Bharat Singh vs Management Of New Delhi Tuberculosis ... on 4 April, 1986

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Bench: V. Khalid, G.L. Oza

PETITIONER:
BHARAT SINGH

Vs.

RESPONDENT:
MANAGEMENT OF NEW DELHI TUBERCULOSIS CENTRE, JAWAHARLALNEHRU

DATE OF JUDGMENT04/04/1986

BENCH:
KHALID, V. (J)
BENCH:
KHALID, V. (J)
OZA, G.L. (J)

CITATION:
1986 AIR 842 1986 SCR (2) 169
1986 SCC (2) 614 1986 SCALE (1)637
CITATOR INFO :
RF 1988 SC 587 (12)

ACT:
Industrial Disputes Act, 1947 - S. 17-B - Statutory interpretation of - Applicability of to awards passed prior to August 21, 1984.
Statutory interpretation - Duty of Court - Evolve the concept of purposive interpretation.

HEADNOTE:
Section 17-B of the Industrial Disputes Act 1947 came into force with effect from August 21, 1984. It provided

that where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of a workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court the employer shall be liable to pay such workman during the pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, if the workman had not been employed in any establishment during such period.

The Labour Court in its award dated September 28, 1983 held that the termination of services of the appellant, was wrongful and illegal and that he was entitled to be reinstated with continuity of service. It directed that the appellant would be entitled to back wages at the rate at which he was drawing them when his services were terminated.

The management challenged the award on January 31, 1984 by filing a writ petition before the High Court. On December 12, 1984 the appellant moved an application under s. 17-B of the Act for a direction to the management to pay him full wages last drawn by him during the pendency of the writ petition. The High Court held that the section was applicable only to cases where the awards were passed after its commencement, and since the award in this case was passed prior to August 21, 1984 the section had no application.

170

In this appeal by special leave it was contended on behalf of the management that a section which imposes an obligation for the first time cannot be made retrospective. Such sections should always be considered prospective.

Allowing the appeal, the Court,

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HELD : 1. Section 17-B applies even to awards passed prior to August 21, 1984 if they have not become final. It gives a mandate to the courts to award wages where the following three ingredients are present: (i) the Labour Court has directed reinstatement of the workman, (ii) the employer has preferred proceedings against such award in the High Court or the Supreme Court, (iii) the workman has not been employed in any establishment during such period.[181 E; 176 A; 174 E]

2. Section 17-B is a progressive social beneficial legislation. It codifies in a statutory form a right available to the workmen to get wages. There are no words in the section to compel the court to hold that it cannot operate retrospectively. The section on its terms does not say that it would bind awards passed prior to the date when it came into force. Before s. 17-B was introduced there was no bar on courts for awarding wages. The workmen, of course, had no right to claim it. The section recognises such a right.[176 D; 181 C-D; 176 C; 181 D]

3.(i) The objects and reasons of the Industrial Disputes (Amendment) Act, 1982 clearly spell out that the delay in implementation of awards was due to the contests by

employers which consequently caused hardship to workmen. The enactment intended to do away with this hardship by providing for the payment of wages to the workman from the date of the award till the final disposal of the case. If that be the object then it would be inconsistent with the progressive social philosophy of our laws to deny to the workman the benefits of s. 17-B simply because the award was passed, for example, just a day or two before it came into force. It would be not only defeating the rights of the workmen but also going against the spirit of the enactment.[175 F; 176 G; 175 D-E, F-G]

(ii) The Court has to evolve the concept of purposive interpretation. Though objects and reasons cannot be the ultimate guide in interpretation of statutes, it often times aids in finding out what really persuaded the legislature to 171
enact a particular provision. The Court should give such construction to a statute as would promote the purpose or object of the Act. [176 D; 175 E-F; 176 F]

(iii) Where the words of a statute are plain and unambiguous, effect must be given to them, but where the intention of the legislature is not clear from the words or where two constructions are possible, it is the court's duty to discern the intention in the context of the background in which a particular section is enacted. Once such an intention is ascertained, the Courts have necessarily to give the statute a purposeful or a functional interpretation. [176 E-F]

4. Section 11-A confers a jurisdiction on the Labour Court, Tribunal or National Tribunal to act in a particular manner which jurisdiction it did not have prior to the coming into force of s. 11-A. The conferment of a new Jurisdiction can take effect only prospectively except when a contrary intention appears on the face of the statute. That is not the case with s. 17-B. It does not confer a new jurisdiction. [181 A-C]

Workmen of Firestone Tyre & Rubber Co. of India Pvt. Ltd. v. The Management & Ors., [1973] 3 S.C.R. 587 and Gujarat Mineral Development Corporation v. P.H. Brahmbhatt, [1974] 2 S.C.R. 128 distinguished.

Rustom & Hornsby (I) Ltd. v. T.B. Kadam, [1976] 1 S.C.R. 119 referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1251 of 1986.

From the Judgment and Order dated 18th April, 1985 of the Delhi High Court in C.M. No. 4006 of 1984.

M.K. Ramamurthi, M.A. Krishnamurthy and Mrs. Chandan for the Appellant.

G.B. Pai, Vineet Kumar, Rakesh Sahni, N.D.B. Raju and Ms. Arshi Singh for the Respondents.

The Judgment of the Court was delivered by KHALID, J. Special leave granted.

Section 17-B was inserted in the Industrial Disputes Act by the Industrial Disputes (Amendment) Act, 1982 (Act 46 of 1982). This Act received the assent of the President on August 31, 1982. It was directed that the commencement of the Act would be on such date as the Central Government may, by a Notification in the Official Gazette, appoint. The Central Government appointed the 21st day of August, 1984, as the date on which the Act would come into force. The question that falls to be decided in this appeal by special leave by the workman is, whether Section 17-B applies to awards passed prior to 21st day of August, 1984. The Delhi High Court held, in the Judgment under appeal, that the Section applied only to awards that were passed subsequent to the coming into force of this Section, namely 21st August, 1984.

The appellant joined the Management of New Delhi Tuberculosis Centre, Jawaharlal Nehru Marg, New Delhi, as a Peon against a permanent regular post. He was thereafter promoted as a Daftry. By a Memorandum dated September 13, 1975, the Management informed the appellant that his services were not required with effect from September 13, 1975 afternoon and his services were thus terminated. He was paid one month's salary in lieu of notice. The appellant kept quite for three years, obviously because the Management Hospital, as per the law as it then stood, was not an industry. It was in the year 1978, that this Court gave the Judgment in Bangalore Water Supply case. Subsequent to that the appellant raised an industrial dispute. The Delhi Administration, as per its Order dated August 6, 1979 referred the following dispute for adjudication :

> "Whether termination of the services of the workman Shri Bharat Singh is justified and/or illegal and if so to what relief is he entitled?"

|The Presiding Officer of the Labour Court, in his award dated September 28, 1983, held that the termination of the services of the appellant was wrongful and illegal and that he was entitled to be reinstated with continuity of service. The Labour Court directed that the appellant would be entitled to back wages with effect from 19th May, 1979 only, at the rate |at which he was drawing them when his services were terminated. The award was published in the Gazette by Notification dated November 2, 1983.

On January 31, 1984, the Management moved the Delhi High Court, under Article 226 of the Constitution of India challenging the award and applied for stay of the operation of the award. The High Court directed stay of the operation of the award, during the pendency of the writ petition on condition that the Management deposited 25 per cent of the amount as determined by the Labour Court, Delhi, in respect of the back wages. The High Court permitted the appellant to withdraw the amount on furnishing security; (we are told that the amount was not withdrawn by the appellant since he could not furnish security). On December 12, 1984, the appellant moved an application under Section 17-B of the Act read with Section 151 of the Code of Civil Procedure, for a direction to

the Management to pay him full wages last drawn by him, during the pendency of the writ petition. His case was that Section 17-B mandated the Court to award full wages if the conditions in that Section were satisfied. This was opposed by the Management. The High Court after considering the rival contentions came to the conclusion that Section 17-B had application only to cases where the awards were passed after the commencement of Section 17-B; in other words, after August 21, 1984, and that since the award in this case was prior to August 21, 1984, it had no application. Accordingly, the High Court dismissed the petition filed by the workman. Hence this appeal by special leave at the instance of the workman.

We are here concerned only with the interpretation of Section 17-B. The appellant's learned counsel relied upon a decision of this Court in Rustom & Hornsby (I) Ltd. v. T.B. Kadam, [1976] 1 S.C.R. 119 where this Court construed the language of Section 2-A of the Act; while the learned counsel for the Management strongly relied upon two decisions of this Court which construed the language of Section 11-A and which according to him, was in pari materia with Section 17-B. The cases are Workmen of Firestone Tyre & Rubber Co. of India Pvt. Ltd. v. The Management and Others, [1973] 3 S.C.R. 587 and Gujarat Mineral Development Corporation v. Shri P.H. Brahmbhatt, [1974] 2 S.C.R. 128.

Before we deal with the rival contentions, it would be useful to read Section 17-B with which we are concerned.

> "17B. Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court :
>
> Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be."

The three necessary ingredients for the application of this Section are (i) the Labour Court should have directed reinstatement of the workman, (ii) the employer should have preferred proceedings against such award in the High Court or in the Supreme Court, (iii) that the workman should not have been employed in any establishment during such period.

The question now before us is whether a workman would be denied the benefit of this Section, even if all the above three conditions are satisfied, if the award was passed prior to August 21, 1984? We may, even at this stage, say that in cases where the award had become final prior to August 21, 1984, Section 17-B cannot be pressed into service to reopen the same. It is only when the award is

challenged and the challenge is pending, that the Section becomes operative.

It is common knowledge that even before Section 17-B was enacted, Courts were, in their discretion, awarding wages to workmen when they felt such a direction was necessary but that was only a discretionary remedy depending upon Court to Court. Instances are legion where workmen have been dragged by the employers in endless litigation with preliminary objections and other technical pleas to tire them out. A fight between a workman and his employer is often times an unequal fight. The legislature was thus aware that because of the long pendency of disputes in Tribunals and Courts, on account of the dilatory tactics adopted by the employer, workmen had suffered. It is against this background that the introduction of this Section has to be viewed and its effects considered.

The objects and reasons for enacting the Section is as follows :

> "When Labour Courts pass award of reinstatement, these are often contested by an employer in the Supreme Court and High Courts. It was felt that the delay in the implementation of the award causes hardship to the workman concerned. It was, therefore, proposed to provide the payment of wages last drawn by the workman concerned, under certain conditions, from the date of the award till the case is finally decided in the Supreme Court or High Courts."

The objects and reasons give an insight into the background why this Section was introduced. Though objects and reasons cannot be the ultimate guide in interpretation of statutes, it often times aids in finding out what really persuaded the legislature to enact a particular provision. The objects and reasons here clearly spell out that delay in the implementation of the awards is due to the contests by the employer which consequently cause hardship to the workmen. If this is the object, then would it be in keeping with this object and consistent with the progressive social philosophy of our laws to deny to the workmen the benefits of this Section simply because the award was passed, for example just a day before the Section came into force? In our view it would be not only defeating the rights of the workman but going against the spirit of the enactment. A rigid interpretation of this Section as is attempted by the learned counsel for the respondents would be rendering the workman worse off after the coming into force of this Section. This section has in effect only codified the rights of the workmen to get their wages which they could not get in time because of the long drawn out process caused by the methods employed by the Management. This Section, in other words, gives a mandate to the Courts to award wages if the conditions in the Section are satisfied.

In interpretation of statutes, Courts have steered clear of the rigid stand of looking into the words of the Section alone but have attempted to make the object of the enactment effective and to render its benefits unto the person in whose favour it is made. The legislators are entrusted with the task of only making laws. Interpretation has to come from the Courts. Section 17-B on its terms does not say that it would bind awards passed before the date when it came into force. The respondents' contention is that a Section which imposes an obligation for the first time, cannot be made retrospective. Such sections should always be considered prospective. In our view, if this submission is accepted, we will be defeating the very purpose for which this Section has been enacted. It is here

that the Court has to evolve the concept of purposive interpretation which has found acceptance whenever a progressive social beneficial legislation is under review. We share the view that where the words of a statute are plain and unambiguous effect must be given to them. Plain words have to be accepted as such but where the intention of the legislature is not clear from the words or where two constructions are possible, it is the Court's duty to discern the intention in the context of the background in which a particular Section is enacted. Once such an intention is ascertained the Courts have necessarily to give the statute a purposeful or a functional interpretation. Now, it is trite to say that acts aimed at social amelioration giving benefits for the havenots should receive liberal construction. It is always the duty of the Court to give such a construction to a statute as would promote the purpose or object of the Act. A construction that promotes the purpose of the legislation should be preferred to a literal construction. A construction which would defeat the rights of the havenots and the underdog and which would lead to injustice should always be avoided. This Section was intended to benefit the workmen in certain cases. It would be doing injustice to the Section if we were to say that it would not apply to awards passed a day or two before it came into force.

The learned counsel for the appellant invited our attention to a decision of this Court in Rustom & Hornsby (I) Ltd. v. T.B. Kadam, where this Court was considering the scope of Section 2-A of the Act. Section 2-A provides thus :

> "where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

Before this section was enacted, there was a bar for individual workman to raise an industrial dispute. It was this bar that the management put forward in that case.

It was contended that the reference was bad since the dismissal took place before December 1, 1965, on which date the Section came into force. This Court did not accept this plea. The appellant's counsel submits that Section 2-A and Section 17-B are more or less similar in their phraseology and when this Court gave Section 2-A retrospectivity, Section 17-B should also be treated alike. This is what this Court said while dealing with Section 2-A:

> "When the Section uses the words 'where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman' it does not deal with the question as to when that was done; it refers to a situation or a state of affairs. In other words where there is a discharge, dismissal, retrenchment or termination of service otherwise the dispute relating to such discharge, dismissal, retrenchment or termination of service becomes an industrial dispute. It is no objection to this to say that this interpretation would lead to a situation where the disputes would be reopened after the lapse of many years and referred for

> adjudication under Section 10. The question of creation of new right by Section 2A is also not very relevant. Even before the introduction of Section 2A a dispute relating to an individual workman could become an industrial dispute by its being sponsored by a labour union or a group of workmen. Any reference under Section 10 would be made only sometime after the dispute itself has arisen. The only relevant factor for consideration in making a reference under Section 10 is whether an industrial dispute exists or is apprehended. There cannot be any doubt that on the day the reference was made in the present case, an industrial dispute as defined under Section 2A did exist."

The appellant's counsel relied upon the above observation and contended that even though the words used are in the future tense, denoting something to happen in future, the Section was held to operate retrospectively also and that similar is the case with Section 17-B. The learned counsel for the respondents met this argument with the plea that Section 2-A was only a definition Section and no support could be drawn from the above Judgment for the purpose of this case. In our view the principle, laid down in the above decision, cannot be dismissed so lightly, because this Court extended the benefit of this Section to a dispute that existed before the Section came into force, notwithstanding the fact that the Section used future tense regarding the dispute. We agree that Section 2-A is a definition Section. Still this Court gave it a retrospective construction. We feel, some support is available to the appellant from this decision.

The respondents' counsel relied heavily upon two decisions of this Court, referred above, dealing with Section 11-A of the Act. Section 11-A reads as follows :

> "Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of dsicharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require :
>
> Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the meterials on record and shall not take any fresh evidence in relation to the matter."

By this Section, Tribunals were conferred with a new jurisdiction. The question arose whether this jurisdiction conferred for the first time by Section 11-A, could be extended retrospectively. While dealing with Section 11-A, this Court stated as follows in Workmen of Messrs Firestone Tyre & Rubber Co. of India Pvt. Ltd. v. The Management and Others.

> "...We have pointed out that this position has now been changed by Section 11A. The section has the effect of altering the law by abridging the rights of the employer inasmuch as it gives power to the Tribunal for the first time to differ both on a finding of misconduct arrived at by an employer as well as the punishment imposed by him. Hence in order to make the section applicable even to disputes, which had been referred prior to the coming into force of the section, there should be such a clear express and manifest indication in the section. There is no such express indication. An inference that the section applies to proceedings, which are already pending, can also be gathered by necessary intendment. In the case on hand, no such inference can be drawn as the indications are to the contrary. We have already referred to the proviso to section 11A which states 'in any proceeding under this section'. A proceeding under the section can only be after the section has come into force. Further the section itself was brought into force some time after the Amendment Act was passed. These circumstances as well as the scheme of the section and particularly the wording of the proviso indicate that section 11-A does not apply to disputes which had been referred prior to 15- 12-1971. The section applies only to disputes which are referred for adjudication on or after 15-12-1971. To conclude, in our opinion, section 11A has no application to disputes referred prior to 15-12-1971. Such disputes have to be dealt with according to the decisions of this Court already referred to....."

This Court approved this conclusion in Gujarat Mineral Development Corporation v. Shri P.H. Brahmbhatt thus :

> "....The next question is whether Section 11A of the Act is applicable to this case. That section provides that where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge of dismissal as the circumstances of the case may require. We are, however, not concerned with the several questions which may arise thereunder, because the section itself will not apply to an industrial dispute referred prior to December 15, 1971, when section 11A was brought into operation. It was held by this Court in the Workmen of M/s. Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. v. The Management and Others, (1973 - 1 - LLJ 278) that this section has no retrospective operation on the pending references....."

According to the respondents' counsel, these two decisions clearly cover the question involved in this appeal also. We feel that this submission cannot be accepted for more than one reason. Section 11-A, confers a jurisdiction on the Labour Court, Tribunal or National Tribunal to act in a particular manner which jurisdiction it did not have prior to the coming into force of Section 11-A. This is the

reason why this Court held that Section 11-A cannot apply to proceedings before it came into force. The conferment of a new jurisdiction can take effect only prospectively except when a contrary intention appears on the face of the statute. Section 11-A plainly indicates its prospective operation. This is made clear in the proviso to the section when it says "provided that in any proceeding under this Section". This can only mean something relatable to a stage after the Section came into being. That is not the case with Section 17-B. Here it is not the conferment of a new jurisdiction but the codification in statutory form of a right available to the workmen to get back-wages when certain given conditions are satisfied. There are no words in the Section to compel the Court to hold that it cannot operate retrospectively. Before Section 17-B was introduced there was no bar for Courts for awarding wages. Of course the workmen had no right to claim it. This Section recognizes such a right. To construe it in a manner detrimental to workmen would be to defeat its object.

In our considered view, therefore, the High Court was in error in holding that the legislature did not intend to give retrospective effect to Section 17-B. We hold that Section 17-B applies even to awards passed prior to August 21, 1984, if they have not become final. We set aside the Judgment of the High Court and allow this appeal with costs, quantified at Rs. 3,000.

P.S.S. Appeal allowed.