant Shukla, the learned counsel appearing for the respondent firstly submitted that compliance with Section 25F of the ID Act had not been made. He submitted that the Irrigation Department of the first appellant is also involved in the activity of pumping of water and sewage. Hence, it is carrying on manufacturing process as defined under clause (k) of section 2 of the ID Act. He submitted that the Irrigation Department of the first appellant being an Industrial Establishment was under an obligation to comply with section 25N of the ID Act of obtaining permission from the appropriate Government.

He submitted that three Courts have concurrently held that there is a failure to comply with Section 25 N on the part of the appellants. He relied upon a decision of this Court in the case of **State of Maharashtra and Anr. v. Sarva Shramik Sangh, Sangli and Ors.**¹ He would submit that no interference is called for.

CONSIDERATION OF SUBMISSIONS AND CONCLUSIONS

6. We have given careful consideration to the submissions. The first question to be decided is whether provisions of Chapter VB will apply to the facts of the case. Chapter VB incorporates special provisions relating to lay off, retrenchment and closure in certain establishment. Section 25K lays down that the provisions of Chapter VB shall apply to industrial establishments in which not less than hundred workmen were employed on an average per working day for the preceding twelve months. In the present case, there is no dispute that the Irrigation Department satisfied the test of having not less than hundred workmen employed on an average. However, the question is whether the Irrigation Department is an Industrial Establishment as defined in Section 25L which reads thus: -

“25L. Definitions.- For the purposes of this Chapter,-

(a) "industrial establishment" means—

¹ (2013)16 SCC 16

(i) **a factory as defined in clause (m) of section 2 of the Factories Act, 1948** (63 of 1948);

(ii) a mine as defined in clause (i) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952); or

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951).”

(emphasis added)

7. It is the case of the respondent that the Irrigation Department of the first appellant is an Industrial Establishment as it is a Factory as defined in clause (m) of section 2 of the Factories Act.

8. It is, therefore, necessary to consider the definition of Factory under clause (m) of section 2 of the Factories Act, which reads thus:-

“(m) “factory” means any premises including the precincts thereof -

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

(emphasis added)

An establishment cannot be termed as a factory unless it is carrying on manufacturing process. The manufacturing process is defined under clause (k) of section 2 of the Factories Act, which reads thus:-

“(k) **“manufacturing process” means any process for—**

- (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or
- (ii) **pumping oil, water, sewage or any other substance; or**
- (iii) generating, transforming or transmitting power; or
- (iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;
- (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;
- (vi) preserving or storing any article in cold storage.”

(emphasis added)

9. We have carefully perused the findings recorded by the Labour Court as well as the High Court. In paragraph 9 of the Judgment, the Labour Court held that as hundreds of employees are posted in Irrigation Department, provisions of Chapter VB will apply. However, the crucial question whether the Irrigation Department of the first appellant is a factory within the meaning of clause (k) of section 2 of the Factories Act, is not considered at all. Even the learned Single Judge

of the High Court has not adverted to this aspect. The Division Bench in paragraph 8 of its judgment observed that Irrigation Department is responsible for creation and maintenance of irrigation potential through construction of Water Resources Department. It is also mentioned that it also looks after the calamity management work. It is stated that as the Irrigation Department is pumping water and sewage, it will be governed by sub-clause (ii) of clause (k) of section 2 of the Factories Act.

10. The respondent has only relied upon sub-clause (ii) of clause (k) of section 2. The Irrigation Department, as noted in paragraph 8 of the impugned judgment and order, looks after creation and maintenance of irrigation potential through construction of water resources projects. The Irrigation Department also deals with disaster management, calamity management, maintenance of flood control works, reservoir operations etc. None of these functions will attract the definition of Industrial Establishment. Even assuming that some of the employees may be doing the work of pumping of water, that is not sufficient to hold that Irrigation Department of the first appellant is carrying on manufacturing process. Overall activities and functions of the Irrigation Department will have to be considered while deciding the question whether it is carrying on manufacturing activities. Few employees of the Irrigation Department out of several may be incidentally operating

pumps. But the test is what are the predominant functions and activities of the said Department. Even if the activity of operation of pumps is carried on by few employees, the Irrigation department does not carry on manufacturing process. As it is not carrying on manufacturing process, it is not a factory within the meaning of clause (m) of section 2 of the Factories Act. Therefore, the Irrigation Department of the first appellant will not be an Industrial Establishment within the meaning of Section 25L. Accordingly, Chapter VB will have no application in the present case.

11. The learned counsel relied upon a decision of the Apex Court in the case of **Sarva Shramik Sangh, Sangli** (supra). In the facts of the said case, the employees were involved in activity of pumping of water and therefore, the said decision is of no help to the respondent. As regards compliance with clause (F) of section 25 of the ID Act, Annexure P-1 is a copy of the notice dated 28th January 2012 issued by the Executive Engineer of Sindh Project Pucca Dam Division. It is a notice under section 25F of the ID Act addressed to the respondent. It is stated therein that in compliance with section 25F, a sum of Rs. 36,361/- was being transferred to his bank account mentioned in the notice. This fact is specifically pleaded in ground 5F of this petition.

There is no counter filed by the respondent denying the fact of payment of compensation in accordance with Section 25F.

12. The Labour Court as well the learned Single Judge and the learned Division Bench of the High Court have not adverted to the question whether the Irrigation Department of the first appellant is an Industrial Establishment within the meaning of Section 25L. There is no finding recorded that the Irrigation Department of the first appellant is doing manufacturing activity as provided in sub-clause (k) of Section 2 of the Factories Act.

13. Accordingly, this appeal must succeed. We, accordingly, set aside the impugned judgments and orders and hold that the termination of the employment of the respondent was legal and valid.

14. The appeal is accordingly allowed in the above terms. There will be no order as to costs.

.....J
(AJAY RASTOGI)

.....J
(ABHAY S. OKA)

**New Delhi;
September 29, 2021.**