



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 2319 of 2017

In R/SPECIAL CIVIL APPLICATION/21883/2016

FOR APPROVAL AND SIGNATURE:

**HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR.JUSTICE L. S. PIRZADA**

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Approved for Reporting	Yes	No
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UMESHWAR AKSHAYWAR DUBEY

Versus

SHREE SAINATH SARVAJANIK SEVA MANDAL TRUST & ANR.

Appearance:

MR DG SHUKLA(1998) for the Appellant(s) No. 1

MR HARSHEEL D SHUKLA(6158) for the Appellant(s) No. 1

DELETED for the Respondent(s) No. 2

MR AK CLERK(235) for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

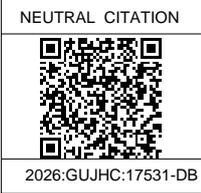
HONOURABLE MR.JUSTICE L. S. PIRZADA

Date : 16/02/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr.D.G. Shukla appearing for the appellant and learned advocate Mr.A.K. Clerk for the respondent No.1 - Trust.



2. By this appeal under Clause 15 of the Letters Patent, 1865, the appellant - petitioner has challenged the Judgment and Order dated 02.08.2017 passed by learned Single Judge in Special Civil Application No.21883 of 2016.

3. The learned Single Judge dismissed the said petition wherein, the Order dated 03.09.2016 passed by the Labour Court, Navsari in Reference (LCN) No.1 of 2014 is upheld and it is held that the Labour Court did not commit any error by coming to the conclusion that the appellant could not be termed as a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (for short, the "I.D. Act").

4. The brief facts of the case are as under: -

4.1. The appellant was working as a Pujari in the Temple run and managed by the respondent No.1 - Trust with effect from 10.03.1999. The appellant was performing Pooja and Aarti at the Temple and was initially paid Rs.1200/- per month towards his remuneration.

4.2. It is the case of the appellant that the respondent No.1 -



Trust was managing Shri Saibaba Temple and was also selling 'Bundi Ladu', coconut etc. The respondent No.1 - Trust had employed 3 Pujaris, 1 Manager, 2 persons for taking donations, 6 staff members for general administration of various activities, 2 cooks and 20 workmen for preparing 'Bundi Ladus' and cleaning the Temple and other premises and accordingly, the respondent No.1 - Trust was carrying out its religious and commercial activities by employing about 35 to 40 workmen.

4.3. It is the case of the appellant that his service was terminated on 30.11.2012 by the respondent No.1 - Trust without any notice, notice pay, retrenchment compensation or without following any legal procedure and contrary to the principles of natural justice. The appellant, therefore, raised the industrial dispute by filing a complaint before the Conciliation Officer, Navsari on 09.10.2014, which was referred to the Labour Court, Navsari being Reference (LCN) No.1 of 2014.

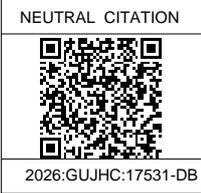
4.4. The appellant submitted his Statement of Claim praying to reinstate him on his original post with continuity of service



and full back wages on the ground that the respondent No.1 - Trust is an 'Industry' within the meaning of Section 2(j) of the I.D. Act as the respondent No.1 - Trust is carrying on commercial and business activity by selling 'Bundi Ladus and coconuts' and other Pooja articles and, therefore, there is a breach of the provisions of Section 25F, 25G and 25H of the I.D. Act.

4.5. The respondent No.1 - Trust submitted its written statement at Exh.8 on 20.11.2014 denying the allegations made in the Statement of Claim. However, it was admitted by the respondent No.1 that the appellant was working as Pujari since 1999 and by Resolution passed on 30.11.2012, his service was terminated.

4.6. The appellant, thereafter, submitted documentary evidence on record including the copies of money receipts issued by the respondent No.1 - Trust for sale of 'Bundi Ladus.' The appellant was also cross-examined on behalf of the respondent No.1 - Trust. The respondent No.1 - Trust thereafter, submitted application dated 14.07.2016 at Exh.31 to decide whether the Labour Court is having jurisdiction to



entertain the Reference or not, as the appellant was working as Pujari and, therefore, cannot be said to be a 'Workman' under Section 2(s) of the I.D. Act, as preliminary issue.

4.7. The appellant filed reply at Exh.32 on 28.07.2016 raising the dispute that such application could not have been entertained at a belated stage as the deposition of the appellant was already completed. The Labour Court allowed the application and framed the preliminary issue at Exh.37 as to whether the appellant could be termed to be a workman within the definition of the Industrial Disputes Act.

4.8. The Labour Court after considering the submissions made by both the sides, passed an order dated 03.09.2016 on the preliminary issue by rejecting the Reference holding that the appellant was not covered within the definition of 'workman' under Section 2(s) of the I.D. Act and hence labour Court has no jurisdiction to proceed with the reference.

4.9. The appellant, therefore, being aggrieved by the order of the Labour Court dated 03.09.2016 preferred Special Civil Application No.21883 of 2016 before this Court. The learned



Single Judge after considering the submissions made by both the sides, dismissed the petition by observing as under: -

“6.1 The Labour Court had vide Exh. 37 framed Preliminary Issue as to whether the petitioner could be termed to be a workman within the definition of the Industrial Disputes Act. The Labour Court has recorded its findings qua the said issue framed by it vide the impugned order dated 03.09.2016. This Court has taken into consideration the reasons recorded by the Labour Court. The Labour Court has, in its findings, starting from Para 7 onwards noted that, the petitioner could not be termed to be a workman, for the reasons recorded therein.

XXXXX

6.3 When the material on record before the Labour Court is weighed viz-a-viz the law in that regard, this Court finds that the Labour Court has not committed any error by coming to the conclusion the the petitioner could not be termed as a workman with the meaning of Section 2(s) of the Industrial Disputes Act, 1947. No interference therefore is required.

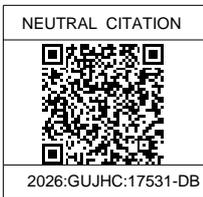
6.4 The decisions relied by learned advocate for the petitioner would not help the petitioner in view of the decision of Supreme Court of India as noted above.”



4.10. The learned Single Judge has also referred to and relied upon the decision of the Hon'ble Apex Court in the case of **H.R. Adyanthaya and Others V.s Sandoz (India) Ltd. and Others** reported in **(1994) 5 SCC 737** wherein, it is held that a person to be a workman under the I.D. Act must be employed to do the work of any of the categories i.e. manual, unskilled, skilled, technical, operational, clerical or supervisory. It was therefore held by the learned Single Judge that as the Pujari is not falling in any of these categories, the Labour Court has rightly held that the appellant cannot be termed as 'Workman' under Section 2(s) of the I.D. Act, which is confirmed by the learned Single Judge.

4.11. Being aggrieved, the appellant has preferred this appeal which is admitted by order dated 24.01.2018 by the Coordinate Bench as the issue involved in the appeal is whether the Pujari offering the services in the Temple can be said to be a 'workman' or not.

5. Learned advocate Mr.D.G. Shukla for the appellant submitted that the learned Single Judge has not appreciated



the submissions on behalf of the appellant that the Labour Court has erred in allowing the application at Exh.31 submitted by the respondent No.1 - Trust at a belated stage after the deposition of the appellant was completed on 21.04.2016 and after submission of the several documents by the appellant in evidence.

5.1. It was pointed out that the application for preliminary issue was submitted almost after about two years from the date of submission of the written statement on 20.11.2014. It was, therefore, submitted that the Labour Court could not have allowed the application Exh.31 to frame and decide the preliminary issue and thereafter, reject the Reference of the appellant, contrary to the settled legal position to hold that the appellant cannot be considered as 'workman' within the meaning of Section 2(s) of the I.D. Act.

5.2. It was submitted that the judgments and decisions relied upon by the appellant wherein, it is held that the Temple is an 'Industry' and the provisions of the I.D. Act would be applicable to such Trust running and managing Temple, therefore, the Pujari, performing the Pooja is manual work



and would fall within the definition of 'Workman' under Section 2(s) of the I.D. Act. It was, therefore, submitted that the learned Single Judge has committed an error by not dealing with the submissions made on behalf of the appellant as the Labour Court, ignored the deposition of the appellant as well as the documents submitted by him to prove that the respondent No.1 - Trust is carrying on commercial activities and, therefore, it is an 'Industry' and the appellant is a 'workman' under Section 2(s) of the I.D. Act.

5.3. Learned advocate Mr. Shukla, in support of his submissions, referred to the decision of the learned Single Judge Hon'ble Bombay High Court in the case of **Cutchi Visa Oswal Derawasi Jain Mahajan vs. B.D. Borude, I.T. Maharashtra**, reported in **1987(1) LLJ 81 (Bombay)**. Referring to the said decision, it was submitted that in the facts of the said case, the Hon'ble Bombay High Court has held that when the charitable trust is carrying on religious activity of managing the Temple and carrying out commercial activities then, it cannot be said that the Charitable Trust merely provides spiritual benefits and not material benefits. It was held that the Pujari is engaged for giving service to the



devotees, and the services are not necessarily spiritual in nature. In the facts of the said case, as the Charitable Trust acquired large properties at several places in Bombay and was letting out the same and the workmen were employed to give services at those properties, which was held to be non-religious in nature and it was, therefore, held that the charitable Trust was an undertaking under the definition of 'Industry' within the meaning of I.D. Act.

5.4. It was, therefore, submitted that in the facts of present case also, when the respondent No.1 - Trust is carrying out the commercial activities by selling 'Bundi Laddus', coconut etc. , the same would fall within the definition of 'Industry' under Section 2(j) of the I.D. Act and the appellant, performing as Pujari in the Temple would be covered by definition of 'Workman' under Section 2(s) of the I.D. Act.

5.5. Learned advocate Mr. D.G. Shukla referred to and relied upon the decision of the learned Single Judge of Hon'ble Calcutta High Court in the case of **Workmen of M/s.Baikuntha Nath Debasthan Trust (Baikuntha Nath Debasthan Mandir Trust) Rep. By Paschimbanga**



Byabasayi Sramik Sengstha vs. State of West Bengal, reported in **1990(2) CalLT 42** wherein the Hon'ble Calcutta High Court held that when the Pujari on a regular wage basis perform Pooja then he would be covered under the definition of 'Workman' as the institution was running more on a commercial than spiritual line and, therefore, would be covered within the definition of 'Industry' under Section 2(j) of the I.D. Act.

5.6. Reliance was also placed on the decision of the Hon'ble Himachal Pradesh High Court in the case of **Rakesh Kumar vs. Commissioner-cum-deputy Commissioner, Baba**, reported in **1991(1) CLJ (HP) 302** wherein, it was held in the facts of the case that Baba Balaknath Temple Trust was carrying out the construction activities at large scale over a period of time and additionally, it was running an Ayurvedic dispensary, Degree College with U.G.C. Scale to the staff and School etc. and, therefore, relying upon the decision of the Hon'ble Apex Court in the case of **Bangalore Water Supply & Sewerage Board vs. A. Rajappa and others**, reported in **1978(2) SCC 213**, the Trust was held to be an industry within the provisions of Section 2(j) of the I.D. Act by



observing as under:-

“10. No doubt, those activities of the Trust pertaining to pooja and Archana' in the temple of the Trust including material things or services geared to celestial bliss e. g making, on a large scale, 'prasad' or food exclusively for offering to the Deity are spiritual or religious and those employees who are engaged in these activities are not workmen by definition and may not be governed by the provisions of the Act. The number of these employees must be nominal as compared to employees who are engaged in the production and/or distribution of goods and services calculated to satisfy human wants and wishes of devotees who visit the temple of the Trust. Therefore, by applying the dominant nature test as held in para 143 (a) of Bangalore Water Supply (supra), the Trust is an Industry. It is not the case of the trust that the petitioners were engaged for such activities which are purely spiritual or religious, for which it must be having regular staff. Therefore, in answer to the first question we hold that the Trust is an industry and the petitioners being its daily wage workers are its workmen, who are governed by the provisions of the Industrial Disputes Act. We need not refer to the authorities cited by the learned Counsel for the parties wherein the religious trusts have been held either industry or not, as these are decided in the facts and circumstances on record of those



cases.”

5.7. Learned advocate Mr. Shukla also referred to and relied upon the decision of the learned Single Judge of the Hon’ble Bombay High Court in the case of **Devadeveshwar Sansthan Parvati And Kothrud vs. Sushila Raghu Kadu**, reported in **2002(4) LLJ 28** wherein, it was held that the Trust employing about 40 workmen in the category of Malis, Peons, Watchmen and Sweepers etc. would be covered by the definition of Section 2(j) of the I.D. Act because in the said case, the Trust, in addition to maintenance of the Temple, also maintained a Museum and a Gallery.

5.8. Reliance was placed on the decision of the Hon’ble Apex Court in the case of **Gajanan Maharaj Sanathan vs. Gajanan Karamchari Sangh**, reported in **2002(10) SCC 531** wherein, Gajanan Maharaj Trust, carrying out religious and charitable activities, was ordered to be considered in light of the decision of the 7 Judge Bench in the case of Bangalore Water Supply & Sewerage Board (supra) and the order of the High Court was set aside and the matter was remanded back to inquire into the nature and activities carried out by the



employees of the Trust.

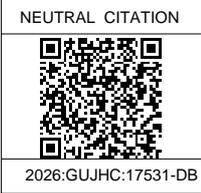
5.9. Learned advocate Mr.Shukla, therefore, submitted that in view of the above settled legal position, the appellant - original petitioner, serving as Pujari, is covered in the definition within the meaning of Section 2(s) of the I.D. Act to be termed as 'Workman' and, therefore, the impugned orders passed by the Labour Court as well as by the learned Single Judge may be quashed and set aside and the matter may be sent back to the Labour Court to decide the Reference on merits as there is clear violation of the provisions of Section 25F, 25G and 25H of the I.D. Act by the respondent No.1 - Trust.

6. On the other hand, learned advocate Mr. A. K. Clerk for the respondent No.1 - Trust submitted that Shri Saibaba Temple managed by the respondent No.1 cannot be considered as 'Industry' as per Section 2(j) of the I.D. Act. It was submitted that the respondent No.1 - Trust is registered under the provisions of the Bombay Public Trust Act, 1950 for charitable purposes and cannot be considered as an 'Industry'. It was further pointed out that the learned Single



Judge of this Court in the case of **Indravadan N. Adhvaryu vs. Laxminarayan Dev Trust Through Chief Executive Kothari**, reported in **2011(2) LLJ 273** has held that the respondent - Trust cannot be considered as an 'Industry', which was confirmed by the Division Bench of this Court in Letters Patent Appeal No.2386 of 2010, reported in 2011(2) LLJ 275. Learned advocate Mr. Clerk also referred to and relied upon the recent decision of the Hon'ble Apex Court in the case of **Indravadan N. Adhvaryu Pipala Fali Modhvada vs. Laxminarayan Dev Trust** passed in **Civil Appeal No.7549 of 2011** wherein, the Hon'ble Apex Court has held that Laxminarayan Dev Trust, is a Temple and as such, should not fall within the four corners of expression "Industry" and has not interfered on merits.

6.1. Reliance was also placed on the decision of the Division Bench of this Court in the case of **Manager, Panchasara Jain Derasar, Patna Dist. vs. Mahmalkha Gajikha Baloch** reported in **1993(1) GLH (UJ)9** by quashing and setting aside the order of the Labour Court whereby, it was held that the petitioner - Temple was an 'Industry'. It was pointed out that the Hon'ble Apex Court did not interfere in the decision



of the Division Bench and closed the matter on payment of compensation.

6.2. Reliance was also placed on the decision of the learned Single Judge in the case of **Aarsuri Ambaji Mata Devasthan Trust vs. Motiji Meghaji Rabari** reported in **2021 LawSuit (Guj) 91** wherein, it was held that the petitioner - Trust was managing the Temple and activity of providing lunch and dinner on concessional basis to the pilgrims, shall not be treated as an industrial work but, it was considered to be a part of charitable activity.

6.3. Learned advocate Mr. Clerk referred to and relied upon the decision of the Hon'ble Andhra Pradesh High Court in the case of **Varaha Lakshmi Narasimha Swamy Vari Devasthanam, Rep. By its Executive Officer, Simhachalam vs. State of Andhra Pradesh, Rep. By its PRL Secretary and 2 others**, reported in **2020 2 ALD 22** wherein, it was held by the learned Single Judge of the Hon'ble Andhra Pradesh High Court as under:-

[8] The legal position in this regard is not res



nova and the same has been well settled. The question whether a temple rendering religious and spiritual services to the pilgrims, who visit the temple to worship the presiding Deity in the temple is a religious institution or an industry, has fallen for consideration on many occasions before the Apex Court and various High Courts including the High Court of Andhra Pradesh. Therefore, it is expedient to consider the relevant judgments on the point which are of precedential guidance which throw light on the controversy involved in this lis to decide whether the temple whose primary objective is to render religious and spiritual services to the pilgrims of the temple, is to be considered as an industry under the Industrial Disputes Act or not.

[9] The Division Bench of the High Court of Orissa in the case of Harihar Bahinipaty v. State of Orissa, 1965 10 FLR 313 had an occasion to deal with the issue whether the management of Puri Jagannath Temple and its workmen comes within the purview of the Industrial Disputes Act or not. The workers working in Sri Jagannath Swamy Temple, Puri, raised a dispute before the Assistant Labour Commissioner for conciliation for redressal of their grievance relating to payment of arrears of salary by the management of the Temple. The conciliation



failed. So, the workers moved the State Government for referring the dispute for adjudication to the Industrial Tribunal under the Industrial Disputes Act. The State Government declined to refer the dispute under the Industrial Disputes Act on the ground that there is no case for reference of the dispute for adjudication as the dispute between the management of the Temple and its workmen does not come within the purview of the Industrial Disputes Act, 1947. Therefore, challenging the decision of the State Government, the workers of the Temple approached the High Court invoking the writ jurisdiction. The Division Bench of the Orissa High Court considered the earlier precedents rendered on the subject and held at paragraph No.22 of the judgment as follows:

"22. It is thus abundantly clear that Shri Jagannath Temple is not an institution where material human needs are being met. It is primarily a spiritual institution. The Ballav that is prepared is offered to the deity as Bhog. It is therefore sold as prasad. It is not that the Temple serves the purpose of a hotel for catering foodstuffs. The maintenance of order and discipline and proper hygienic conditions in the temple and of proper



standard of cleanliness and purity in the offerings made therein, as required under Section 15(4) of the Shri Jagannath Temple Act 11 of 1955, is for preserving spiritual atmosphere of the temple and for providing facilities to the pilgrims to have peaceful Darshan of the Deity. The primary object is spiritual. The petitioners are to maintain peace and tranquility inside the temple. The duty of maintaining order and discipline inside the temple is different from the duty of the policeman to keep law and order outside on the public road. The duty of the petitioners inside the Temple is akin to that of teachers to maintain order and In a class room in an educational institution."

10] Having held so, the Division Bench of the Orissa High Court ultimately held that the main objective of an institution is always to be kept in view. As the spiritual side is the ultimate object of Shri Jagannath Swamy Temple, it cannot be said that it is an industry. The duties of the management of the temple are to keep the temple in order and to see that there is no irregularity. Thus, one of the features which are distinctive to which Section 2(j) applies are present in the instant



case. Therefore, the High Court of Orissa upheld the decision of the Orissa Government in declining to refer the dispute under the Industrial Disputes Act on the ground that the dispute between the management of the temple and the workmen does not come within the purview of the Industrial Disputes Act.

[11] The Division Bench of Andhra Pradesh High Court in the case of Tirumala Tirupati Devasthanam v. Commissioner of Labour, 1979 1 LLJ 448 AP had an occasion to deal with the issue whether the Tirumala Tirupati Devasthanam is an industry as defined under Section 2(1) of the Industrial Disputes Act and whether its employees are workmen as defined under Section 2(s) of the Act or not. The Division Bench of this High Court considered various judgments rendered by various High Courts and also the Apex Court on the said controversy and elaborately discussed the legal position in this regard and ultimately held at paragraph No.22 of the judgment as follows:

"22. The Tirumala Tirupathi Devasthanam consists of a group of religious institutions in Tirumalai and Tirupathi. They are together regarded



as one religious institution for the purposes of Charitable and Religious Endowments Act. The main function of the Devasthanam is to arrange for the worship in its temples and to enable the pilgrims from all parts of India to visit temples and offer their prayers. It is, therefore, essentially a religious institution. Having regard to the enormous income, which this Devasthanam derives, it utilises the income for various educational and religious purposes. It has established several educational institutions and also it is one of the prime donors of the Venkateswara University. In order to cater to the thousands of pilgrims especially to the temple of Tirumalai, the Devasthanam also runs several canteens, dispensaries, etc. It has necessarily to provide for transport of the pilgrims, which it was undertaking on its own till recently. It has departments dealing with supply of electricity and water, not only to the pilgrims but to the members of the staff, Archakas, etc., and to the quarters constructed in Tirumala for the benefit of the pilgrims. Even though, having regard to the enormous flow of pilgrims throughout the year the



Devasthanam has to maintain several departments, there can be no doubt that the essential character of the institution is that of a religious institution. We cannot, therefore, regard the Devasthanam generally as an industry within the meaning of Trade Unions Act or within the meaning of Industrial Disputes Act."

[15] Thus, from the conspectus of law enunciated in the above judgment of the Division Bench of this High Court, the legal position is now manifest that when the primary object of the Temple/Endowment is to render spiritual services to the pilgrims visiting the Temple to worship the Deity and its predominant activity is a religious and spiritual activity, the Temple or the Endowment, as the case may be, as a whole cannot be regarded as an industry, bringing the same within the purview of the definition of the industry as defined under Section 2(j) of the Industrial Disputes Act. Therefore, any dispute that arises between the Endowment and its employee cannot be regarded as an industrial dispute and the employee of the said Temple or Endowment cannot be considered as a workman as defined under Section 2(s) of the Act. So, no right is conferred on any such employee appointed by



the Endowment to raise an industrial dispute under the Industrial Disputes Act in connection with any dispute that arose between the Endowment and the employee.

[16] The learned counsel for the 3rd respondent relied on the judgment of the High Court of Himachal Pradesh in the case of Jagbir Singh v. State of Himachal Pradesh, 1999 2 LLJ 304 HP wherein it is held that the Trust is an industry and the writ petitioners who were working in the said Trust are workmen and as they were retrenched without giving notice and compensation as provided under Section 25-F of the Industrial Disputes Act that the dispute raised by them is valid.

[17] As it is found in the said case that the Baba Balak Nath Temple is a Trust, in the fact situation obtained in the said case, the High Court of Himachal Pradesh held that the Trust is an industry. The said case is distinguishable on facts and it is not of use to the case set up by the 3rd respondent herein. The petitioner in this writ petition is not a Trust. It is a religious Endowment Temple and in view of the judgment of the Division Bench of Andhra Pradesh High Court in Tirumala Tirupati Devasthanam's case (3) supra) which prevails



over the judgment of other High Court, considering the ratio laid down in the said judgment, this Court arrived at a conclusion that the petitioner/Temple is not an industry and the 3rd respondent is not a workman.

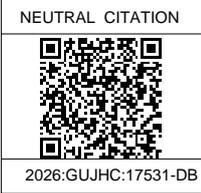
[18] However, the legal position as enunciated by the Division Bench of this High Court in the above judgment, after undertaking a laborious exercise of surveying the entire law on the subject with reference to the earlier precedents rendered by the Apex Court is that when the Temple or the Endowment, as the case may be, maintains other individual departments like Engineering Department, Transport Department, Water Department etc., then the said separate departments as individual units can be regarded as an industry and employees working in the said separate units can be considered as workmen and any dispute which arises between the employer and employee relating to the said separate units is amenable to raise an industrial dispute.

[19] Applying the aforesaid tests, if the dispute on hand is considered, it is to be held that Sri Varaha Lakshmi Narasimha Swamy Vari Temple, which is declared as an endowment under Section 6(a)(ii) of the



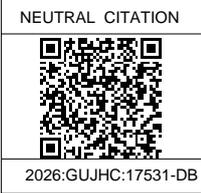
Endowments Act and registered under Section 43 of the Endowments Act, whose primary object is to render spiritual services to its pilgrims visiting the Temple from all over the country to offer worship to the presiding Deity of the Temple which is religious activity and having regard to the said predominant activity of the Temple, it is to be held that the petitioner Temple/Endowment as a whole cannot be regarded as an industry.”

6.4. Reliance was placed on the decision of the Full Bench of the Hon’ble Karnataka High Court in the case of **Mookambika Temple, Kollur vs. Raviraja Shetty and Ors.**, reported in **AIR 2020 KARNATAKA 60**, wherein the Full Bench of the Hon’ble Karnataka High Court has held that a temple cannot come within the definition of ‘Industry’ under the provisions of Section 2(j) of the I.D. Act, which defines ‘Industry’ to mean any having business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. It is also held that the Temple does not come within the expression “Industrial Establishment or undertaking” under Section 2(ka) of the I.D. Act. The Full



Bench of the Hon'ble Karnataka High Court has also considered the decision of the Hon'ble Orissa High Court in the case of **Shri Jagannath Temple**, reported in **1992 Lab IC 1621 (Ori)** wherein, the pertinent question was whether the provisions of the Payment of Gratuity Act were applicable to its employees or not and the Division Bench of the Hon'ble Orissa High Court held that the provisions of Section 1(3)(b) of the Payment of Gratuity Act are not restricted only to commercial establishments but, to establishment within the meaning of any law for the time being in force in relation to establishments in a State.

6.5. Learned advocate Mr. Clerk also referred to the decision of the Hon'ble Rajasthan High Court in the case of **Pushkarlal S/o Bhanwar Lal Shrimali vs. Administrative Officer**, reported in **2021 LLR 725**, wherein the Hon'ble Rajasthan High Court, after considering the scope of work of Pujari in a Temple, held that a Pujari would not be covered by the definition of "Workman" within the meaning of Section 2(s) of the I.D. Act. However, the Hon'ble Rajasthan High Court in the said decision, has held that even if the Temple falls within the definition of "Industry" given in Section 2(j) of



the I.D. Act, the Pujari is not a “Workman” as per the provisions of I.D. Act and, therefore, the Labour Court has no jurisdiction to adjudicate the dispute referred by the appropriate Government. It was pointed out that the Special Leave to Appeal (C) No.5675 of 2021 arising out of the aforesaid Judgment of the Hon’ble Rajasthan High Court has been dismissed by the Hon’ble Apex Court by order dated 12.04.2021.

6.6. Learned advocate Mr. Clerk for respondent No.1 - Trust referred to the following decisions to canvass that the persons, who are not performing the work of the nature specified in the definition of the term “Workman” under Section 2(s) of the I.D. Act are not “Workmen”.

(1) *Burmah Shell Oil Storage and Distributing Co. of India Ltd. vs. The Burmah Shell Management Staff Association and others*, reported in AIR 1971 SC 922.

(2) *H.R. Adyanthaya and Others V.s Sandoz (India) Ltd. and Others* reported in (1994) 5 Supreme Court Cases 737

(3) *Miss. A. Sundarambal vs. Government of*



GOA, Daman and Diu and others, reported in (1988)4 SCC 42.

(4) Mukesh K. Tripathi vs. Senior Divisional Manager, LIC and others reported in (2004)8 SCC 387.

(5) Muir Mills Unit of NTC (U.P.) Ltd. vs. Swayam Prakash Srivastava and another, reported in (2007)1 SCC 491.

(6) C. Gupta vs. Glaxo-Smithkline Pharmaceuticals Ltd., reported in (2007)7 SCC 171.

(7) Lenin Kumar Ray vs. M/s. Express Publications (Madurai) Ltd., reported in 2024(12) SCALE 538.”

6.7. Learned advocate Mr. Clerk also referred to and relied upon the following decisions in support of his contention that a Pujari performing Pooja in a Temple or a Pastor in a Church cannot be considered as a “Workman” within the definition of Section 2(s) of the I.D. Act:-

(1) Laxmi Narayan Shastri vs. Shri Sanatan Dharam Sabha Laxmi Narayan Temple Trust, reported in 2011 LawSuit (Del) 1128.

(2) Sai Bhakta Samaj (Regd.) vs. Durga Prasad



and others, reported in 2007-I LLJ 651 (Delhi).

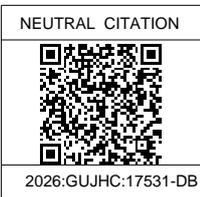
(3) Ram Kishan Sharma vs. Presiding Officer and Another, reported in 2016 LLR 511 (P&H High Court).

(4) Radhakrishna Bhakta vs. Subramanya Shastri, reported in 2006(2) LLJ 669 (Karnataka).

(5) A. Kesava Bhatt and Sree Ram Ambalam Trust and another., in O.P. No.7451 of 1988-K dated September 23, 1988 (Kerala High Court).

(6) M.R. Damon (Ms.), Mission Superintendent, P.B. No.17, Andivilla Bungalow, Kodaikanal and Another vs. Rev. M.M. Raja Dass, Chennai and Another, reported in 2003-II LLJ 730 (Madras)."

6.8. Referring to the above Judgments, it was submitted that the appellant, who was working as a Pujari with the respondent No.1 -Trust, would not fall within the definition of "Workman" under Section 2(s) of the I.D. Act and, therefore, the Labour Court has no jurisdiction to adjudicate the Reference made by the appropriate Government. It was, therefore, submitted that no interference is called for in the impugned Judgment and Order passed by the learned Single Judge upholding the Order of the Labour Court, whereby the



Reference is rejected on the ground of jurisdiction.

7. Having heard the learned advocates for the respective parties, two questions arise for consideration (1) whether Shri Saibaba Temple run by the respondent No.1 - Trust can be considered as an 'Industry' within the provisions of Section 2(j) of the I.D. Act and if the answer to the first question is in affirmative or in alternative, (2) whether the appellant, who was performing the duties of Pujari would fall within the provisions of 'Workman' under Section 2(s) of the I.D. Act or not.

8. The facts are not in dispute. The appellant - original petitioner was discharging his duties as Pujari of the Temple run and managed by the respondent No.1 - Trust. It would, therefore, be germane to refer to the relevant provisions of the I.D. Act as under:-

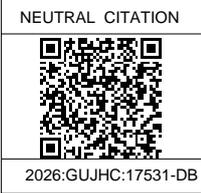
“2(j) “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;



2(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express 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 retrenchment has led to that dispute, but does not include any such person

—

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (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
- (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand 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.”



9. On perusal of the provisions of Section 2(j) of the I.D. Act, the 'Industry' means business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. Therefore, whether the Temple can be considered as an 'Industry' within the aforesaid definition or not has been deliberated upon and decided by the various Hon'ble High Courts and the Hon'ble Apex Court. It would, therefore, be necessary to refer to the ratio laid down by the Hon'ble High Courts and the Hon'ble Apex Court regarding the issue as to whether the Temple would fall within the purview of 'Industry' under the I.D. Act or not.

10. This Court in the case of Indravadan N. Adhvaryu Pipala Fali Modhvada (supra), has held that the Temple run and managed by the Laxminarayan Dev Trust is not an 'Industry' as per the definition of 'Industry', which is also upheld by the Hon'ble Apex Court in the recent Order passed on 29.01.2026 in the case of Indravadan N. Adhvaryu Pipala Fali Modhvada vs. Laxmi Narayan Dev Trust(supra)wherein, it is held as under:-



“4. Though the argument of the learned senior counsel for the appellant at the first blush looks attractive, we are not inclined to entertain the same as the reasons assigned by the Labour Court is to the effect that the respondent-Trust is a temple and as such, it would not fall within the four corners of the expression "industry". However, the oral termination in the instant case at the first instance being without holding any inquiry and thereafter, transferring the appellant to a far-off place not being warranted and as a result of the same, the disciplinary proceedings having been initiated, we are of the considered view that the entire issue can be laid to rest by directing the respondent-Trust to pay a lump-sum compensation of Rs. 12,00,000/- (Rupees Twelve Lakhs) since the appellant had worked for twelve years in the said Trust continuously, uninterruptedly and without any blemish.”

11. In the case of Aarsuri Ambaji Mata Devasthan Trust (supra), the learned Single Judge of this Court has held as under:-

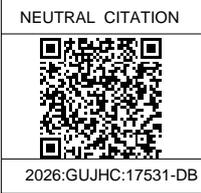
“7. Now, it is an admitted fact that the present petitioner is a Trust and the activity of providing lunch and dinner on concessional basis to the pilgrim cannot be treated as an industrial work.



Such activity of providing lunch and dinner on charitable basis is not an activity which may fall within the meaning of the industrial activity.”

12. The Hon’ble Apex Court in the case of **Mahamadkha Gajika Baloch vs. Manager, Panchasara Jain Derasar**, reported in **1994 LawSuit (SC) 741**, has impliedly confirmed the judgment of this Court t wherein, it is held that the Jain Temple is not an ‘Industry’, by considering the question of reasonableness of compensation.

13. In the case before this Court, it was held that except Bhakti and Puja, no other activity was carried out in the Temple and even if it is assumed that certain articles are sold to the persons, who come for darshan, there was no material to show that they were sold at a profit and, therefore, it was held that the Temple is not an ‘Industry’ within the meaning of Section 2(j) of the I.D. Act. The Court also considered the decision of the Hon’ble Calcutta High Court in the case of **Workmen of M/s.B.N. Debasthan Trust vs. State of West Bengal**, reported in **1991-I LLJ 145** to distinguish the same where, it was found by the Hon’ble Calcutta High Court that



the approach of the Temple was mercenary and activity which it was carrying on was of commercial nature.

14. Even in the case of *Indravadan N. Adhvaryu Pipala Fali Modhvada (supra)*, the Hon'ble Apex Court has only considered the aspect of compensation payable to the employee while confirming that the Temple is not an 'Industry.

15. The Hon'ble Andhra Pradesh High Court in the case of *Varaha Lakshmi Narasimha Swamy Vari Devasthanam (supra)*, while considering the very issue as to whether the Tirumala Temple is an 'Industry' as per Section 2(j) of the I.D. Act and whether the employees were 'Workman' under Section 2(s) of the I.D. Act or not, has held as under:-

"[7] It is not in dispute that the petitioner Sri Varaha Lakshmi Narasimha Swamy Vari Devasthanam is a religious institution published under Section 6(a)(ii) of the Endowments Act. It is also not in controversy that the petitioner/Devasthanam was registered under Section 43 of the Endowments Act. Sri Varaha Lakshmi Narasimha Swamy is the presiding Deity



in the Temple. Pilgrims from various parts of the country visit the Temple and offer their prayers. These material facts are incontrovertible facts in this lis. Therefore, it is clear that it is essentially a religious institution. It is also primarily a spiritual institution. So, when the object of the institution is primarily to render spiritual services to the pilgrims to enable them to worship the presiding Deity in the Temple, having regard to the said predominant activity of the Temple, it is to be held that it is undoubtedly a religious institution and a spiritual institution.

[8] The legal position in this regard is not res nova and the same has been well settled. The question whether a temple rendering religious and spiritual services to the pilgrims, who visit the temple to worship the presiding Deity in the temple is a religious institution or an industry, has fallen for consideration on many occasions before the Apex Court and various High Courts including the High Court of Andhra Pradesh. Therefore, it is expedient to consider the relevant judgments on the point which are of precedential guidance which throw light on the controversy involved in this lis to decide whether the temple whose primary objective is to render religious and spiritual services to the pilgrims of the temple, is to be considered as an industry under the Industrial Disputes Act or not.”



16. After the above observations, the Hon'ble Andhra Pradesh High Court has considered the decision of the Hon'ble Orissa High Court in the case of **Harihar Bahinipaty vs. State of Orissa**, reported in **1965 10 FLR 313** wherein, the issue whether the management of the Puri Jagannath Temple and its workmen comes under the purview of the I.D. Act or not was considered and the Division Bench of the High Court, after considering the real precedence rendered on the subject, held as under:-

“22. It is thus abundantly clear that Shri Jagannath Temple is not an institution where material human needs are being met. It is primarily a spiritual institution. The Ballav that is prepared is offered to the deity as Bhog. It is therefore sold as prasad. It is not that the Temple serves the purpose of a hotel for catering foodstuffs. The maintenance of order and discipline and proper hygienic conditions in the temple and of proper standard of cleanliness and purity in the offerings made therein, as required under Section 15(4) of the Shri Jagannath Temple Act 11 of 1955, is for preserving spiritual atmosphere of the temple and for providing facilities to the pilgrims to have peaceful Darshan



of the Deity. The primary object is spiritual. The petitioners are to maintain peace and tranquility inside the temple. The duty of maintaining order and discipline inside the temple is different from the duty of the policeman to keep law and order outside on the public road. The duty of the petitioners inside the Temple is akin to that of teachers to maintain order and discipline inside a class room in an educational institution."

17. Therefore, the main objective of an institution is always to be kept in view and as the spiritual side is the ultimate object of any Temple, it cannot be said to be an 'Industry' inasmuch as the duties of the management of the Trust are only to keep the Temple in order and to see that there is no irregularity. Therefore, it was held by the Hon'ble Orissa High Court that the dispute between the management of the Temple and the workmen could not come within the purview of the I.D. Act.

18. The Division Bench of the Hon'ble Andhra Pradesh High Court in the case of **Tirumala Tirupati Devasthanam vs. Commissioner of Labour**, reported in **1979 1 LLJ 448 AP** also had an occasion to deal with the same issue as to



whether, the Tirumala Tirupati Devasthanam is an industry under Section 2(j) of the I.D. Act and whether the employees are 'Workman' under Section 2(s) of the I.D. Act or not. After considering the various judgments rendered by various High Courts and also the Hon'ble Apex Court on the said controversy, it was held as under:-

"22. The Tirumala Tirupathi Devasthanam consists of a group of religious institutions in Tirumalai and Tirupathi. They are together regarded as one religious institution for the purposes of Charitable and Religious Endowments Act. The main function of the Devasthanam is to arrange for the worship in its temples and to enable the pilgrims from all parts of India to visit temples and offer their prayers. It is, therefore, essentially a religious institution. Having regard to the enormous income, which this Devasthanam derives, it utilises the income for various educational and religious purposes. It has established several educational institutions and also it is one of the prime donors of the Venkateswara University. In order to cater to the thousands of pilgrims especially to the temple of Tirumalai, the Devasthanam also runs several canteens, dispensaries, etc. It has necessarily to provide for transport of the pilgrims, which it was undertaking on its own till recently. It has



departments dealing with supply of electricity and water, not only to the pilgrims but to the members of the staff, Archakas, etc., and to the quarters constructed in Tirumala for the benefit of the pilgrims. Even though, having regard to the enormous flow of pilgrims throughout the year the Devasthanam has to maintain several departments, there can be no doubt that the essential character of the institution is that of a religious institution. We cannot, therefore, regard the Devasthanam generally as an industry within the meaning of Trade Unions Act or within the meaning of Industrial Disputes Act.

24. We are unable to agree with the contention that the Tirumala Tirupathi Devasthanam should be regarded generally as an industry. As pointed out in *University of Delhi v. Ramnath*, in considering whether a public institution is an industry or not, the predominant activity or object must be taken into consideration. Adopting this test we are of the view that the Tirumala Tirupathi Devasthanam as a body cannot be considered to be an industry within the meaning of Section 2(j) of the Industrial Disputes Act or within the meaning of Trade Unions Act."

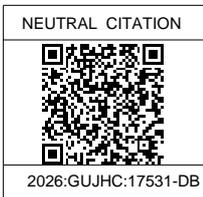
19. However, the Hon'ble Andhra Pradesh High Court in the facts of the case, held that the Devasthanam as a whole



cannot be regarded as an industry, if any separate departments like Electricity, Water and Transport Departments are maintained by the Devasthanam, only those departments as a single unit can be considered as an industry or analogous to an industry and employees in those departments would be 'Workman' within the meaning of Trade Unions Act.

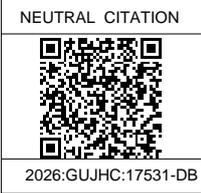
20. Considering such conspectus of law, the Hon'ble Andhra Pradesh High Court in facts of the case before it, held that when the primary object of the Temple / Endowment is to render spiritual services to the pilgrims visiting the Temple to worship the Deity and its predominant activity is a religious and spiritual activity, then the Temple as a whole cannot be regarded as an 'Industry' within the scope of the 'Industry' as per Section 2(j) of the I.D. Act and, therefore, any dispute between the employees and the management of the Temple cannot be regarded as an industrial dispute and the employees cannot be considered as a 'Workman' under Section 2(s) of the I.D. Act.

21. In the case of **Lawrence Messy vs. Diocese of Delhi**,



reported in **2019 - IV LLJ 359 (Del)**, the Hon'ble Delhi High Court held that an institution, the main function of which was worship and facilitation of worship by pilgrims, would be essentially a religious institution and such an institution could not be regarded as an "industry", even if, for the convenience of the pilgrims, certain departments, in which persons were required to be taken on hire, had to be maintained. It was further held that what was required to be seen is, therefore, essential character of the institution and in order to qualify "industry" within the meaning of Section 2(j) of the I.D. Act, an element of res commercium is essential i.e. institution had to be in the business of distribution of goods and services or in activities analogous thereto. In the facts of the case before the Hon'ble Court, it was found that the activities carried out by Diocese are essentially ecclesiastical, evangelical and spiritual in nature and this being essential nature and character of the Diocese, it is questionable as to whether it could be regarded as an "industry" as no part of income, forming the corpus of the Diocese, comes from any activity which could partake of the character of res commercium.

22. The Full Bench of the Hon'ble Karnataka High Court in



the case of Mookambika Temple, Kollur (supra), while considering the issue under the provisions of the Karnataka Hindu Religious Institution and Charitable Endowments Act (33 of 2001) and Payment of Gratuity Act, 1972, in para 60, has held that the Temple cannot also come within the definition of 'Industry' under the provisions of the I.D. Act as Section 2(j) of the I.D. Act defines an 'Industry' and the Temple is not within the meaning of expression 'Industry' under the I.D. Act nor does it become within the expression 'Industrial Establishment or Undertaking' under Section 2(ka) of the I.D. Act.

23. The Constitution Bench of the Hon'ble Apex Court, in the case of Bangalore Water Supply & Sewerage Board (supra), while considering the meaning and scope of "Industry" under Section 2(j) of the I.D. Act, has laid down the test and guidelines for inclusion and exclusion. So far as considering the issue as to whether the Bombay Panjrapole would be covered by the definition of 'Industry' or not, it was held that a Panjrapole is no Church, Mosque or Temple and, therefore, employees engaged by the Panjrapole on ordinary economic terms and with condition of service as in any other business



institutions having organisational comparability to other profit making dairies or Panjarpoles. The Hon'ble Apex Court has held that one must look at the predominant character of the institution and the nature of the relations resulting in the production of goods and services and stray wage-earning employees do not shape the soul of an institution into an industry. While considering the question whether the charitable institutions are industries or not, it was held by the Hon'ble Apex Court as under:-

“103. If we mull over the major decisions, we get a hang of the basic structure of “industry” in its legal anatomy. Bedrocked on the grundnorms, we must analyse the elements of charitable economic enterprises, established and maintained for satisfying human wants. Easily, three broad categories emerge; more may exist. The charitable element enlivens the operations at different levels in these patterns and the legal consequences are different, viewed from the angle of “industry”. For income tax purposes, Trusts Act or company law or registration law or penal code requirements the examination will be different. We are concerned with a benignant disposition towards workmen and a trichotomy of charitable enterprises run for producing and/or supplying goods and services, organized systematically and employing workmen,



is scientific.

104. The first is one where the enterprise, like any other, yields profits but they are siphoned off for altruistic objects. The second is one where the institution makes no profit but hires the services of employees as in other like businesses but the goods and services, which are the output, are made available, at low or no cost, to the indigent needy who are priced out of the market. The third is where the establishment is oriented on a humane mission fulfilled by men who work, not because they are paid wages, but because they share the passion for the cause and derive job satisfaction from their contribution. The first two are industries, the third not. What is the test of identity whereby these institutions with eleemosynary inspiration fall or do not fall under the definition of industry?

106. It is common ground that the first category of charities is disqualified for exemption. If a business is run for production and or supply of goods and services with an eye on profit, it is plainly an industry. The fact that the whole or substantial part of the profits so earned is diverted for purely charitable purposes does not affect the nature of the economic activity which involves the cooperation of employer and employee and results in the production of goods



and services. The workers are not concerned about the destination of the profits. They work and receive wages. They are treated like any other workmen in any like industry. All the features of an industry, as spelt out from the definition by the decisions of this Court, are fully present in these charitable businesses. In short, they are industries. The application of the income for philanthropic purposes, instead of filling private coffers, makes no difference either to the employees or to the character of the activities. Good Samaritans can be clever industrialists.”

24. It was held by the Hon’ble Apex Court in para 110 as under:-

“..... If a philanthropic devotion is the basis for the charitable foundation or establishment, the institution is headed by one who wholeheartedly dedicates himself for the mission and pursues it with passion, attracts others into the institution, not for wages but for sharing in the cause and its fulfillment, then the undertaking is not 'industrial'. Not that the presence of charitable impulse extricates the institution from the definition in Section 2(j) but that there is no economic relationship such as is found in trade or business between the head who employs and the others who emotively flock to render service. In one



sense, there are no employers and employees but crusaders all. In another sense, there is no wage basis for the employment but voluntary participation in the production, inspired by lofty ideals and unmindful of remuneration, service conditions and the like.....”

25. The Hon’ble Apex Court has thereafter, given an example of the Ashram and described the same as under:-

“ Supposing there is an Ashram or Order with a guru or other head. Let us further assume that there is a band of disciples, devotees or priestly subordinates in the Order, gathered together for prayers, ascetic practices, bhajans, meditation and worship. Supposing, further, that outsiders are also invited daily or occasionally, to share in the spiritual proceedings. And, let us assume that all the inmates of the Ashram and members of the Order, invitees, guests and other outside participants are fed, accommodated and looked after by the institution. In such a case, as often happens, the cooking and the cleaning, the bed-making and service, may often be done, at least substantially by the Ashramites themselves. They may chant in spiritual ecstasy even as material goods and services are made and served. They may affectionately look after the guests, and, all this they may do, not for wages but for the chance



to propitiate the Master, work selflessly and acquire spiritual grace. It may well be that they may have surrendered their lucrative employment to come into the holy institution. It may also be that they take some small pocket money from the donations or takings of the institution. Nay more; there may be a few scavengers and servants, a part-time auditor or accountant employed on wages. If the substantial number of participants in making available goods and services, if the substantive nature of the work, as distinguished from trivial items, is rendered by voluntary wageless sishyas, it is impossible to designate the institution as an industry, notwithstanding a marginal few who are employed on a regular basis for hire. The reason is that in the crucial, substantial and substantive aspects of institutional life the nature of the relations between the participants is non-industrial. Perhaps, when Mahatma Gandhi lived in Sabarmati, Aurobindo had his hallowed silence in Pondicherry, the inmates belonged to this chastened brand. Even now, in many foundations, centres, monasteries, holy orders and Ashrams in the East and in the West, spiritual fascination pulls men and women into the precincts and they work tirelessly for the Maharishi or Yogi or Swamiji and are not wage-earners in any sense of the term. Such people are not workmen and such institutions are not industries despite some menials and some professionals in a vast complex being hired. We



must look at the predominant character of the institution and the nature of the relations resulting in the production of goods and services. Stray wage-earning employees do not shape the soul of an institution into an industry.”

26. As against the above decisions, various Hon’ble High Courts and the Hon’ble Apex Court have applied the decision in the case of Bangalore Water Supply & Sewerage Board (supra) to the facts of the case in the following decisions, which are relied upon on behalf of the appellant:-

(1) Cutchi Visa Oswal Derawasi Jain Mahajan vs. B.D. Borude, I.T. Maharashtra, reported in 1987(1) LLJ 81 (Bombay)

(2) Workmen of M/s.Baikuntha Nath Debasthan Trust (Baikuntha Nath Debasthan Mandir Trust) Rep. By Paschimbanga Byabasayi Sramik Sengstha vs. State of West Bengal, reported in 1990(2) CalLT 42

(3) Rakesh Kumar vs. Commissioner-cum-deputy Commissioner, Baba, reported in 1991(1) CLJ (HP) 302

(4) Devadeveshwar Sansthan Parvati And

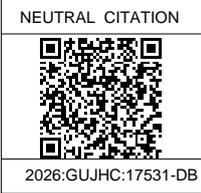


Kothrud vs. Sushila Raghu Kadu, reported in 2002(4) LLJ 28

(5) Sri Nathji Bhandar vs. State of West Bengal, reported in 2011(2) CalHN 874.

(6) Gajanan Maharaj Sanathan vs. Gajanan Karamchari Sangh, reported in 2002(10) SCC 531”

27. In view of the facts of the present case, when the respondent No.1 - Trust is managing Shri Saibaba Temple where, the devotees gathered together for prayers and worship and they are provided with Ladus manufactured in the Temple then, it cannot be said that merely because they are few servants employed by the respondent No.1 - Trust including Pujari for a main and substantive nature of the activity is the prayers and worship only and, therefore, it is not possible to designate the respondent No.1 - Trust as an 'Industry', notwithstanding a marginal few who are employed on regular basis for hire as the crucial, substantial and substantive aspects of the institutional life of the respondent No.1 - Trust is the nature of the relations between the participants is non-industrial. Therefore, as held by the



Hon'ble Apex Court, we must look at the predominant character of the institution and the nature of relations resulting in production of goods and services in absence of any material on record to demonstrate that the employees engaged on ordinary economic terms with condition of service as in other business institution and more particularly, when none of the activities is shown to have organisational comparability to other profit making institution.

28. Therefore, the respondent No.1 - Trust cannot be considered as an 'Industry' within the definition of Section 2(j) of the I.D. Act. The Labour Court, therefore, could not have assumed the jurisdiction under the provisions of the I.D. Act to adjudicate the Reference made by the competent Government under Section 10 of the I.D. Act.

29. Considering the above conspectus of law, the other question which is required to be considered on the ground that assuming for a while, the respondent No.1 - Trust falls within the definition of 'Industry', whether the appellant - Pujari would be covered by the definition of 'Workman' under Section 2(s) of the I.D. Act or not.



30. The Hon'ble Apex Court in the case of *Burmah Shell Oil Storage and Distributing Co. of India Ltd. (supra)*, has held that a person may not be a workman even though he does not come within the exceptions under Section 2(s) of the I.D. Act. If the duties of a person is neither clerical nor manual, he cannot fall within the definition of 'Workman' under the I.D. Act, and the Industrial Tribunal would have no jurisdiction to adjudicate the Reference.

31. The Hon'ble Apex Court, while considering the various types of activities carried out by the persons, has examined as to whether such type of person carrying out the different activities would be covered by the definition of 'Workman' or not. So far as the Transport Engineer is concerned, it is held by the Hon'ble Apex Court that the Transport Engineer cannot be considered as a 'Workman' as there is combination of supervisory duties of the work of repair and maintenance, servicing and fabrication etc. Similarly, the District Engineer was also held to be not a 'Workman'. The Foreman (Chemicals), Chemists were held to be 'Workman', but the Sales Engineering Representative is held to be not a



'Workman' as he was neither employed for clerical work nor manual work but, only does an ancillary job for promoting sales and giving advise.

32. The Hon'ble Apex Court in the case of Miss. A. Sundarambal vs. Government of Goa, Daman and Diu and Others (supra), while considering the case of a teacher in an educational institution, as a workman or not, has held as under:-

"2. 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 April 25, 1975. After she failed in her several efforts in getting the order of termination cancelled, 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 of Goa, Daman and Diu by his letter dated May 2, 1982. On receipt of the report the government considered the question whether it could refer the matter for adjudication 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 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 by its judgment dated September 5, 1983. Aggrieved by the judgment of the High Court, the appellant has filed this appeal by special leave.

6. 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 v. R. Rajappa the question whether teachers in an educational institution can be considered as workmen still remains to be decided.

8. 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.

9. 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 a workman even though he is an employee of an industry as settled by this Court in *May and Baker (India) Ltd. v. Workmen*. 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:

A '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 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 word as. it existed before the amendment of 1956. The nature of the 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 Section 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 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 duties and had to work under the directions of his superior officers. That, how-ever, 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 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.

10. The court held that the employee Mukerjee involved in that case 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 employment 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 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 (1) 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 *Mav and Baker (India) Ltd. v. Workmen* 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.

11. 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."

33. In the case of Mukesh K. Tripathi vs. Senior Divisional Manager, LIC and others (supra), the Hon'ble Apex Court has considered the issue as to whether the apprentice would be a 'Workman' or not and has held as under:-

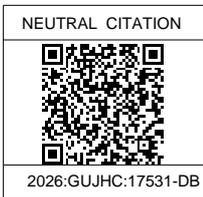
"34. The definition of "workman" as contained in Section 2(s) of the Industrial Disputes Act, 1947



includes an apprentice, but a "workman" defined under the Industrial Disputes Act, 1947 must conform to the requirements laid down therein meaning thereby, inter alia, that he must be working in one or the other capacities mentioned therein and not otherwise.

36. A "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 must not only establish that he is not covered by the provisions of the Apprentices Act but must further establish that he is employed in the establishment for the purpose of doing any work contemplated in the definition. Even in a case where a period of apprenticeship is extended, a further written contract carrying out such intention need not be executed. But in a case where a person is allowed to continue without extending the period of apprenticeship either expressly or by necessary implication and regular work is taken from him, he may become a workman. A person who claims himself to be an apprentice has certain rights and obligations under the statute.

37. In case any person raises a contention that his status has been changed from apprentice to a workman, he must plead and prove the requisite facts. In absence of any pleading or proof that either by novation of the contract or by reason of the conduct of the parties, such a change has been brought about, an apprentice cannot be held



to be a workman.”

34. In the case of Muir Mills Unit of NTC (U.P.) Ltd. (supra), the Hon’ble Apex Court examined the scope of definition of ‘Workman’ to professionals and it is held that the professionals can never be termed as ‘Workman’ under any law.

35. The Hon’ble Apex Court in the case of C. Gupta vs. Glaxo-Smithkline Pharmaceuticals Ltd. (supra) has considered the effect of amendment brought in Section 2(s) of the I.D. Act and has determined the factors to be considered or to find out whether a particular employee is workman or not, as under:-

“18. It is not in dispute that the nomenclature is really not of any consequence. Whether a particular employee comes within the definition of workman has to be decided factually, In fact, it has been found as a matter with reference to various factual aspects that the duties undertaken by the c appellant overwhelmingly fell in the managerial cadre. So far as the nature of work is concerned, the Division Bench of the High Court took note of several aspects as reflected in para 29 of the judgment. The same reads as follows:



"In the evidence adduced on behalf of the Company, its Director, Shri Rustam Padam Bharucha deposed that the duties of the appellant were to represent the Company in conciliation proceedings, before d government authorities under the Factories Act, the ESI Act, the PF Act, the Contract Labour (Regulation and Abolition) Act, to represent the management as an enquiry officer or as the management's representative in domestic enquiries, to guide and advise the management's representative in domestic enquiries, to advise him about the line of cross-examination in such enquiries, advise about the quantum of e punishment to be inflicted in disciplinary proceedings. To give advise on queries raised by the management pertaining to the interpretation of statutes or settlement with the unions or regarding enquiries raised by government authorities, to brief witnesses, to prepare drafts for the perusal of counsel, to brief counsel on facts as well as law, to be present in court when the arguments were



taking place in judicial matters related f to the Company, to keep in touch with the latest case laws and amendments to the labour legislations, to ensure that the management fulfilled its obligations under the labour legislations and to advise the management on provisions of settlement."

25. In *Hussan Mithu Mhasvadkar v. Bombay Iron & Steel Labour Board* it was held that while deciding the status of the person, nature of work is really relevant. The High Court has referred to the evidence of the appellant. He had admitted in his evidence that apart from the advice to the management from time to time, he had other independent functions such as preparation of draft enquiry reports and conducting domestic enquiries. In his cross-examination he had further admitted that he had tendered legal advice in all the four branches and factory of the Company at Worli. He also admitted that on many occasions he had drafted management enquiry and it was his duty to hold conferences with the advocates in relation to the Company's acts. He also admitted that as an employee in the category of management staff, his conditions of service were different than those provided for the workers of the Company. He also admitted that leave given to him were not applicable under the settlement. He



also admitted that he was covered under the pension scheme which did not apply under the settlement with employees.”

36. The learned Single Judge has referred to and relied upon the decision of the Hon’ble Apex Court in the case of H.R. Adyanthaya and Others (supra) wherein, it is held that the Medical Representatives would not fall in the definition of ‘Workman’ as they are neither skilled workers nor are they technical or operational workers and, therefore, their work is not covered by any type of works mentioned in the main body of the definition. Similarly, in the facts of the case, the work carried out by the Pujari of worshiping and doing Puja in the Temple can neither be considered as a skilled, technical nor operational to fall within the definition of ‘Workman’.

37. The Hon’ble Delhi High Court in the case of Sai Bhakta Samaj (Regd.) (supra), though held that the Bhakta Samaj was covered under the definition of ‘Industry’, it was held that the Pujari in Temple cannot be held as workman, relying upon the decision of the Hon’ble Apex Court in the case of H.R. Adyanthaya and Others (supra). It was further held that the



Pujari in a Temple does not do any manual, unskilled, skilled, technical, operational, clerical or supervisory work and Pooja by a Pujari is an application of his knowledge of religious hymns and bhajans and aarties which he has to recite in the Temple, which can never be considered by a work specified in Section 2(s) of the I.D. Act.

38. Similarly, the Hon'ble Punjab & Haryana High Court in the case of Ram Kishan Sharma (supra), has held that duties of Pujari in Temple would not fall within the definition of 'Workman'.

39. The Hon'ble Karnataka High Court in the case of Radhakrishna Bhakta (supra), has held as under:-

"[3] A temple which is visited by the devotees by reason of faith cannot by any process of reasoning be said to be an activity analogous to trade or business. We are of the view that the State Government was right in declining the reference. While doing so it relied upon a judgment of the Kerala High Court in a Kesava Bhatt v. Sree Ram Ambalam Trust 1990-1- LLJ-192 wherein Archak or a priest in a temple was held not to be a "workman" within the meaning of the



Act as he cannot be said to be doing any manual or clerical services to the devotees of the temple. The temple was held not to be an industry within the meaning of Clause (j) of Section 2 of the Act. We have carefully gone through this judgment and are in agreement with the reasoning of the learned single Judge.”

40. The Hon’ble Kerala High Court in the case of A. Kesava Bhatt (supra), while considering the issue as to whether a Priest in a Temple would fall within the definition of ‘Workman’ or not and he cannot be equated with a mere wage-earner so as to invoke the jurisdiction of the Labour Court, has considered the role of the Priest since ancient times as under:-

“Even from very ancient times, priests and law had intimate connection. A historic evaluation on this aspect is available from a recent study, "Lord Chancellor" by Nicholas Underhill. (Its young author had critically commented upon the evaluation and working of the office of Lord Chancellor from early times and in the course of such a critical evaluation, he has not spared Lord Campbell and his book "Lives of Chancellors" from harsh comments). Due to very many historic



reasons, laws have sometimes reacted to priests unkindly. Perhaps, the most horrifying exercise was that of the English Parliament, when in 1530 it enacted that the Bishop of Rochester's cook be boiled to death. Comparatively less hard was a recent legislation attempted by the State of Tennessee in America when it imposed under the statute a prohibition against priests entering politics. The prohibition was declared unconstitutional by the American court. See Paul A. Mc Daniel v. Selma Cash Paty(1).

Priests have played prominent parts in the history of mankind. Some, by their humanism, live through history; like father Damien, who, like Him, nursed and cured many a lachrymose leper. Francis Xavier, known for his "vigorous self-devotion, and incredible labour for no wisable reward"; who usually went on foot, and without shoes, living only on roasted rice, which he begged as he went on and slept on the ground with a stone under his head. The Christian priests (and the nuns who, like well-lit candles, spread around them much of haloed light, even while quickly melting into extinction) have added several glorious chapters in the compilation of the history of enlightenment of India. The endless saga of sacrifice associated with a priest even generated a feeling that only the rough and



hardlooking, could pursue a priest's life. It is such a mental make up that prompted an innocent question by a character in "Princess Kathilde" by Marguerite Castillon Du Perron: "How can a man become a priest when he is so good looking." However, as in other professions too, deviations have been detected in Divinity. William Ralph Inge in his "Lay Thoughts of a Dean" quotes Colet as referring to, "Pestilent and pernicious traits seen in the evil and wicked life of priests". The portrait of a Cardinal by Marguerite Castillon Du Perron with special reference to his sleeping habit is fictional and not factual. However, Howard, who heralded the prison reform in England and in Europe was factual in his observation, and effectual in his condemnation of the luxuriant life of the holy fathers he saw at the Capuchin Convent at Prague. Howard recorded as having seen the monastery as "a house of revelling and drunkenness", that shattered his notion about the priests as persons "who had retired from the world to live a life of abstemiousness and prayer". A Russian Priest, very close to the sceptre and crown, now lives in the musical lines Rasputin, Rasputin, lover of the Russian Queen.

The hiatus between the ideal and the actual in relation to the priestly class was



visible in the Indian setting too. The ideal is referred to by Robert Lingat in "The Classical Law of India". There is a pointed discussion on the role and the duties of a "Purohita" at page 217 reading:

"Thus the King is bound to choose amongst the Brahmins a purohita who will be his chief counsellor. Agreement between King and purohita is regarded by Gautama (XI. 12-14) to be the very symbol of harmony between the two powers. And Vasistha (XIX. 4) recalls that it is written in the Veda, "A realm where a Brahmin is appointed purohita flourishes". The role of the purohita is multiple, and the translation chaplain poorly indicates what his functions are. He is far from being simply a priest with the duty to see that the King fulfils his religious obligations. Elsewhere Manu (VII.78) and Yajnavalkya (I.314) distinguish him from officiating priests whose duty it was to celebrate ritual ceremonies. Yajnavalkya (312) demands of him knowledge of astrology in order to know the influence of the planets and to be able to neutralise their effects if they are sinister; he should also be versed in the Atharva Veda and know the required spells to be cast, and magic prayers. The



same verse requires him to be knowledgeable in the art of politics (dandaneethi). In reality, the purohita is the brain of the King. As a servant of dharma he is a servant of the State. For the rest, he occupies a singular position by reason of his functions. Vijneshvara (Mit., on Yaj., 1.353) ranks him amongst the ministers (mantrin) and Manu (XII. 46) classes him, with kings and kshatriyas, amongst those whose future destiny is dominated by rajas ('energy', 'passion')".

A very illuminating judicial decision about the priestly class and its degeneration in later times is seen in *Annaya Tantri v. Ammakka Bengsu*(2). That dealt with the competence of a Hindu female to succeed to the office of "archaka" in a temple and the emoluments attached thereto. She was not incompetent by reason of her sex - was the majority decision. Seshagiri Ayyar, J., in a very illuminating order of reference (which fortunately forms part of the reported decision) indicated how from the point of view of the worshipper, it was the fitness of the archaka for the discharge of the duties that had to be considered, and how from the point of view of archaka, the question of secular rights was more important. A historic background is



furnished thus:

"In the Vedas and in the ancient Smritis, we do not hear of the founding of temples. It is to the puranic age that we owe their existence. In Manu's days, the only religious teacher was the ascetic sanyasi. He gave instructions to his disciples who, in their turn, spread the light of wisdom among the lay people. There were no places of worship, and no images to worship. It is to Buddha that India owes the introduction of fixed places of worship and ordained orders of preachers..... Temples for the worship of Siva and Vishnu were established mostly by non-Aryans at or about this time to circumvent the Buddhistic influence.

The second period begins with the advent of Sankara. He found that the ancient worship of the elements was losing hold on the popular mind, and that the people were being led by the precepts of Buddhism into the track of atheism. He had to fight blind orthodoxy behind him and materialism ahead of him. He adopted a compromise."



The decision recounted how rich endowments were made for the upkeep of temples. Trusted service had, however, to be found. It had always been the belief in India that "the nearer a man is to God, the farther is he from Him." It is unnecessary for the purpose of this case to delve deep into, or deal at length with, the history of the temples. Yet, a reference to a decline in the priestcraft as made therein, may furnish a background to the present sight and fight in the case, when a priest had taken the road to the Labour Court. The slokas of Vaidyanatha Dikshitar (together with their translations by Manghat Krishna Menon) were given in that decision. One sloka is particularly striking. It reads:

The translation reads:

"A Vipra, who, though he may be well-versed in the four Vedas is desirous of getting money, and who performs the worship of the Gods for the sake of another will be considered equal to a Chan-dala."

"The question pointedly arose in the context of industrial jurisprudence itself in a decision rendered by the House of Lords in Davies v.



Presbyterian Church of Wales(3). A dismissed pastor applied to an Industrial Tribunal under the Employment Protection (Consolidation) Act, 1978. He claimed that he had been employed by the Church under a contract of service and that he had been unfairly dismissed. The House of Lords held that an Industrial Tribunal had no jurisdiction to determine the reasonableness of such a termination. It was contended that on his appointment, a paster agreed to preach, conduct religious services and give religious instructions, to comfort the sick and bereaved and to propagate the faith in his pastorate for the benefit of the Church and its members; that he was employed by the Church full-time and in consideration he became entitled to a stipend and a manse. On these factors, it was claimed that the pastor was a servant employed under a contract of service.

The contention was, however, repelled. The House of Lords observed (at p. 709):

"The duties owed by the pastor to the Church are not contractual or enforceable. A pastor is called and he accepts the call. He does not devote his working life but his whole life to the Church and his religion, his duties are defined and his



activities are dictated not by contract but by conscience. He is the servant of God..... duties owed by the Church to the pastor are not contractual." (Emphasis supplied).

Differences and details notwithstanding, a basic approach is indicated by the above decision, in the context of a cleavage of views regarding the nature and character of services by a person in the spiritual field.

V. P. Gopalan Nambiar, J., as he then was, took the view in Superintendent, Koodalmanickom Devaswom v. Kunhan Karthe (4), that:

"...that part of the Koodalmanickom Devaswom which is engaged in the collection of rent of its properties and maintenance of records of these collections, is an 'establishment' as given in the definition of 'commercial establishment in the Kerala Shops Act, 1960."

The decision of this Court on this aspect in The Devaswom Board's Maramath Department case and Jaganath Temple case(5), decided by the Orissa High Court



have been referred to in that case. The discussion could indicate that the conclusion was reached by the learned Judge in a halting manner, as evident from the sentence reading:

"...the only question is whether the Devaswom fills the bill for the limited purpose of the Act and not whether it can be said to be a commercial establishment for all purposes, whatsoever." (Emphasis supplied)

The learned Judge after referring to the decisions rendered in the background of the Industrial Disputes Act, chose to emphasise the fact that "it would be inappropriate to import into the Shops and Commercial Establishments Act the definition of the term "Industry" as given in the Industrial Disputes Act." It was also observed that the definition of the term "commercial establishment" in the Kerala Shops and Establishments Act was "wider than what is contained in the Madras Travancore-Cochin counterparts."

The case was taken up in appeal. The subject-matter was compromised during the pendency of the appeal. The Division Bench



took care to set aside that decision, and left the matter "open for consideration in an appropriate case untrammelled by anything said in that judgment."

When an employee of a Thirumullapulli Devaswom was dismissed the question again sprang up. Namboodiripad, J., had a different approach and a different conclusion. See Thirumullapulli Devaswom v. Commissioner (6). The approach was more from the point of view of the nature and features of the establishment. A deep insight into, and an intimacy with the internal working of a temple enabled the learned Judge to have his views in sharp focus. With great respect, I endorse that approach and conclusion. See the observations (at p. 142):

"Devaswom' is a compendious expression taking in a temple, its property, its management, etc. Certain employees of a temple will have to discharge duties which are exclusively concerned with the performance of religious rites in accordance with Sastras, the traditions of the temple, custom, etc... Every person employed by a Devaswom normally discharges functions pertaining to the proper functioning of the temple, the



paramount object of which is to maintain the place of worship in proper condition for the benefit of the devotees.... the mere fact that certain employees are directed to discharge non-religious or administrative functions does not mean that the persons employed by the Devaswom are 'mainly engaged in office work'."

The learned Judge sought to buttress his view by drawing on general observations contained in *V. Sasidharan v. Peter and Karunakaran*(7). That decision which concerns a lawyer's office has been affirmed by the Supreme Court in *Sasidharan v. Peter and Karunakaran*(8).

It is unnecessary in this case to consider whether other employees of a Devaswom will adequately satisfy the requirements of the relevant definition of "employee" or "workman." A poojary or a priest stands away from the general queue, with his distinctive dress, decorum, discipline and devotion, and with his distinct duties and subtle services.

There is all the difference between a mahout, cook or clerk, active in the precincts of the temple or its corridors and office rooms, and a priest placed in the sanctum sanctorum and silently saying his prayers.



An evaluation of the evolution of the office of archaka or priest, as priest, as available from the rich legal literature, dissuades me from equating him to a mere wage earner; and to treat his services as manual or clerical in the sense in which those terms are employed in the setting of the Industrial Disputes Act, 1947. The deity he propitiates or the God he serves, cannot be looked upon as a profit producing scheme or set up. The owner of a temple cannot, therefore, be equated to an industrial or commercial employer. The petitioner cannot, therefore, be treated as a workman, coming under that term as defined in the Industrial Disputes Act, 1947. The order of the Labour Court on this point is, therefore, correct. Consequently, there is no scope for interference with the order for that reason too”

41. The Hon’ble Madras High Court in the case of M.R. Damon (Ms.), Mission Superintendent, P.B. No.17, Andivilla Bungalow, Kodaikanal and Another (supra), while considering the issue as to whether the Pastor in Church can be said to be a ‘Workman’ or not, it was held that the Pastor cannot be considered as a ‘Workman’, as under:-



“9. While dealing with the duties of a Pastor and his relationship with the Church, the House of Lords, in the decision in *Davies v. Presbyterian Church of Wales*, 1986 (1) All ER 705, have held as follows:

"My Lords, it is possible for a man to be employed as a servant or as an independent contractor to carry out duties which are exclusively spiritual. But in the present case the pastor of the Church cannot point to any contract between himself and the Church. The book of rules does not contain terms of employment capable of being offered and accepted in the course of a religious ceremony. The duties owed by the pastor to the Church are not contractual or enforceable. A pastor is called and accepts the call. He does not devote his working life but his whole life to the Church and his religion. His duties are defined and his activities are dictated not by contract but by conscience. He is the Servant of God. If his manner of serving God is not acceptable to the Church, then his pastorate can be brought to an end by the Church in accordance with the rules. The law will ensure that a pastor is not



deprived of his salaried pastorate save in accordance with the provisions of the book of rules but an industrial tribunal cannot determine whether a reasonable Church would sever the link between minister and congregation.

The duties owned by the Church to the pastor are not contractual. The law imposes on the Church a duty not to deprive a pastor of his office which carries a stipend, save in accordance with the procedures set forth in the book of rules. The law imposes on the Church a duty to administer its property in accordance with the provisions of the book of rules."

42. In view of the above dictum of law and analysis carried out, it is apparent that the appellant being a Pujari, looking after the Temple, would not fall within the scope of the 'Workman' as per Section 2(s) of the I.D. Act because, a Pujari in a Temple does not do any manual, unskilled, skilled, technical, operational, clerical or supervisory work but, he only applies his knowledge of religious hymns, bhajans and aarties and recites the same in the Temple and merely helping the other Temple activities incidentally, cannot be considered



to be work specified in Section 2(s) of the I.D. Act.

43. In view of the above foregoing reasons, no interference is called for in the impugned Judgment and Order passed by the Labour Court and confirmed by the learned Single Judge. The appeal, therefore, being devoid of any merit, is accordingly dismissed with no order as to cost.

(BHARGAV D. KARIA, J)

(L. S. PIRZADA, J)

Hitesh