HARYANA UNRECOGNISED SCHOOL ASSOCIATION V. STATE OF HARYANA CASE ANALYSIS

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INTRODUCTION

"Social and Economic Justice have been given a place of pride in our Constitution and one of the directive principles of State policy enshrined in Art. 38 requires that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice social, economic and political shall inform all the institutions of national life. The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of a welfare state."[1] - **P.B. Gajendragadkar J**

When India made a tryst with destiny, the Constitution was solemnly enacted and we, the People gave ourselves to the Constitution. The Constitution made a promise to create an egalitarian economy in its directive principles, wherein the ownership and control of the material resources of the community are so distributed as best to subserve the common good so the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. The Ideal of the Constitution in regard to the protection of labour rights get resonated in Chapter- III & Chapter IV of the Constitution of India which contains Fundamental Rights and Directive Principles of State Policy which sets an aim to be achieved by the Government of Country.

These Directive Principles provide:

- for securing the health and strength of employees, men and women; • that the tender age of children are not abused;

[1] The State of Mysore vs The Workers of Gold Mines, AIR 1958 SC 923

- that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- just and humane conditions of work and maternity relief are provided; and
- That the Government shall take steps, by suitable legislation or in any other way, to secure the participation of employee in the management of undertakings, establishments or other organisations engaged in any industry.

Labour is a concurrent subject in the Constitution of India. Indian Constitution mentions the subject matter for the Welfare of labour including conditions of work, provident funds, workmen's compensation, Pensions and maternity benefits implying that both the Union and the state governments are competent to legislate on labour matters and administer the same. With this view, the Parliament enacted Minimum Wages Act, 1948.

Minimum Wages Act envisages the idea of Living Wage, Fair Wage and Minimum Wage and at the same time goes against the idea of Starving Wage. While observing the Constitutionality of the act, the Hon'ble Supreme Court observed that:-

"If the labourers are to be secured in the enjoyment of minimum wages and they are to be protected against exploitation by their employers, it is absolutely necessary that restraints should be imposed upon their freedom of contract and such restrictions cannot in any sense be said to be unreasonable. It can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency, is conducive to the general interest of the public. This is one of the Directive Principles of State Policy embodied in article 43 of our Constitution."

Further, the act applies to the persons who are considered to be an "employee" under the act. This research work deals with the case of **Haryana Schools Associations v State of Haryana**[2] wherein the question before the court was that whether teachers of an educational institution can be held to be employee under Section 2 (i) of the Minimum Wages Act to enable the Government to fix their minimum wages?

[2] AIR 1996 SC 2108

The Supreme Court observed that the "teachers" were not employees under the act. The research work tends to critically analyse the law declared by the Supreme Court in the present condition and in accordance with the law declared in the **Bombay Water Supply v. R.Rajappa.**[3]

OBJECTIVE OF THE RESEARCH WORK:

The Research work aims to critically analyse the correctness of law declared by Supreme Court in Haryana School Association v. State of Haryana in wake of foreign judgement, recent judgements and law declared in Bombay Water Supply case.

HYPOTHESIS:

The researcher assumes that:- The law declared by Supreme Court in case of Haryana School Association is not correct.

RESEARCH QUESTIONS:

- What is the Law that has been declared by the Supreme Court in Haryana Unrecognised School Association's case?
- Whether this judgement is jurisprudentially correct in regard to the judgement given in Bombay Water Supply's Case?
- Whether teachers do not come under the ambit of Minimum Wages Act?
- Whether teachers are not employed to do any skilled work or Unskilled Work?

LAW DECLARED IN HARYANA UNRECOGNISED SCHOOL ASSOCIATION CASE: A Bird's Eye View

Facts of the Case:

The Government of Haryana, in exercise of the authority conferred by Section 27 of the Act, added in Part I of Schedule I, Item No. 40, "Employment in private coaching classes, schools, including Nursery Schools, and technical institutions," for the purpose of establishing

[3] AIR 1978 SC 548

minimum wage rates for employees therein. The State Government, in exercise of the authority provided by sub-section (2) of Section 5 of the Act, set the minimum rate of remuneration in respect of the various types of workers functioning in such schools by notification dated April 30, 1983.

Subsequent Challenge before High Court:

Writ applications were filed in response to these announcements, arguing that instructors of educational institutions do not fall within the ambit of the Act since they are neither workers under the Industrial Disputes Act nor employees under Section 2(i) of the Act. The High Court, however, dismissed the writ petition on the grounds that the State Government's power to add any employment to the Schedule under Section 27 of the Act is unfettered, and that the appropriate Government has tried to alleviate the sufferings and exploitation of educated trained/untrained teachers at the hands of the managements/employers of private educational institutions, and Section 5 of the Act gives the appropriate Government broad powers.

The High Court dismissed the application, relying on this Court's decision in **Ministry of Labour & Rehabilitation and another v. Tiffin's Barytes Asbestos & Paints Ltd. and another**[4], in which this Court stated that a notification fixing minimum wages in a country where wages are already minimal should not be interfered with under Article 226 of the Constitution except on the most substantial grounds, and the legislation is a social welfare legislation undertaken to further the Directive Principles of State Policies and action taken pursuant to it cannot be struck down on mere technicalities.

Contentions of Appellant before the Supreme Court:

The learned counsel for the appellant stated that since the goal of the Act is to prevent worker exploitation and to that end it aims at establishing minimum wages that employers must pay, instructors in educational institutions cannot be brought under the scope of the Act. The learned counsel also contended that even if the definition of employee in Section 2(i) of the Act is liberally interpreted, it will not include a teacher of an educational institution because the duty performed by a teacher cannot be classified as manual or clerical, nor can it be classified as skilled or unskilled.

[4] S.C.C. 1985 (3) 594

As a result, it was argued that the State Government lacks the authority to determine the minimum pay of a teacher at an educational institution under Section 5(2) read with Section 27 of the Act.

Contentions of Respondent before the Supreme Court:

The learned counsel for the respondent, on the other hand, contended that it was open to the State Government to add a specific category of employment to the Schedule in exercise of power under Section 27 of the Act, and that since the management of the schools is exploiting the teachers, the State Government has fixed a minimum wage under Section 5(2) of the Act to mitigate the teachers' grievances, and that this should not be interfered with.

Question rose before the Court:

The short question that arises for consideration is whether teachers of an educational institution can be held to be employee under Section 2(i) of the Minimum Wages Act (hereinafter referred to as 'the Act') to enable the Government to fix their minimum wages?

Judgement given by the Supreme Court:-

The Supreme Court held that the ‘teachers’ cannot come in the ambit of Minimum Wages Act, 1948. The Court rendered this decision by giving a restrictive meaning & reading down “*the object & statements of the act with the term employee defined under the act & power to fix the rate of minimum wages by the appropriate government.*” As the Court held that,

“*A combined reading of the aforesaid provisions as well as the object of the legislation as indicated earlier make it explicitly clear that the State Government can add to either part of the Schedule any employment where persons are employed for hire or reward to do any work skilled or unskilled, manual or clerical. if the persons employed do not do the work of any skilled or unskilled or of a manual or clerical nature then it would not be possible for the State Government to include such an employment in the Schedule in exercise of power under Section 27 of the Act.*”

The Court while considering the object and statements of the Act, observed its own Constitution Bench Judgement of **M/s. Bhikusa Yamasa Kshatriya and another v.**

Sangamner Akola Taluka Bidi Kamgar Union and others[5], in the following words:

"The object of the Act is to prevent exploitation of the workers, and for that purpose it aims at fixation of minimum wages which the employers must Pay. The Legislate undoubtedly intended to apply the Act to those industries or localities in which by reason of causes such as unorganised labour or absence of machinery for regulation of wages, the wages paid to workers were, in the light of the general level of wages, and subsistence level, inadequate... It is to carry out effectively the purpose of this enactment that power has been given to the appropriate Government to decide with reference to local conditions, whether it is desirable that minimum wages should be fixed in regard to any scheduled trade or industry, in any locality, and if it be deemed expedient to do so the rates at which the wages should be fixed in respect of that industry in the locality."

In context with the word employee, it observed that:-

"employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed, and includes an outworker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processes for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out- worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union."

With this it also observed the power of appropriate government to fix „minimum wages" in part of scheduled employment. As it observed that,

"The appropriate Government after giving by notification in the Official Gazette not less than three months' notice of its intention so to do, may, by notification, add to either Part of the Schedule any employment in respect of which it is of opinion that minimal rates of stages should be fixed under this Act, and thereupon the Schedule shall in its application to the State be deemed to be amended accordingly."

[5] 1963 (2) SCC 242

Thus, the Supreme Court while concurring with its own view in **Miss A. Sundaram Bal v. Government of Goa, Daman & Diu & Ors** [6] held that,

"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 junction of teachers cannot be construed as skilled or unskilled manual work or clerical work.

Imparting of education is an 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 become responsible citizens. Children grow under care of teachers. The clerical work, if any they may do, is only incidental to their principal of teaching."

Living Law & Judicial Decision: A Critical Analysis

This part of the research project will analyse the judicial decision that has been rendered by the Supreme Court in Bombay Water Supply's Case and the Landmark Dissenting Judgement of Issac J. in The Federated State School Teachers' Association of Australia v. The State of Victoria16. The foundation of "educational institution" coming under industry has been laid down in Bombay Water Supply Case, but the strength to declare it comes from the landmark dissenting opinion of Issac J. in Federated School Teacher Association's Case, which in the words of H.R.Khanna J. can be described aptly as,

"Judges are not there simply to decide cases, but to decide them as they think they should be decided, and while it may be regrettable that they cannot always agree, it is better that their independence should be maintained and recognized than that unanimity should be secured through its sacrifice. A dissent in a court of last resort, is an appeal to the brooding spirit of the law to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed."[7]

Facts of the Federated School Teacher Association's Cases:

"The claimant, the Federated State School Teachers' Association of Australia, by plaint filed

[6] 1988 (4) SCC 42
[7] A.D.M Jabalpur v. Shivakant Shukla, AIR 1976 SC 1207

in the Commonwealth Court of Conciliation and Arbitration set out that it was in dispute with the respondents, the State of Victoria, His Majesty the King in the right of the State of Victoria, the State of Tasmania, and His Majesty the King in the right of the State of Tasmania, in respect of definitions, salaries, appeal, holidays, size of schools, sick leave. furlough, removal expenses, housing, furniture and equipment, staffing conditions, board of reference and other conditions of work. The respondents by their answer raised (inter alia) the question whether the dispute was an "industrial dispute" within the meaning of the Commonwealth Conciliation and Arbitration Act 1904-1926 and of sec. 51, pi. xxxv., of the Constitution"

The Majority Opinion of High Court in the above case didn't consider "education" coming under the term as "industry" and as such refuse to interpret "educational dispute" as an "industrial dispute". While the Issac J. at first laid down the question before the court:-

Whether an "industrial dispute" within the meaning of the Federal Constitution is legally possible between the States of Victoria and Tasmania on the one hand and the teachers they employ on the other?

The Majority based its judgement on the reasoning that:

"A community is industrially organized with a view to the production and distribution of wealth (Insurance Staffs' Case) and capital and labour in co-operation for the satisfaction of material human needs (Municipal Employees' Case)".

While further discussing it, Issac J. described the Judicial Theory behind such reason: "The theory was that society is industrially organized for the production and distribution of wealth in the sense of tangible, ponderable, corpuscular wealth, and therefore an " industrial dispute " cannot possibly occur except where there is furnished to the public— the consumers—by the combined efforts of employers and employed, wealth of that nature. Consequently, say the employers, "education" not being "wealth" in that sense, there never can be an "industrial dispute" between employers and employed engaged in the avocation of education, regardless of the wealth derived by the employers from the joint co-operation".

Disagreeing to this majority opinion, Issac J. observed that:

"The contention sounds like an echo from the dark ages of industry and political economy. It not merely ignores the constant currents of life around us, which is the real danger in deciding

questions of this nature, but it also forgets the memorable industrial organization of the nations, not for the production or distribution of material wealth, but for service, national service, as the service of organized industry must always be."

"The contention is radically unsound for two great reasons. It erroneously conceives the object of national industrial organization and thereby unduly limits the meaning of the terms of production and wealth when used in that connection. But it further neglects the fundamental character of "industrial disputes" as a distinct and insistent phenomenon of modern society."

"Such disputes at heart they are a struggle, constantly becoming more intense on the part of the employed group engaged in co-operation with the employing group in rendering services to the community essential for a higher general human welfare, to share in that welfare in a greater degree".

The Supreme Court in Bangalore Water Supply Case agreed with the opinion of Issac J. as Krishna Iyer J. observed that:

"So long as services are part 'of 'the wealth of a nation-and it is obscurantist to object to it-educational services are Wealth, are 'industrial'. We agree with Isaacs J."

Thus, it agreed that educational services & dispute occurring in regard to the educational establishment will be regarded as industrial dispute. But, it was left to be decided that whether the "teachers" will be regarded as "employee" and in this regard it was held in Miss A. Sundarambals Case, after judges quoting observation of Krishna Iyer J., that the Bangalore Water Supply case didn't decide authoritatively on the matter. As it observed that,

"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, education 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."

"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."

After which the Court decided that,

"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."

In Bangalore Water Supply Case, the Court further held by repudiating the argument which was raised in University of Delhi & Anr. v. Ramnath & Ors. case[8]

"The final ground accepted by the Court is that education is a mission and vocation, rather than a profession or trade or business. The most that one can say is that this is an assertion which does not prove itself. Indeed, all life is a mission and a man without a mission is spiritually still- born. The high mission of life is the manifestation of the divinity already in man. To christen education as a mission, even if true, is not to negate its being an industry. We have to look at educational activity from the angle of the Act, and so viewed the ingredients of education are fulfilled. Education is, therefore, an industry and nothing can stand in the way of that conclusion. It may well be said by realists in the cultural field that educational managements depend so much on governmental support and some of them charge such high fees that schools have become trade and managers merchants. Whether this will apply to universities or not, schools and colleges have been accused, at least in the, private sector, of being tarnished with trade motives.

[8] AIR 1963 S.C. 1873

Let us trade romantics for realities and see. With evening classes, correspondence courses, admissions unlimited, fees and government grants escalating, and certificates and degrees for prices, education legal, medical, technological, school level or collegiate-education-is riskless trade for cultural 'entrepreneurs and hapless posts of campus (industrial) unrest. Imaginary assumptions are experiments with untruth.

Our conclusion is that the University of Delhi case was wrongly decided and that education can be and is, in its institutional form, an industry.

The test laid down in Bangalore Water Supply Case for declaring anything as an industrial establishment are as follows:

"Industry", as defined in Section 2(j) and explained in Banerjee, has a wide import.

(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee, (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale, Prasad or food), prima facie, there is an „industry" in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking. Although Section 2(j) uses words of the widest amplitude in its two limbs their meaning cannot be magnified to overreach itself. Hence, by applying this test, "teachers" must be considered to be "employee", as the definition under Industrial Dispute Act & Minimum Wages Act does not differ.

CONCLUSION & SUGGESTION

As a result, the researcher thinks that the legislation must be properly established, and teachers must be recognised as workers under the Minimum Wage Act. The subject of instruction may

be innovative, but it still needs expertise. All of the courses deemed required by the UGC for seeking to become teachers in primary schools, secondary schools, high schools, and universities instil in them the "skill" of a teacher. However, with the current deterioration of academic standards by the UGC, the status of education has reached a low point.

Thus, industrial adjudication, in terms of minimum wage, must be aware of the current socioeconomic thought ground; it must recognise that in the modern welfare State, healthy industrial relations are of paramount importance, and its essential function is to assist the State by assisting in the resolution of industrial disputes, which constitute a distinct and persistent phenomenon of modern industrialised States. Industrial adjudication does not and should not use a doctrinal approach to resolving industrial disputes. It must develop certain operating rules and should avoid creating or accepting abstract generalisations in general. As a result, teachers must be treated as both a worker and an employee under the minimum wage statute in order to reap the benefits of a beneficent act; otherwise, it will be an injustice not only to the instructors, but to society as a whole.

REFERENCES

1. Constitution of India, 1949

2. Minimum Wages Act, 1948

3. Industrial Disputes Act, 1947