A MISS A. SUNDARAMBAL

v.

GOVERNMENT OF GOA, DAMAN AND DIU & ORS.

JULY 27, 1988

B [E.S. VENKATARAMIAH AND N.D. OJHA, JJ.]

Labour law—Industrial Disputes Act. 1947—Sections 2(s) and 2(j)—"Industry" and "workmen"—educational institution being "industry", whether teachers employed therein would be "workmen".

C **The appellant was a school teacher and her services were terminated by the Management. She made several efforts in getting the order of termination cancelled but without success. Ultimately she raised an industrial dispute before the Conciliation Officer under the Act. The conciliation proceedings failed and the conciliation officer reported accordingly to the Government. The Government considered the ques-**
D **tion of referring the matter for adjudication under section 10 of the Act. But on reaching the conclusion that the appellant was not a 'workman' as defined in the Act, it declined to make a reference.**

The appellant filed a writ petition before the High Court for issue of a Writ of Mandamus requiring the Government to make a reference under section 10(1)(c) of the Act to a Labour Court to determine the
E **validity of the termination of her services. The High Court dismissed the petition holding that the appellant was not a workman. This appeal by special leave is against the Judgment of the High Court.**

Dismissing the appeal, this Court,

F **HELD: 1.1 Even though an educational institution has to be treated as an industry the teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or post graduate education cannot be called as 'workmen' within the meaning of section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled**
G **or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any they may do, is only incidental to their princi-**
H **pal work of teaching. [608B-C; 610A-C]**

1.2 If an employee in an industry is not a person engaged in doing work falling in any of the categories as mentioned in Section 2(s) of the Act, he would not be a workman at all even-though he is employed in an industry. It is not possible to accept the suggestion that having regard to the object of the Act, all employees in an industry except those falling under the four exceptions (i) to (iv) in section 2(s) of the Act should be treated as workmen. The acceptance of this argument will render the words 'to do any skilled or unskilled manual, supervisory, technical or clerical work' meaningless. A liberal construction as suggested would have been possible only in the absence of these words. [609C-D; 611C-E]

Bangalore Water Supply & Sewerage Board, etc. **v.** *R. Rajappa & Others,* **[1978] 3 S.C.R. 207, relied on. (2)**

University of Delhi & Anr. **v.** *Ram Nath,* **[1964] 2 SCR 703 and** *May and Baker (India) Ltd.* **v.** *Their Wrokmen,* **[1961] 11 L.L.J. 94 referred to.**

2. Teachers as a class cannot be denied the benefits of social justice. It is necessary to provide for an appropriate machinery so that teachers may secure what is rightly due to them. In a number of States in India laws have been passed for enquiring into the validity of illegal and unjust terminations of service of teachers by providing for appointment of judicial tribunals to decide such cases. It is time that State of Goa takes necessary steps to bring into force legislation providing for adjudication of disputes between teachers and the Managements of educational institutions. [611F-G]

[At the instance of this Court, the Management of the School agreed to pay the appellant Rs.40,000 which this Court directed to be paid in 6 monthly instalments commencing from September, 1988.] [612B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1776 (NL) of 1984.

From the Judgment and Order dated 5.9.1983 of the High Court of Bombay in Special Civil Application No. 59 of 1983

Dr. Y.S. Chitale and V.N. Ganpule for the Appellant.

G.B. Pai, Parveen Kumar and Vivek Ghambir for the Respondents.

A The Judgment of the Court was delivered by

VENKATARAMIAH, J. The short question which arises for consideration in this case is whether a teacher employed in a school falls within the definition of the expression 'workman' as defined in section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred B to as 'the Act').

The appellant, Miss A. Sundarambal, was appointed as a teacher in a school conducted by the Society of Franciscan Sisters of Mary at Caranzalem, Goa. Her services were terminated by the Management by a letter dated 25th April, 1975. After she failed in her several efforts in getting the order of termination cancelled, she raised an C industrial dispute before the Conciliation Officer under the Act. The conciliation proceedings failed and the Conciliation Officer reported accordingly to the Government of Goa, Daman and Diu by his letter dated 2nd May, 1982. On receipt of the report the Government considered the question whether it could refer the matter for adjudication D under section 10(1)(c) of the Act but on reaching the conclusion that the appellant was not a 'workman' as defined in the Act which alone would have converted a dispute into an industrial dispute as defined in section 2(k) of the Act, it declined to make a reference. Thereupon, the appellant filed a writ petition before the High Court of Bombay, Panaji Bench, Goa for issue of a writ in the nature of mandamus E requiring the Government to make a reference under section 10(1)(c) of the Act to a Labour Court to determine the validity of the termination of her services. The said writ petition was registered as Special Leave Application No. 59 of 1983. That petition was opposed by the respondents. After hearing the parties concerned, the High Court dismissed the writ petition holding that the appellant was not a workman F by its judgment dated 5th September, 1983. Aggrieved by the judgment of the High Court, the appellant has filed this appeal by special leave.

Two questions arise for consideration in this case; (1) whether the school, in which the appellant was working, was an industry, and G (2) whether the appellant was a 'workman' employed in that industry. It is, however, not disputed that if the appellant was not a 'workman' no reference under section 10(1)(c) of the Act could be sought.

The first question need not detain us long. In *University of Delhi & Anr.* v. *Ram Nath,* [1964] 2 S.C.R. 703 a bench consisting of three H learned judges of this Court held that the University of Delhi, which

was an educational institution and Miranda House, a college affiliated to the said University, also being an educational institution would not come within the definition of the expression 'industry' as defined in section 2(j) of the Act. Section 2(j) of the Act states that 'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. Gajendragadkar, J., (as he then was) who decided the said case, held that the educational institutions which were predominantly engaged in teaching could not be considered as industries within the meaning of the said expression in section 2(j) of the Act and, therefore, a driver who was employed by the Miranda House could not be considered as a workman employed in an industry. The above decision came up for consideration in *Bangalore Water Supply & Sewerage Board, etc.* v. *R. Rajappa & Others,* [1978] 3 S.C.R. 207 before a larger bench of this Court. In that case the decision in *University of Delhi & Anr.* v. *Ram Nath,* (supra) was overruled. Krishna Iyer, J. who delivered the majority judgment observed at page 283 of the Report thus:

> "(a) Where a complex of activities, some of which qualify for exemption, others not, involves, employees on the total undertaking, some of whom are not 'workmen' as in the *University of Delhi* case or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the *Corporation of Nagpur,* will be true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status."

The learned Judge, however, observed that while an educational institution was an industry it was possible that some of the employees in that industry might not be workmen. At page 261 of the Report with reference to the case of *University of Delhi & Anr.* v. *Ram Nath,* (supra) the learned Judge observed thus:

> "The first ground relied on by the Court is based upon the preliminary conclusion that teachers are not 'workmen' by definition. Perhaps, they are not, because teachers do not do manual work or technical work. We are not too sure whether it is proper to disregard, with contempt, manual work and separate it from education, nor are we too sure whether in our technological universe, edu-

A cation has to be excluded. However, that may be a battle to be waged on a later occasion by litigation and we do not propose to pronounce on it at present. The Court, in the *University of Delhi,* proceeded on that assumption viz. that teachers are not workmen, which we will adopt to test the validity of the argument."

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Thus it is seen that even though an educational institution has to be treated as an industry in view of the decision in the *Bangalore Water Supply & Sewerage Board, etc.* v. *R. Rajappa & Others,* (supra) the question whether teachers in an educational institution can be considered as workmen still remains to be decided.

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Section 2(s) of the Act defines 'workman' thus:

"2(s). 'workman' means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work D for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or E retrenchment has led to that dispute, but does not include any such person

(i) who is subject to the Army Act, 1950 (46 of 1940), or the Air Force Act, 1950 (45 of 1950), or the Navy (Discipline) Act, 1934 (34 of 1934); or

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(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

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(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

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In order to be a workman, a person should be one who satisfies the following conditions: (i) he should be a person employed in an industry for hire or reward; (ii) he should be engaged in skilled or unskilled manual, supervisory, technical or clerical work; and (iii) he should not be a person falling under any of the four clauses, i.e., (i) to (iv) mentioned in the definition of 'workman' in section 2(s) of the Act. The definition also provides that a workman employed in an industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, an industrial dispute, or whose dismissal, discharge or retrenchment has led to that dispute.

We are concerned in this case primarily with the meaning of the words 'skilled or unskilled manual, supervisory, technical or clerical work'. If an employee in an industry is not a person engaged in doing work falling in any of these categories, he would not be a workman at all even though he is employed in an industry. The question for consideration before us is whether a teacher in a school falls under any of the four categories, namely, a person doing any skilled or unskilled manual work, supervisory work, technical work or clerical work. If he does not satisfy any one of the above descriptions he would not be workman even though he is an employee of an industry as settled by this Court in *May and Baker (India) Ltd.* v. *Their Workmen.*, [1961] (II) L.L.J. 94. In that case this Court had to consider the question whether a person employed by a pharmaceutical firm as a representative (for canvassing orders) whose duties consisted mainly of canvassing orders and any clerical or manual work that he had to do was only incidental to his main work of canvassing could be considered as a workman as defined in the Act. Dealing with the said question Wanchoo, J. (as he then was) observed thus:

> "As 'workman' was then defined as any person employed in any industry to do any skilled or unskilled manual or clerical work for hire or reward. Therefore, doing manual or clerical work was necessary before a person could be called a workman. This definition came for consideration before industrial tribunals and it was consistently held that the designation of the employee was not of great moment and what was of importance was the nature of his duties. If the nature of the duties is manual or clerical, then the person must be held to be a workman. On the other hand if manual or clerical work is only a small part of the duties of

A the person concerned and incidental to his main work which is not manual or clerical, then such a person would not be a workman. It has, therefore, to be seen in each case from the nature of the duties whether a person employed is a workman or not, under the definition of that work as it existed before the amendment of 1956. The nature of the B duties of Mukerjee is not in dispute in this case and the only question therefore is whether looking to the nature of the duties it can be said that Mukerjee was a workman within the meaning of S. 2(s) as it stood at the relevant time. We find from the nature of the duties assigned to Mukerjee that his main work was that of canvassing and C any clerical or manual work that he had to do was incidental to his main work of canvassing and could not take more than a small fraction of the time for which he had to work. In the circumstances the tribunal's conclusion that Mukerjee was a workman is incorrect. The tribunal seems to have been led away by the fact that Mukerjee had no supervisory D duties and had to work under the directions of his superior officers. That, however, would not necessarily mean that Mukerjee's duties were mainly manual or clerical. From what the tribunal itself has found it is clear that Mukerjee's duties were mainly neither clerical nor manual. Therefore, as Mukerjee was not a workman, his case would not be E covered by the Industrial Disputes Act and the tribunal would have no jurisdiction to order his reinstatement. We, therefore, set aside the order of the tribunal directing reinstatement of Mukerjee along with other reliefs."

The Court held that the employee Mukerjee involved in that case F was not a workman under section 2(s) of the Act because he was not mainly employed to do any skilled or unskilled manual or clerical work for hire or reward, which were the only two classes of employees who qualified for being treated as 'workman' under the definition of the expression 'workman' in the Act, as it stood then. As a result of the above decision, in order to give protection regarding security of emG loyment and other benefits to sales representatives, parliament passed a separate law entitled the Sales Promotion Employees (Conditions of Service) Act, 1976. It is no doubt true that after the events leading to the above decision took place section 2(s) of the Act was amended by including persons doing technical work as well as supervisory work. The question for consideration is whether even after the inclusion of H the above two classes of employees in the definition of the expression

'workman' in the Act a teacher in a school can be called a workman. We are of the view that the teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or post graduate education cannot be called as 'workmen' within the meaning of section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching. We agree with the reasons given by the High Court for taking the view that teachers cannot be treated as 'workmen' as defined under the Act. It is not possible to accept the suggestion that having regard to the object of the Act, all employees in an industry except those falling under the four exceptions (i) to (iv) in section 2(s) of the Act should be treated as workmen. The acceptance of this argument will render the words 'to do any skilled or unskilled manual, supervisory, technical or clerical work' meaningless. A liberal construction as suggested would have been possible only in the absence of these words. The decision in *May and Baker (India) Ltd.* v. *Their Workmen,* (supra) precludes us from taking such a view. We, therefore, hold that the High Court was right in holding that the appellant was not a 'workman' though the school was an industry in view of the definition of 'workman' as it now stands.

We may at this stage observe that teachers as a class cannot be denied the benefits of social justice. We are aware of the several methods adopted by unscrupulous managements to exploit them by imposing on them unjust conditions of service. In order to do justice to them it is necessary to provide for an appropriate machinery so that teachers may secure what is rightly due to them. In a number of States in India laws have been passed for enquiring into the validity of illegal and unjust terminations of services of teachers by providing for appointment of judicial tribunals to decide such cases. We are told that in the State of Goa there is no such Act in force. If it is so, it is time that the State of Goa takes necessary steps to bring into force an appropriate legislation providing for adjudication of disputes between teachers and the Managements of the educational institutions. We hope that this lacuna in the legislative area will be filled up soon.

This appeal, however, fails and it is dismissed. Before we con-

A clude we record the statement made on our suggestion by the learned counsel for the Management, Shri G.P. Pai that the Management would give a sum of Rs.40,000 to the appellant in full and final settlement of all her claims. The learned counsel for the appellant has agreed to receive Rs.40,000 accordingly. We direct the Management to pay the above sum of Rs.40,000 to the appellant in six instalments. B They shall pay Rs.6,000 on 1.9.1988, Rs.6,000 on 1.10.1988, Rs.6,000 on 1.11.1988, Rs.6,000 on 1.12.1988, Rs.6,000 on 1.1.1989 and Rs.10,000 on 1.2.1989.

There is no order as to costs.

G.N. Appeal dismissed.