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SMT. USHA RANI DATTA, AAYA/ATTENDANT AND OTHERS

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v.

STATE INDUSTRIAL COURT, INDORE & ORS.

April 30, 1985

C

[D.A. DESAI AND V. KHALID, JJ.]

Industrial Disputes Act :

Family Planning Clinic—Financial Expenditure incurred by Central Government—Taken over by Public Sector Undertaking Steel Plant—Employees of Clinic—Whether employees of Steel Plant.

D

Urban Family Clinic was set up by a Steel Plant for implementation of family welfare schemes. The Chief Medical Officer of the Plant was the administrative officer for the Clinic. The financial expenditure of the Clinic was borne by the Government of India. Subsequently the Clinic was treated as an integral part of the administration of the Plant and its employees were absorbed with effect from February 4, 1976.

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The appellants who were serving as Aaya/Attendants moved an application before the Labour Court for a relief that they are being wrongly treated as fresh employees from the date of absorption and that their services since the commencement of employment be treated as continuous for the purpose of gratutity, retrenchment and leave etc.

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The management of the Plant contested the application contending that the Clinic was an independent unit set up by the Government of India and that it was not an integral part of the administration and, therefore, the services rendered prior to the absorption could not be treated as service under the Plant and, therefore, the application deserves to be dismissed.

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The Labour Court allowing the application held that the Clinic had hardly any independent existence and that the employees of the Clinic were in reality and for all practical purposes the employees of the Plant.

Two revision petitions were filed before the Industrial Court—one on behalf of the Plant, and the other on behalf of the appellants. The Industrial Court dismissed the revision petition of the appellants with a further direction

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A that the application before the Labour Court was liable to be dismissed. While allowing the revision petition of the management, the Industrial Court held that family planning centres were run by different public undertakings and it was started as part of the general policy of the Government of India and even though the expenditure of the centre was reimbursed by the Government, the Clinic of the centre could not be said to be an industry within the meaning of
B expression in the Act nor could it be said to be incidental to the main business of the Plant. The prayer in the application before the Labour Court that the appellants should be given additional and better wages and service conditions was beyond the competence of the Labour Court and consequently the application was not maintainable.

C The writ petition filed by the appellants was dismissed by the High Court.

Allowing the Appeal,

HELD : 1. The findings of facts as recorded by the Labour Court and which have neither been departed from nor questioned by the High Court clearly point to the inescapable conclusion that the Clinic had no independent existence of its own and that for all practical purposes it was under the adminis-
D trative control of the Plant. [1053 E]

2. The Clinic had no independent existence. In fact it was an euphemism to call it an independent undertaking. It was part and parcel of the administrative set up. The Clinic was managed by the Chief Medical Officer of the Plant with a designation of Administrative Officer, and was accountable for the money received from the Government of India. The labour Court was perfectly
E justified in holding that the employees of the Clinic were the employees of the Plant working in a department under the administrative control of Chief Medical Officer who was under the overall administrative control of the management of the Plant. The Labour Court was perfectly justified in holding that since the inception of the Clinic the employees were the employees of the Plant and that the absorption was an acceptance of reality avoiding the pretence.
E [1054 E; G-H; 1055 A-B]

3. The Industrial Court was in error in concluding that whether the application as made was not maintainable. The reasons which appealed to the Labour Court for holding that the application was maintainable are indisputably unquestionable and the view to the contrary is untenable. [1055 C]

G 4. The High Court has overlooked that Family Planning Scheme has to be implemented in larger national interest. Public sector undertakings owned by the Government ofI ndia may be directed to carry out the scheme. For this purpose the Clinic was set up under the administrative control of the Chief Medical Officer of the Plant. If a hospital can be said to be run for the welfare of the employees of the Plant how the Clinic which would also be described as a hospital for giving advice in family planning could be differentiated from a
H hospital. A modern hospital can as well have a family planning clinic. The distinction drawn by the High Court lacks logic. The Clinic was an integral

department of the Plant and had hardly any independent existence. The independent paper existence was found unworkable in the long run and therefore the Public Enterprises Committee directed to absorb the employees of the Clinic in the establishment of the Plant. Accordingly no other view is possible than the on taken by the Labour Court. [1055 E-H]

Bangalore Water Supply & Sewerage Board etc. v. *R. Rajappa & others*, [1978] 3 SCR 207, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2231 of 1985.

From the Judgment and Order dated 8.3.1983 of the Madhya Pradesh High Court in Misc. Petition No. 1124 of 1982.

R. Satish for the Appellants.

S.K. Mehta for the Respondents.

The Judgment of the Court was delivered by

DESAI, J. Special leave granted.

A trivial dispute disposed of by an eminently just and legally correct order by the Labour Court was unnecessarily interfered with by the Industrial Court, Madhya Pradesh which has forced employees working in a comparatively lower grade to knock at the doors of this Court.

Urban Family Planning Clinic ('Clinic' for short) was set up at Bhilai for implementation of family welfare schemes of the Government of India in accordance with approved pattern set out in the letter of Ministry of Health dated May 16, 1963. The Chief Medical Officer of the Bhilai Steel Plant was to be the administrative officer for the Clinic. The entire expenditure of the Clinic was met by the Government of India by giving 100% grant though it was stated as a fact that this amount was not brought into the bank account of Bhilai Steel Plant but was deposited in a separate bank account in the State Bank of India under the name and style of Bhilai Steel Plant Urban Family Planning Clinic Grant-in-aid Account. Subsequently on the recommendation of Bureau of Public Enterprises, the Clinic was treated as an integral part of the

A administration of Bhilai Steel Plant and the employees working in the Clinic were absorbed as employees of the Bhilai Steel Plant effective from February 4, 1976.

Smt. Usha Rani Datta and 11 others who were serving as Aaya/Attendants etc. (presumably Class IV employees) moved an B application before the Labour Court for a relief that they are being wrongly treated as fresh employees from the date of absorption and that their services since the commencement of employment somewhere in 1964 be treated as continuous for the purpose of gratuity, retrenchment and leave etc. The application was moved in the Labour Court, Durg but it came to be transferred to Labour Court C at Raipur.

The management of the Bhilai Steel Plant contested the application contending that the Clinic was an independent unit set up by the Government of India and that it was not an integral part D of the administration of Bhilai Steel Plant and therefore the services rendered prior to the absorption on February 4, 1976 could not be treated as service under the Bhilai Steel Plant and therefore the application deserves to be dismissed.

The learned Presiding Officer of the Labour Court after hear- E ing both sides and taking into consideration the evidence produced before it held that the Clinic had hardly any independent existence and that the employees of the Clinic were in reality and for all practical purposes the employees of the Steel Plant. Accordingly the application was allowed and the necessary relief was given.

F Two revision petitions came to be filed before the Industrial Court at Madhya Pradesh set up under the Madhya Pradesh Industrial Relations Act. One Revision Petition being No. 10/MPIR/81 was filed by the Executive Director, Bhilai Steel Plant questioning the correctness of the decision of the Labour Court. Original applicants before the Labour Court Smt. Usha Rani Datta and G others filed a Revision Petition being No. 2/MPIR/81 praying for relief not granted by the Labour Court.

Both the revision petitions were disposed of by a learned Member of the Industrial Court by a common jndgment.

H Taking up the revision petition of the management it was held

family planning centres were run by different public undertakings and it was started as part of the general policy of the Government of India and even though the entire expenditure of the Centre was reimbursed by the Government of India, the clinic of the centre could not be said to be an industry within the meaning of the expression in the Act nor could it be said to be incidental to the main business of the Bhilai Steel Plant. The learned Member further held that the prayer in the application before the Labour Court was that the petitioners before the Labour Court who were formerly employed in the Family Planning Clinic should be given additional and better wages and service conditions and this subject was beyond the competence of the Labour Court, and for these reasons the application was not maintainable. Accordingly the revision petition filed by the management was allowed and the revision petition of the original petitioners was dismissed with a further direction that the application before the Labour Court was liable to be dismissed.

After an unsuccessful writ petition No. 1124/82 in the High Court of Madhya Pradesh at Jabalpur, theoriginal applicants have filed this appeal by special leave.

The findings of facts as recorded by the Labour Court and which have neither been departed from nor questioned by the High Court clearly point to the inescapable conclusion that the Clinic had no independent existence of its own and that for all practical purposes it was under the administrative control of the Bhilai Steel Plant. Let us recapitulate those findings of facts. The Clinic was set up at Bhilai somewhere in 1964 according to the approved pattern set out in the letter of the Ministry of Health dated May 16, 1963. This letter was annexed as Annexure R-1 to the writ petition, in the High Court. Bhilai Steel Plant is an wholly owned Government of India undertaking. It received grant to meet the entire expenditure of the Clinic. After the independent existence on paper from 1964 to 1976, the pretence was removed and the reality accepted in that all the employees of the Clinic were absorbed as employees of the Bhilai Steel Plant. This becomes clear from the letter of the Senior Personnel Manager, Bhilai Steel Plant dated February 4, 1976. It provides that the General Manager has approved absorption of Family Planning staff as regular employees of the Bhilai Steel Plant under Chief Medical Officer with imme-

diate effect, against posts and scales set out in the letter. It was further stated that the posts, designations and scales are personal to the existing incumbents and on finalisation of standard manning & designations, the absorbed personnel would be suitably adjusted, to the extent feasible. Therefore till the absorption, the pretence was that the Clinic even though it wholly under the administrative control of the Chief Medical Officer, Bhilai Steel Plant who was none other than a full-time employee of the Bhilai Steel Plant, was treated independent. Absorption erased the pretence. These facts are not in dispute and were not controverted before us.

The learned Member of the Industrial Court with whom High Court appears to have agreed, was of the opinion that when the Clinic had its separate existence it was not covered in the expression 'industry' and that even though Bhilai Steel Plant is an industry, the Clinic could not be styled as industry. In our opinion this distinction drawn is entirely meaningless. If Bhilai Steel Plant is an industry and if under the decision of this Court in *Bangalore Water Supply & Sewerage Board etc.* v *R. Rajappa & others* (1) an hospital is an industry, this distinction drawn between two branches of administration of Bhilai Steel Plant attaches importance to a shadow without substance and substance without significance. The Clinic had no independent existence. In fact it was an euphimism to call it an independent undertaking. It was part and parcel of Bhilai Steel Plant administrative set-up. May be for purpose of accounting 100% grant received from the Government of India was kept in a separate account but that does not clothe the Clinic with any independent existence. It was nowhere suggested that the employees of the Clinic were employees of the Government of India. This aspect did agitate the mind of the High Court when it observed that : 'it is a moot question whether the employees in the Clinic were employees of the Government of India or of the Plant.' The undisputed fact is that the Clinic was managed by Chief Medical Officer of Bhilai Steel Plant with a designation of Administrative Officer of the Clinic and was accountable for the money received from the Government of India as grant to the Undertaking called Bhilai Steel Plant and if it was never contended that the employees of the Clinic were the employees of the Government of India, indisputably the Labour Court was perfectly justified in holding that the employees of the Clinic were the employees of the Bhilai Steel

(1) [1978] 3 SCR, 207.

Plant working in a department called Clinic under the administrative control of Chief Medical Officer who was under the overall administrative control of the management of Bhilai Steel Plant. In our opinion, therefore the Labour Court was perfectly justified in holding that since the inception of the Clinic the employees were the employees of the Bhilai Steel Plant and that the absorption was an acceptance of reality avoiding the pretence.

The learned Member of the Industrial Court was in error in concluding that whether the application as made was not maintainable. The reasons which appealed to the Labour Court for holding that the application was maintainable are indisputably unquestionable and the view to the contrary does not commend to us.

Lastly we may refer to one observation of the High Court which may create confusion in future and therefore requires to be properly understood. Says the High Court that the Clinic was not a canteen or a hospital run for the welfare of the employees in the main industry and it was not opened as an operation incidental to the main industry. The High Court concluded that for this reason the employees working in the Clinic, could not be taken to be the employees employed in the Iron and Steel Industry carried on by the Plant. Unfortunately the High Court overlooked that family planning scheme has to be implemented in larger national interest. Public Sector undertakings owned by the Government of India may be directed to carry out this scheme. Probably imbued with this idea, the Clinic was set up under the administrative control of the Chief Medical Officer of the Plant. If a hospital can be said to be run for the welfare of the employees of the plant as observed by the High Court one fails to understand, how a clinic which could also be described as a hospital for giving advice in family planning could be differentiated from a hospital. A modern hospital can as well have a family planning clinic. The distinction drawn by the High Court lacks logic. Therefore also one can safely conclude that the clinic was an integral department of the Plant and had hardly any independent existence. The independent paper existence was found unworkable in the long run and therefore the Public Enterprises Committee directed public enterprise to absorb the employees of the Clinic in the establishment of the Plant. Accordingly no other view is possible than the one taken by the Labour Court.

A Accordingly this appeal is allowed and the decision of the learned Member of the Industrial Tribunal as well as the judgment of the High Court are set aside and the one given by the Labour Court is restored with costs throughout. The total costs is quantified at Rs. 5,000

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A.P.J. *Appeal allowed.*