Workers Of The Industry Colliery, ... vs Management Of The Industry Colliery on 12 December, 1952

Equivalent citations: AIR1953SC88, (1953)ILLJ190SC, (1953)IMLJ431(SC), [1953]4SCR428, AIR 1953 SUPREME COURT 88

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Bench: Mehr Chand Mahajan

JUDGMENT

Das, J.

1. This appeal by special leave is directed against the decision dated April 24, 1950, of the Central Government Industrial Tribunal at Dhanbad confirming the decision dated February 2, 1950, of the Regional Labour Commissioner (Central), Dhanbad, which had declared the one-day strike by the appellant the took place on November 7, 1949, to be an illegal strike. The relevant facts are as follows :-

2. On October 13, 1949, the appellants through the Secretary of their Union gave a notice to the respondents, under section 22(1) of the Industrial Disputes Act, 1947, that they proposed to call a one-day strike on the expiry of November 6, 1949, for the fulfilment of demands, 16 in number, noted therein. This strike notice was, in accordance with rule 85 of the rules framed under the Industrial Disputes Act, 1947, sent to (1) the Conciliation Officer (Central), Dhanbad, (2) the Regional Labour Commissioner (Central), Dhanbad, (3) the Chief Labour Commissioner, Department of Labour, Government of India, New Delhi, (4) Secretary, Ministry of Labour, Government of India, New Delhi, and (5) A. D. C., Dhanbad. This notice was received at the office of the Regional Labour Commissioners (Central), Dhanbad, on October 15, 1949. The Regional Labour Commissioner (Central) held conciliation proceedings at Dhanbad on October 22, 1949, but the appellants, by their letter of same date, declined the participate in the proceedings alleging that they were convinced that nothing would come out of the same and that the proceedings should, therefore, be considered "to be ceased." On the same day the Regional Labour Commissioner (Central), Dhanbad, addressed letter No. RLC/CON 5 (Token) 7910 to the Chief Labour Commissioner, New Delhi, stating that after receipt of the notice of strike he had issued notice to the parties of conciliation, that the employers' representatives were ready to discuss the demands but the Union's representative filed a petition in writing saying that they did not want to participate in the proceedings and that no fresh material had been placed before him to change his view and he was not in favour of recommending a reference of the demand to the Industrial Tribunal. The letter ended with a request that the Government may be informed of the situation. It appears that this

report was received in the office of the Chief Labour Commissioner, New Delhi, on October 25, 1949. Although the Chief Labour Commissioner, in his letter of November 17, 1949, to the Regional Labour Commissioner (Central), Dhanbad, states that the contents of the latter's report had already been communicated to the Ministry of Labour, a copy of the report was actually sent to and received by the Ministry of Labour only on that day. In the meantime on November 7, 1949, the appellants about 700 in number, went on one-day strike as per their strike notice. Apparently the respondents contended that the strike was illegal and they made an application, under section 8(2) of the Coal Mines Provident Fund and Bonus Scheme Act, 1948, to the Regional Labour Commissioner (Central), Dhanbad, for a decision on the question whether the strike was legal or illegal. By his order dated February 2, 1950, the Regional Labour Commissioner (Central), Dhanbad, declared that the strike was illegal. Being aggrieved by the aforesaid decision the appellants, under section 8(4) of the last mentioned Act, preferred an appeal to the Central Government Industrial Tribunal at Dhanbad which, however, also held that the strike was illegal and that the conclusions arrived at by the Regional Labour Commissioner (Central) were correct and accordingly dismissed the appeal. The appellants thereafter applied for and obtained special leave to appeal to this Court.

3. The only question raised on this appeal is whether the strike was illegal. Section 24(1) of the Act provides, inter alia, that a strike shall be illegal if it is commenced or declared in contravention of section 22 or section 23 of the Act. Section 22(1) provides as follows :-

> "22. (1) No person employed in a public utility service shall go on strike in breach of contract -
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> (a) without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
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> (b) within fourteen days of giving such notice; or
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> (c) before the expiry of the date of strike specified in any such notice as aforesaid; or
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> (d) during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings."

4. Notice of strike having been given in terms of clause (a) and 14 days having elapsed after the giving of such notice as required by clause (b) and the actual strike having taken place after November 6, 1949, being the date specified in the strike notice, the only other question for consideration is whether the strike took place during the pendency of any conciliation proceedings before a Conciliation Officer, and seven days after the conclusion of such proceedings. Under section 20(1) a conciliation proceeding shall be deemed to have commenced on the date on which a notice of strike under section 22 is received by the Conciliation Officer. In this case the strike notice was received by the Regional Labour Commissioner (Central) who is the Conciliation Officer, on October 15, 1949, and the conciliation proceedings, therefore, commenced on that date under section 20(1). The relevant portion of sub-section (2) of that section runs as follows :-

"(2) A conciliation proceeding shall be deemed to have concluded -

(a) .....

(b) where no settlement is arrived at, when the report of the Conciliation Officer is received by the appropriate Government or when the report of the Board is published under section 17, as the case may be, or

(c) ....."

5. The Regional Labour Commissioner (Central), who is the Conciliation Officer in this dispute, is required by section 12 to hold conciliation proceedings in the prescribed manner and, without delay, investigate the dispute and to do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute. In this case the Regional Labour Commissioner (Central) held conciliation proceedings on October 22, 1949, but no settlement could be arrived at as the appellants declined to take part in the proceedings on the ground that they were convinced that nothing would come out of it. That being the position, under section 12(4) it became the duty of the Regional Labour Commissioner (Central) to "as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof together with a full statement of such facts and circumstances and the reasons on account of which, in this case, a settlement could not be arrived at". Sub-section (6) of this section requires that the report shall be submitted within fourteen days of the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government. As already stated, the conciliation proceedings commenced on October 15, 1949. The report, therefore, was to be submitted within fourteen days from that date. In point of fact the report was sent by the Regional Labour Commissioner (Central) to the Chief Labour Commissioner, New Delhi, on October 22, 1949 (which was well within 14 days from the commencement of the conciliation proceedings), with the request that the Government may be informed of the situation. Under sub-section (4) the report has to be sent to the "appropriate Government" which according to the definition under section 2(a) means, in relation to an industrial dispute concerning a mine, the Central Government. The Regional Labour Commissioner (Central) did not send the report direct to Central Government but sent it to the Chief Labour Commissioner, New Delhi, in accordance with what has been called the usual course and routine of official business. The report, however, was received by the Central Government on or about November 17, 1949, and it is only on such receipt that the conciliation proceedings are to be deemed to have concluded according to the provisions of section 20(2)(b). Prima facie, therefore, the strike which took place on November 7, 1949, was during the pendency of the conciliation proceedings as held by the authorities below.

6. Shri N. C. Chatterjee, however, argues that in point of fact the conciliation proceedings came to an end when the appellants had withdrawn from the proceedings and the Regional Labour Commissioner (Central) had sent his report. It is by a legal fiction, introduced by section 20(2)(b), that the conciliation proceedings are prolonged until the actual receipt of the report by the appropriate Government. According to Shri N. C. Chatterjee the conciliation proceedings should be

held to terminate when the Regional Labour Commissioner (Central) sent his report within fourteen days of the commencement of the conciliation proceedings. The difficulty in accepting this argument is that while the word "send" is used in section 12(4) and the word "submitted" in section 12(6), the word used in section 20(2)(b) is "received". That word obviously implies the actual receipt of the report. To say that the conciliation proceedings shall be deemed to have concluded when the report should, in the ordinary course of business, have been received by the appropriate Government would introduce an element of uncertainty, for the provisions of section 22(1)(d) clearly contemplate that the appropriate Government should have a clear seven days' time after the conclusion of the conciliation proceedings to make up its mind as to the further steps it should take. It is, therefore, necessary that the beginning of the seven days' time should be fixed so that there would be certainty as to when the seven days' time would expire. It is, therefore, provided in section 20(2)(b) that the proceedings shall be deemed to have concluded, where no settlement is arrived at, when the report is actually received by the appropriate Government. Shri N. C. Chatterjee on the other hand strongly urges, and not without some force, that on that construction it may be possible for the Government or its officers to withhold the report designedly or the report may be lost in course of transit or may be actually received after the expiry of the date fixed for the strike in the notice under section 22(1). Shri N. C. Chatterjee also points out that it will not be possible for the workers to know when the report is actually received and their right to strike may thus be taken away from them. Shri N. C. Chatterjee contends that the Government cannot take advantage of its own wrong. While we feel considerable force in Shri N. C. Chatterjee's argument based on hardship we are bound to assume that the public officers concerned would act fairly and properly. Further, it is not a case of the Government taking advantage of its own wrong as suggested by Shri N. C. Chatterjee, for here we are concerned with a dispute between the employers and the employees and there is no material before us to justify our attributing the misdeeds, if any, of the Regional Labour Commissioner (Central) or of the Chief Labour Commissioner, to the respondents, the employers who are entitled to take their stand on the language of the law. The Court can only construe the statute as it finds it and if there is any defect in the law it is for other authority than this Court to rectify the same.

7. Shri N. C. Chatterjee also urges that the Regional Labour Commissioner (Central) should have, under section 12, sent his report to the appropriate Government, which in this case means the Central Government, and he should not have sent the report to the Chief Labour Commissioner. Assuming that that is the position then the fact will still remain that the Central Government did not receive the report and, therefore, the conciliation proceedings did not come to an end when the strike took place. Shri N. C. Chatterjee also suggests that the Chief Labour Commissioner should have returned the report to the Regional Labour Commissioner (Central) because under the law the report should not have been made to him. He, however, did not return the same to the Regional Commissioner but took upon himself to forward the same to the Labour Ministry. In the circumstances, Shri N. C. Chatterjee urges, on the authority of Chaturbhuj Ram Lal v. Secretary of State for India , that the Chief Labour Commissioner must be deemed to be the agent of the Central Government for the purpose of receiving the report. We adjourned this case in order to enable Shri N. C. Chatterjee to ascertain whether there was any delegation of authority in this behalf by the Central Government to the Chief Labour Commissioner. Shri N. C. Chatterjee has not been able to discover any such delegation of authority. It seems obvious to us that the Chief Labour

Commissioner cannot possibly be regarded for this purpose as the Central Government. In point of fact by a notification in the Gazette of India dated April 5, 1947, the Chief Labour Commissioner has been appointed as a Conciliation Officer and, therefore, in conciliation proceedings conducted by him he has to submit his report to the Central Government. It follows, therefore, that the Chief Labour Commissioner must be an authority separate from the Central Government. According to rule 85 to which reference has been made the strike notice has to be sent, amongst others, to the Chief Labour Commissioner as well as to the Department of Labour of the Government of India, which again indicates that the two are different entities. The Chief Labour Commissioner is, therefore, only the channel or post office through which correspondence between the Regional Labour Commissioner (Central) and the Central Government is to pass and he cannot possibly be regarded as an agent of the Central Government for the purpose of receiving the report. The Chief Labour Commissioner being the official channel the ruling relied upon by Shri N. C. Chatterjee can have no application to the facts of this case.

8. For reasons stated above we are of opinion that the conclusions arrived at by the authorities below on this point are correct and that this appeal must be dismissed. In the peculiar circumstances of the case, however, we think that there should be no order as to costs and the parties should bear their own costs.

9. Before concluding we must draw the attention of the authorities concerned to the slack and unbusiness-like manner in which the matter was dealt with in the office of the Chief Labour Commissioner. The Act requires that the Conciliation Officer must submit his report within 14 days from the commencement of conciliation proceedings and then on receipt of the report by the appropriate Government the conciliation proceedings are to be deemed to have concluded. Although factually the conciliation proceedings terminate when a settlement is arrived at before the Conciliation Officer or when it is found that no settlement can be arrived at, the Act, by a legal fiction, prolongs the conciliation proceedings until the actual receipt of the report by the appropriate Government and goes on to provide that the appropriate Government must have seven days' time to consider what further steps it would take under the Act. Up to the expiry of this period of 7 days the Act permits no strike but after that period is over the employees are left free to resort to collective action by way of a strike. Indeed, it is on the basis of these provisions that the date of strike has to be carefully selected and specified in the notice of strike to be given by the employees under section 22(1) of the Act. Thus, even a cursory perusal of the Act makes it clear that time is of the essence of the Act and that the requirements of its relevant provisions must be punctually obeyed and carried out if the Act is to operate harmoniously at all. In this case the conciliation officer submitted his report on October 22, 1949, i.e., well within 14 days from the commencement of the conciliation proceedings as required by section 12(6) of the Act. The report was sent through what has been called the routine official channel. Admittedly, it was received in the office of the Chief Labour Commissioner at New Delhi on October 25, 1949, but surprisingly it was not passed on to the Ministry of Labour, which is also in New Delhi, until about November 17, 1949. The employees had no means of knowing when the report was actually received by the Central Government which is the appropriate Government in this case or when the period of 7 days after such receipt expired. But in the belief, entertained, we think, quite legitimately, that the official business had been conducted regularly and promptly the employees went on strike on November 7, 1949, as previously notified. It

now transpires that the report had not been actually received by the Central Government and, therefore, on the letter of the law, the strike must be held to be illegal and the employees must face and bear the consequences of an illegal strike and may even be deprived of benefits to which they would otherwise have been entitled. This hardship has been thrown upon the employees for no fault of their own but simply because of the callous indifference or utter inefficiency and slackness apparently prevailing in the office of the Chief Labour Commissioner which cannot be too strongly deprecated. It is to be hoped that public officers would, in the discharge of their official duties in future, show a greater sense of responsibility than what they have done in the case before us.

10. Appeal dismissed.