IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17000 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.Y. KOGJE Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**No**
2	To be referred to the Reporter or not ?	**No**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**No**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**No**

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DARUL ULLUNARABIYYAH ISLAMIYYAH
Versus
MAULAVI MAHMRUDUL HASAN & 1 other(s)

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Appearance:
MR YOGI K GADHIA(5913) for the Petitioner(s) No. 1
MR GK RATHOD(2386) for the Respondent(s) No. 1
RULE SERVED for the Respondent(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE A.Y. KOGJE**

Date : 13/06/2022

ORAL JUDGMENT

1. This petition under Article 226/227 of the Constitution of India is filed by the petitioner, which is an institution registered with the Gujarat State Wakf Board. Challenge by the petitioner is to judgment and award dated 30.06.2015 passed by the Labour Court, Bharuch in Reference T No.164 of 2009. The reference was made by respondent No.2, who was employed with the petitioner and according to him, was terminated from the services without

following due process of law.

2. Learned Advocate for the petitioner has challenged the impugned award on two grounds, i.e. that the petitioner institution cannot be termed to be an “industry” and that respondent No.1 does not fall in the definition of “workman”.

2.1 Learned Advocate for the petitioner submitted that the petitioner institution is not engaged in any commercial activity and is in fact, running this institution for providing religious teachings to the children and that too on no profit basis. It is submitted that the source of income of the petitioner institution is also in the form of donation received from the members of its community and therefore, by no stretch of imagination, activity of the petitioner can be compared with an industry as required under the definition of an industry under Section 2(j) of the Industrial Disputes Act. It is submitted that in view of the aforesaid, the reference itself was not maintainable and when such ground was taken up, the Labour Court has committed an error in taking into consideration irrelevant consideration to conclude that the petitioner’s activity would fall in the activity of an industry.

2.2 It is submitted that appointment of the respondent, even on the basis of his own deposition would indicate that the respondent himself was a student of the petitioner institution and thereafter, he was taken in service and at the time of alleged

termination, the respondent was discharging duty of religious teacher ("Maulvi") and the respondent, being a teacher, cannot be covered in the definition of a workman.

2.3 Learned Advocate for the petitioner cursorily submitted that there was a grave reason for not continuing the respondent in the petitioner institution as there were allegations of serious nature which may also amount to serious offence under the Indian Penal Code, but for not stretching the matter beyond limit, which may affect the children who are coming to the institution, such alleged offence was not probed further.

2.4 Learned Advocate for the petitioner has taken this Court to the pleadings in the form of statement of claim to indicate that the respondent himself has admitted that he was engaged for religious job with the institution. In view of his admission in the statement of claim itself, the Labour Court ought to have concluded that the respondent being a teacher cannot be treated to be a workman.

2.5 Learned Advocate for the petitioner has relied upon decision of the Apex Court in case of ***A.Sundarambai Vs. Government of Goa, Daman and Diu***, reported in **1988 (4) SCC, 42** to substantiate his argument that the teacher would not fall in the definition of a workman.

2.6 Learned Advocate for the petitioner then relied upon

decision of the Apex Court in case of ***Haryana Unrecognised Schools Association Vs. State of Haryana***, reported in **1996 (4) SCC, 225**, in support of his contention that even in connection with Minimum Wages Act, the Apex Court has held that the teacher of an educational institution cannot be brought within the perview of Minimum Wages Act, particularly expression “employee” which has been defined in Section 2(i) of the Act.

2.7 In support of his contention regarding trust not being an industry, learned Advocate for the petitioner relied upon decision of the Division Bench of this Court in case of ***Managershri, Panchasara Jain Derasar Vs. Mahamadkhan Gazikhan Baloch***, reported as **1993 (1) GLH (UJ), 9**. In this regard, it is submitted that merely because it has come on record before the Labour Court that the petitioner was engaged in some other activity like printing of books, etc., will not change the complexion of a trust and therefore, in view of aforesaid judgment, though the said trust was engaged in other activity, in view of “Bhakti” and “Puja” being carried out, still the said trust was not covered in the definition of an industry.

2.8 Learned Advocate for the petitioner has thereafter relied upon decision of the Apex Court in case of ***Bharat Bhawan Trust Vs. Bharat Bhawan Artists Association***, reported in **2001 (7) SCC, 630**, to substantiate that where activity carried out by the institution does not result into large scale production nor the

activities are some kind of services of goods, such institute cannot be classified as “industry”.

3. As against this, learned Advocate for the respondent submitted that case of the respondent to the extent that the respondent was appointed as a clerk and was engaged in the activity of all the natures with the institution, even from the evidence given by the petitioner institution itself, it is clear that the respondent was given responsibility of handling library books as well as managing all the printing material, etc. and therefore, contention that the respondent was engaged only in religious teaching, would not take the respondent out of definition of a workman being a religious teacher.

3.1 Learned Advocate for the respondent submitted that claim of the petitioner institution to be not an industry because it is engaged in religious teaching activity cannot be accepted as the petitioner trust is not registered as an educational institution. It is submitted that any trust which claims to be engaged in imparting of education requires to follow necessary rules governing functioning of educational institutions and also requires registration as such with the Government authorities. None of this is available in case of the petitioner and therefore, stand taken by the petitioner is only to escape its liability towards the respondent.

3.2 Learned Advocate for the respondent submitted that

nature of activity which has come on record of the Labour Court would clearly fall within the definition of industrial activity as defined and classified by the celebrated judgment of the Apex Court in case of ***Bangalore Water Supply and Sewerage Board Vs. A.Rajappa & Ors***., reported in **1978 LAB IC, 467**.

3.3 Learned Advocate has then relied upon judgment of this Court in case of ***Sunni Muslim Wakf Committee Vs. Abdulgani Ishabhai Kachhot*** in **SCA No.4389 of 2008 with SCA No.1106 of 2008 dated 17.03.2011**, to submit that this Court, after taking into consideration the nature of activities involved, has held that Sunni Muslim Wakf Committee has to be treated as "industry". It is submitted that the activities of said Sunni Muslim Wakf Committee were same as are claimed by the petitioner and all the arguments made by the petitioner herein have been dealt with in the aforesaid judgment.

4. Having considered the rival submissions of learned Advocates for the parties and having perused documents on record, it appears that statement of claim filed by the respondent vide Exh.7 would indicate that the respondent had joined in April 1993 after securing religious teaching in the very institution and when he had joined the petitioner institution, he was given job or running library. Thereafter, the respondent continued his educational activity in religious field and went on to become a "Maulvi", i.e. to say religious teacher. The reference was made, when according to

the petitioner, somewhere in November 2008, the respondent was precluded from discharging his duties and therefore, on 14.11.2008, the respondent addressed legal notice to the petitioner, which was answered by the petitioner vide its reply dated 17.11.2008, wherein it was indicated that on account of some allegations against him, respondent was not permitted to work. It is pertinent to observe that though in such communication and the stand taken by the petitioner before the Labour Court, there is element of serious allegations which may amount to serious offence as per the Indian Penal Code, however, the respondent, who by then had rendered 11 years of service, was not put to notice with regard to allegations against him. In the opinion of the Court, had the petitioner institution inclined to act on the basis of such allegations, it was incumbent for the petitioner institution to act in accordance with law and providing opportunity by following principles of natural justice, ought to have called for the explanation towards such serious allegations. In the opinion of the Court, the Labour Court, has therefore, rightly arrived at a conclusion that termination of the respondent from the service would amount to violation of Section 25F of the Industrial Disputes Act. From the record, it is not coming out that provisions of Section 25F have been complied with before terminating services of the respondent.

5. In view of the aforesaid, feeble attempt made on behalf

of the petitioner that no findings are given by the Labour Court about having completed more than 240 days before passing the impugned award, will not hold good.

6. With regard to contention of the petitioner that the respondent does not fall in the definition of a workman, it is pertinent to observe that on the basis of deposition of the respondent, the manner in which the respondent had entered into the institution after having received religious education from the very institution, he was inducted to do clerical work in the library. In the deposition, nature of work performed by the respondent is clearly indicated. The contention that the petitioner is not a workman is particularly based on the contention that the petitioner institution is an educational institution and the respondent workman is discharging duty as a teacher. Therefore, in the opinion of the Court, first and foremost fact required to be established is to to take the institution out of the definition of an "industry" and the respondent out of the definition of a "workman". From the record, it is apparent that the petitioner has failed to discharge his burden to establish before the Labour Court that the petitioner institution is an educational institution. It is pertinent to observe from the evidence led, both by the petitioner as well as by the respondent, the nature of activities of the petitioner institution not only included imparting of religious education, but was also involved in activity of printing of magazines and educational books.

The evidence also goes on to show the fact that the institution was receiving subscriptions for such magazines. The submission of learned Advocate for the petitioner that such activity was done at minuscule level and printing of only 1000 magazines was undertaken, will not take the activity out of the definition of an "industry". As per case of Bangalore Water Supply and Sewerage Board (supra), to bring activity under the definition of an "industry", the requirements are (i) systematic activity, (ii) organized by cooperation between employer and employee and (iii) for production and /or distribution of goods and services calculated to satisfy human wants and wishes. In the opinion of the Court, from the evidence on record, the petitioner institution satisfies requirements as stipulated under the judgment of Bangalore Water Supply and Sewerage Board (supra).

7. Another aspect which requires to be taken into consideration is that for claiming the institution to be an educational institution, the same is required to be a recognized educational institution and for recognizing the institution as an educational institution, several statutes are provided for, which include registration of the institution as an educational institution. Admittedly, even as per the case of the petitioner, the petitioner institution is not registered as an educational institution, but is registered as a trust with the Wakf board. Looking to the activities in which the petitioner is involved and lack of any recognition as an

educational institution by any Government authorities, has rightly led the Labour Court to conclude that the petitioner institution is not an educational institution and consequentially, the respondent a teacher. In judgment referred to by learned Advocate for the petitioner in case of A.Sundarambai (supra), the Apex Court has indeed distinguished a teacher from a workman, where the Apex Court has expressed a view that a teacher who is employed by an educational institution for imparting education, cannot be termed as a workman within Section 2(s) as imparting of education is the main function of a teacher and cannot be compared with the skilled or unskilled manual, supervisory, technical or clerical work as imparting of education is in the nature of a mission or a noble vocation. The facts before the Apex Court were very categoric and clear in terms, where the appellant before the Apex Court was joined as a teacher in a full fledged school registered as school. Such are not the facts in the present case.

8. In case of Haryana Unrecognised Schools Association (supra), the Apex Court was examining definition of term “employee” as defined under Section 2(i) of the Minimum Wages Act. The question which was for consideration was whether teacher of educational institutions can be held to be an employee under Section 2(i) of the Minimum Wages Act, where State of Haryana, in exercise of powers under Section 27 of the Minimum Wages Act, had described employment in private coaching classes,

scrolls, including nursery, at Item No.40 in Part-I for the purpose of fixing minimum rate of wages of teachers. It is in that context that the Apex Court differentiated work rendered by the teachers in compared to other workmen to hold that the teachers would come in the definition of employee for all purposes.

9. Reliance placed by the respondent on the decision of this Court in case of Sunni Muslim Wakf Committee Vs. Abdulgani Ishabhai Kachhot in SCA No.4389 of 2008 with SCA No.1106 of 2008, in the opinion of the Court, is justified as Coordinate Bench of this Court had examined very similar contentions, where the petitioner was Sunni Muslim Wakf Committee, a trust and its activities were relatable to the activities as claimed by the petitioner herein and had argued that the Wakf committee is not an industry. Turning down such contention, this Court had proceeded to hold that the Wakf committee is an “industry” and the persons gainfully employed under it, as workmen.

10. In view of the aforesaid reasonings, the Court is not inclined to interfere with the impugned judgment and award. Hence, the petition deserves to be and is hereby dismissed. Rule is discharged. Interim relief granted earlier stands vacated. No order as to costs.

Sd/-
(A.Y. KOGJE, J)

SHITOLE