BLOGS

Passage-Based Questions on Labour and Industrial Law for CLAT PG

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Passage I

That leads to the consideration whether charitable enterprises can at all be industries. Viewing the problem from the angle from which one must, according to me, view the State's inalienable functions, it seems to me to follow logically that a systematic activity which is organised or arranged in a manner in which trade or business is generally organised or arranged would be an industry despite the fact that it proceeds from charitable motives. It is the nature of the activity that one has to consider and it is upon the application of that test that the State's inalienable functions fall within the definition of 'industry'.

The very same principle must yield the result that just as the consideration as to who conducts an activity is irrelevant for determining whether the activity is an industry, so is the fact that the activity is charitable in nature or is undertaken with a charitable motive. The status or capacity, corporate or constitutional, of the employer would have, if at all, closer nexus, than his motive, with the question whether the activity is an industry. And yet that circumstance, according to me, cannot affect the decision of the question. The motive which propels an activity is yet another step removed and, ex hypothesi, can have no relevance on the question as to what is the nature of the activity.

It is never true to say that the nature of an activity is charitable. The subjective motive force of an activity can be charity but for the purpose of deciding whether an activity is an industry one has to look at the process involved in the activity, objectively. The argument that he who does charity is not doing trade or business misses the point because the true test is whether the activity, considered objectively, is organised or arranged in a manner in which trade or business is normally organised or arranged. If so, the activity would be an industry no matter whether the employer is actuated by charitable motives in undertaking it.

The jural foundation of any attempt to except charitable enterprises from the scope of the definition can only be that such enterprises are not undertaken for profit. But then that, clearly, is to introduce the profit-concept by a side wind, a concept which, I suppose, has been rejected consistently over the years. If any principle can be said to be settled law in this vexed field it is this: the twin consideration of profit motive and capital investment is irrelevant for determining whether an activity is an industry.

Therefore, activities which are dominated by charitable motives, either in the sense that they involve the rendering of free or near-free services or in the sense that the profits which they yield are diverted to charitable purposes, are not beyond the pale of the definition in section 2(j). It is as much beside the point to in-

Excerpt from Bangalore Water-Supply & Sewerage Board vs R. Rajappa & Others, 1978 AIR 548

1. Which of the following establishments is most likely to be regarded as an "industry"?

a) A private temple carrying out religious ceremonies
b) Hiring a cook for the household
c) A government hospital that employs medical professionals
d) High Court performing judicial duties

2. Based on the triple test, which of the following is not a necessary condition?

a) Systematic activity
b) Profit motive
c) Employer-employee cooperation
d) Production or distribution of goods or services

3. Assertion (A): The term "industry" can include charitable organisations.
Reason (R): Even in the absence of profit, the existence of systematic service and employer-employee relations is adequate.

a) Both A and R are true, and R correctly explains A
b) Both A and R are true, but R does not explain A
c) A is true, but R is false
d) A is false, but R is true

4. Out of the following combinations, which one passes the "triple test"?

a) Charity, Volunteers only and Religious activity

b) Systematic service, Employer-employee relationship and Satisfaction of human wants

c) Government ownership, Profit and Capital investment

d) Casual labour + Temporary service

5. Assertion (A): The term "industry" may include educational establishments.
Reason (R): According to the triple test, education is a service that satisfies human needs.

a) Both A and R are true, and R correctly explains A

b) Both A and R are true, but R does not explain A

c) A is true, but R is false

d) A is false, but R is true

Passage II

Apart from statutory rights, Government employees cannot claim that they can take the society at ransom by going on strike. Even if there is injustice to some extent, as presumed by such employees, in a democratic welfare State, they have to resort to the machinery provided under different statutory provisions for redressal of their grievances.

Strike as a weapon is mostly misused which results in chaos and total maladministration. Strike affects the society as a whole and particularly when two lakh employees go on strike enmasse, the entire administration comes to a grinding halt. In the case of strike by a teacher, entire educational system suffers; many students are prevented from appearing in their exams which ultimately affect their whole career. In case of strike by Doctors, innocent patients suffer; in case of strike by employees of transport services, entire movement of the society comes to a stand still; business is adversely affected and number of persons find it difficult to attend to their work, to move from one place to another or one city to another.

On occasions, public properties are destroyed or damaged and finally this creates bitterness among public against those who are on strike. Further, Mr. K.K. Venugopal, learned senior counsel appearing for the State of Tamil Nadu also submitted that there are about 12 lacs Government employees in the State. Out of the total income from direct tax, approximately 90% of the amount is spent on the salary of the employees. Therefore, he rightly submits that in a Society where there is a large scale unemployment and number of qualified persons are eagerly waiting

for employment in Government Departments or in public sector undertakings, strikes cannot be justified on any equitable ground.

Excerpt from T.K. Rangarajan vs Government Of Tamil Nadu & Others, 2003 (6) SCC 581

6. The Supreme Court ruled in T.K. Rangarajan v. Government of Tamil Nadu and Others, that government employees have:

a) A fundamental right to strike
b) A statutory right to strike
c) Both fundamental and statutory right to strike
d) Neither a fundamental nor a statutory right to strike

7. Under which constitutional provisions did the Court mainly reject the claim of the right to strike?

a) Articles 14 and 21
b) Articles 14 and 19
c) Articles 19(1)(a), (b) and (c)
d) Articles 32 and 226

8. The State used which of the following statutes to prohibit the strike?

a) Industrial Disputes Act
b) Trade Unions Act
c) Essential Services Maintenance Act
d) Factories Act

9. Which of the following statements is INCORRECT as per the judgment?

a) Strike is a fundamental right
b) Public employment is subject to statutory control
c) The government can regulate service conditions under Article 309
d) Larger public interest may override employees' demands

10. Assertion (A): The right to strike is included in the right to form associations under Article 19(1)(c).
Reason (R): Every association activity inherently becomes a fundamental right.

a) Both A and R are true, and R correctly explains A

b) Both A and R are true, but R does not explain A

c) A is true, but R is false

d) A is false, but R is true

Passage III

It is true that the principle of ‘equal pay for equal work’ is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. Art. 39(d) of the Constitution proclaims ‘equal pay for equal work for both men and women” as a Directive Principle of State Policy. ‘Equal pay for equal work for both men and women’ means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation.

Art. 14 of the Constitution enjoins the state not to deny any person equality before the law or the equal protection of the laws and Art. 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. These equality clauses of the Constitution must mean some thing to everyone. To the vast majority of the people the equality clauses of the Constitution would mean nothing if they are unconcerned with the work they do and the pay they get. To them the equality clauses will have some substance if equal work means equal pay.

Whether the special procedure prescribed by a statute for trying alleged robber-barons and smuggler kings or for dealing with tax evaders is discriminatory, whether a particular Governmental policy in the matter of grant of licences or permits confers unfettered discretion on the Executive, whether the takeover of the empires of industrial tycoons is arbitrary and unconstitutional and other questions of like nature, leave the millions of people of this country untouched.

Questions concerning wages and the like, mundane they may be, are yet matters of vital concern to them and it is there, if at all that the equality clauses of the Constitution have any significance to them. The preamble to the Constitution declares the solemn resolution of the people of India to constitute India into a Sovereign Socialist Democratic Republic. Again the word ‘Socialist’ must mean something. Even if it does not mean ‘To each according to his need’, it must atleast mean

'equal pay for equal work'. The principle of 'equal pay for equal work' is expressly recognized by all socialist systems of law, e.g, Section 59 of the Hungarian Labour. Code, para 2 of Section 111 of the Czechoslovak Code, Section 67 of the Bulgarian Code, Section 40 of the Code of the German Democratic Republic, para 2 of Section 33 of the Rumanian Code. Indeed this principle has been incorporated in several western labour codes too.

Under provisions in Section 31 (g. No. 2d) of Book I of the French Code du Travail, and according to Argentinian law, this principle must be applied to female workers in all collective bargaining agreements. In accordance with Section 3 of the Grundgesetz of the German Federal Republic, and clause 7, Section 123 of the Mexican Constitution, the principle is given universal significance (vide: International Labour Law by Istvan Szaszy p. 265). The preamble of the Constitution of the International Labour Organisation recognises the principle of 'equal remuneration for work of equal value' as constituting one of the means of achieving the improvement of conditions "involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled".

Construing Articles 14 and 16 in the light of the Preamble and Art. 39(d) we are of the view that the principle 'Equal pay for Equal work' is deducible from those Article and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though these drawing the different scales of pay do idential work under the same employer.

Excerpt from Randhir Singh vs Union Of India & Ors, 1982 AIR 879

10. Which constitutional provision specifically mentions the principle of "equal pay for equal work"?

a) Article 14
b) Article 16
c) Article 21
d) Article 39(d)

11. Which of the following does not qualify as a "workman" under Section 2(s) of the Industrial Disputes Act?

a) Technician
b) Clerk
c) Manager performing supervisory functions with high salary

d) Machine operator

12. A disagreement over the unjust dismissal of fifty plant workers would be eligible as:

a) Civil dispute

b) Industrial dispute under Section 2(k)

c) Constitutional dispute

d) Criminal dispute

13. Pay discrimination on the basis of gender would be against:

a) Article 19 only

b) Article 300A

c) No constitutional provision

d) Articles 14 and 16

14. Which of the following would most likely go against the principle laid down in Randhir Singh v. Union of India?

a) Higher pay for engineers with specialised degrees

b) Higher pay for workers with additional hazardous duties

c) Higher pay for one department solely due to historical practice

d) Higher pay for employees with supervisory roles

15. Assertion (A): In every circumstance, equal pay for equal work is a fundamental right.
Reason (R): When two positions seem similar, courts are required to equalise wages.

a) Both A and R are true, and R correctly explains A

b) Both A and R are true, but R does not explain A

c) A is true, but R is false

d) Both A and R are false

Answers

1. (C)
2. (B)
3. (A)

4. (B)
5. (A)
6. (D)
7. (C)
8. (C)
9. (A)
10. (D)
11. (C)
12. (B)
13. (D)
14. (C)
15. (D)