Chhotobhai Jethabhai Patel & Co vs The Industrial Court, Maharashtra ... on 9 March, 1972

Equivalent citations: 1972 AIR 1268, 1972 SCR (3) 731, AIR 1972 SUPREME COURT 1268, 1972 LAB. I. C. 444, 1973 (1) SCJ 466, (1972) 1 LAB LJ 657, 25 FACLR 213, 41 FJR 337, 1972 3 SCR 731

Bench: C.A. Vaidyialingam, I.D. Dua

PETITIONER:
CHHOTOBHAI JETHABHAI PATEL & CO.

Vs.

RESPONDENT:
THE INDUSTRIAL COURT, MAHARASHTRA NAGPUR BENCH, NAGPUR &

DATE OF JUDGMENT09/03/1972

BENCH:
MITTER, G.K.
BENCH:
MITTER, G.K.
VAIDYIALINGAM, C.A.
DUA, I.D.

CITATION:
1972 AIR 1268 1972 SCR (3) 731
1972 SCC (2) 46
CITATOR INFO :
R 1973 SC 883 (16)

ACT:
Bombay Industrial Relations Act, 1948--ss. 78(1) D, 42(4)--Compliance with s. 42(4) if condition precedent for invoking jurisdiction of Labour Court under s. 78(1) D.

HEADNOTE:
Against the order of the appellant company dismissing him, an employer filed an application before the Labour Court under section 78of the Bombay Industrial Relations Act, 1946. The Labour Court set aside the order. The Industrial Court and the High Court confirmed the order of the Labour Court rejecting the appellant's contention that the order of the Labour Court was liable to be set aside on the ground that the employee did not make an application under s. 42(4) in Chapter VIII of the Act' which was a condition precedent

to approaching the Labour Court. On the question whether the Labour Court could exercise jurisdiction under s. 78(1) D of the Act in a case where the employee of an industry governed by the Act had not complied with the provisions of sub-section (4) of s. 42 of the Act read with the proviso to the sub-section,
HELD:Allowing the appeal.
(i) The scheme of Chapter VIII of the Act is that in regard to any "Change" in an industrial matter there must be compliance with the provisions of that chapter. There is nothing in the Act which warrants the conclusion that the legislature by inserting paragraph D in s. 78(i) intended to chalk out a wholly different course of action to that prescribed in Chapter VIII dealing with changes. The ,scheme of s. 78 (1) is that Labour Court is to have power to decide all the disputes covered by paragraph A. In other words, efforts must first be made by the employer intending to effect any change in respect of matters covered by s. 42(1), or an employee desiring a change in respect of any order passed by the employer under standing order which would of necessity include an order of dismissal, to see whether it was possible to come to any agreement and an application to the Labour Court could only be resorted to after efforts had been made to settle the dispute and no agreement had been arrived at. [739C-G]
(ii) A person who is dismissed would, be an employee within the meaning of s. 3(13) of the Act and there is no valid reason for differentiating the case of a dismissed employee from one who complains of some other change. [739H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 12 of 1968.

Appeal from the judgment and order dated April 12, 1967 of the Bombay High Court, Nagpur Bench in Special Civil Application No. 812 of 1966.

M. N. Phadke and Mohinder Narain, for the appellant. The Judgment of the Court was delivered by Mitter, J. In this appeal by certificate the question involved is, whether the Labour Court at Nagpur could exercise jurisdiction under s. 78(1)D of the Bombay Industrial Relations Act in a case where the employee of an industry governed by the Act had not complied with the provisions of s. 42(4) of the said statute read with the proviso to the said sub-section. The Bombay High Court has held that it was not necessary for an employee first to approach the employer or to follow the procedure laid down in s. 42(4) including the proviso before he could apply to the Labour Court for relief under S. 7 8 (1) D. The facts are as follows. One Nathu, respondent No. 3 herein, was employed as a munshi in the appellant's Bidi factor at Bhandara. The appellant had framed a charge sheet against him in respect of certain acts of misconduct, gross negligence of duty, insubordination etc. on May 13, 1965. An enquiry in respect thereof was held on May 15th after receipt of written statement from Nathu.

Holding that the charges leveled against him were proved, the employer dismissed the third respondent with effect from August 1, 1965. The said respondent filed an application challenging the order of dismissal before the Labour Court under s. 78 of the Bombay Industrial Relations Act, 1946, hereinafter referred to as the 'Act', on the 5th August. His complaint was that the charge sheet was not proper, that the Head Office of the appellant had no authority to deal with his case tinder the Standing Orders, that no evidence was allowed or filed on behalf of the employer and that the finding was based only on his statement and in particular his cross-examination. He had been forced to append his signature to a certain paper without the same having been read over to him. The Labour Court after holding an enquiry took the view that the findings of the enquiry officer were perverse, that the order of dismissal was passed by a person not authorised to exercise the power and consequently the Labour Court directed the reinstatement of the third respondent with all back wages. The appellant preferred an appeal to the State Industrial Court contending, inter alia, that the third respondent had failed to comply with the provisions of law in that he did not make an application under S. 42(4) of the Act which was a condition precedent to approaching the Labour Court and prayed that the order of the Labour Court should be set aside on that ground alone. The Industrial Court confirmed the order of the Labour Court. The appellant then filed a peti-

tion under Art. 227 of the Constitution before the Bombay High Court. The High Court field against the appellant. Unfortunately, there is no appearance for the respondent before us.

In order to appreciate the scope of the Labour Court's jurisdiction under the Act and in particular the attractability of s. 78(1)D it is necessary to examine the scheme of the Act as a whole including the provisions relevant for this appeal. The Act when first passed in 1946 known as the Bombay Industrial Relations Act was applicable to a limited area within the State. In the Vidarbha region of the State, there was another similar Act in operation. The Act suffered numerous amendments from time to time until 1965 when Maharashtra Act 22 of 1965 was passed The new, Act was described as an Act "to extend the Bombay Industrial Relations Act, 1946 throughout the State of Maharashtra and for that and for certain other purposes further lo amend that Act, and to repeal corresponding laws in force in any part of the State". Under s. 2 of that Act the Bombay Industrial Relations Act of 1946 as in force immediately before the commencement of the 1965 Act in the Bombay area of the State of Maharashtra was extended to the rest of the State. The C.P. and Berar Act was repealed. As a result, the Act now extends to the whole of the State. Chapter I contains only three sections : s. 2 deals with the extent, commencement and application of the Act and s. 3 is the definition section. Chapter 11 sets out the authorities to be constituted or appointed under the Act. S. 9 provides for the constitution of Labour Courts and S. 10 of Indus- trial Courts. Chapter III containing ss. 11 to 22 deals with registration of Unions and Chapter IV with approved Unions. Chapter V deals with representatives of employers and employees and appearance in proceedings on their behalf. Chapter VI deals with Powers and duties of labour officer and Chapter VIII deals with standing, Orders. Chapter VIII containing ss. 42 to 47 deals with "changes". Chapter IX deals with Joint Committees, Chapter X with Conciliation Proceedings, Chapter XI with Arbitration and Chapter XII with Labour Courts, their territorial jurisdiction, heir powers, commencement of proceedings before the Labour etc. It is not necessary to take note of other Chapters excepting S. 123 in Chapter XIII which deals with the rule making power. 'the relevant definitive clauses in s. 3 are "(8) "change" means an alteration in an industrial matter;

(13) "employee" means any person employed to do any skilled or unskilled work for hire or reward in any industry, and includes-

(a) a person employed by a contractor to do any ,work for him in the execution of a contract with an employer within the meaning of sub-clause (e) of clause (14)

(b) a person who has been dismissed, discharged or retrenched or Whose services have been terminated from employment on account of any dispute relating to change in respect of which a notice is given or an application made, under section 42 whether before or after his dismissal. discharge, retrenchment or, as the case may be, termination from employment;

but does not include-

(i) a per.-,on employed primarily in a managerial administrative, supervisory or technical capacity drawing basic pay (excluding allowances) exceeding five hundred and fifty rupees per month;

(ii) any other person or class of persons employed in the same capacity as those specified in clause (i) above irrespective of the amount of the pay drawn by such person which the State Government may, by noti- fication in the Official Gazette, specify in this behalf.

(17) "Industrial dispute" means any dispute or difference between an employer and employee or between employers and employees or between employees and employees and which is connected with any industrial matter;

(18) "industrial matter' means any matter relating to employment, work, wages, hours of work, privileges, rights or duties of employers or employees. or the mode.. terms and conditions of employment, and includes-

(a) all matters pertaining to the relationship between, employers and employees, or to, the dismissal or non-employment of any person;

(b) all matters pertaining to the demarcation of functions of any employees or class of employees; .

(c) all matters pertaining to any right or claim under or in respect of or concerning a registered agreement or a submission, settlement or award made under this Act;

(d) all questions of what is fair and right in relation to any industrial matter having regard to the person immediately concerned and of the community as a whole;"

> Under s. 3 1 (1) every employer must submit for approval to the Commissioner, of Labour in the prescribed manner standing Orders regulating the relations between him and his employees. with regard to the industrial matters mentioned in Schedule within six weeks from the date of the application of the Act to the industry. Under sub-s. (5) of the section :

> "Until standing orders in respect of an undertaking come into operation under the provisions of sub-section (4), model standing orders, if any, notified in the Official Gazette by the State Government in respect of the industry shall apply to such undertaking."

Schedule 1 to the Act contains among other matters items 10 and 11 relating to termination of employment including notice to be given by the employer and employee and punishment including warning, censure, fine, suspension or dismissal for misconduct, suspension pending enquiry into alleged misconduct and the acts or omissions which constitute misconduct.

Normally, therefore, standing orders must deal with miscon- duct which can lead to dismissal or other punishment. Under s. 41 the provisions of the Industrial Employment (Standing Orders) Act, 1946 are not to apply to any industry to which the provisions of Chapter VII of the Act apply. As 'industrial matter' as defined in s. 3(18) includes all matters pertaining to the dismissal or non-employment of any person, an industrial dispute within the meaning of s. 3(17) must necessarily arise when there is any difference between an employer and an employee about such dismissal. The solution to the question before us turns on the interpretation of the relevant provisions in Chapter VIII headed "changes". 'Change' as already noticed means any alteration in an industrial matter. Under s. 42(1) any employer intending to effect any change in respect of an industrial matter specified in Schedule 11 of which item 3 reads "Dismissal of any employee except as provided for in the standing orders applicable under this Act".

must give notice of such intention in the prescribed form to the representative of the employees. He must also send a copy of such notice to the , Chief Conciliator, the Conciliator for the industry concerned for the local area, the Registrar, the Labour Officer and such other person as may be prescribed. He has also to affix a copy of such notice at a conspicuous place of the premises where the employees affected by the change are employed. Under sub-s. (2) of s. 42 an employee desiring a change in respect of an indus-

trial matter not specified in Schedule I or Schedule III has to give notice in the, prescribed form to the employer with similar intimation to others. Under sub-s. (4) any employee desiring a chance in respect inter alia, of any industrial matter specified in Schedule III of which item 6 reads "Employment including-

(i) reinstatement and recruitment" must make an application to the Labour Court. 'This subsection has a proviso which runs :

> "Provided that no such application shall lie unless the employee or a representative union has in the prescribed manner approached, the employer with a request for the change and no agreement has been arrived at in respect of the change within the prescribed period."

S. 44 envisages an agreement between the parties regarding "change" and registration of the memorandum thereof by the Registrar. Under s. 44-A a memorandum of agreement arrived at is to

be forwarded by either party to the Registrar by registered post and an agreement which is registered under s. 44 is to come into operation as laid down in s. 45. The territorial jurisdiction of Labour Courts extends to local areas for which they are constituted under s. 77 in Part XII. S. 78 runs as follows :

> "78. (1) A Labour Court shall have power to-A. decide-
>
> (a) disputes regarding-
>
> (i) the propriety or legality of an. order passed by an employer acting or purporting to act under the standing orders;
>
> (ii)the application and interpretation of standing order;
>
> (iii) any change made by an employer or desired by an employee in respect of an industrial matter specified in Schedule III except item (5) thereof and matters arising out of such change;
>
> (b) industrial disputes-
>
> (i) referred to it under section 71 or 72;
>
> (ii) in respect of which it is appointed as an arbitrator by a submission;
>
> .lm15
>
> (c)whether a strike, lock-out, closure, stoppage or any change is illegal under this Act;

B. try offenses punishable under this Act where the payment of compensation on conviction for an offence is provided for, determine the compensation and order it,-; payment; C. require any employer to-

(a) withdraw any change which is held by it to be illegal, or withdraw temporarily any change the legality of which is a matter of issue in any proceeding pending final decision, or

(b) carry out any change provided such change is a matter in issue in any proceeding before it under this Act.D.require an employer, where it finds that the order of dismissal, discharge, removal, retrenchment, termination of service, or suspension of an employee made; by the employer,-

(i) was for fault or misconduct committed by the employee which came to the notice of the employer more than six months prior to the date of such order;, or

(ii) was in contravention of any of the provisions of' any law, or of any standing order in force applicable to such employee, or

(iii) was otherwise improper or illegal,

(a) reinstate the employee forthwith or by a date specified by it in this behalf and pay him wages for the period beginning can the date of such order of dismissal, discharge, removal, retrenchment, termination of' service or suspension, as the case may be, and ending on the date on which the Labour Court orders his reinstatement or on the date of his reinstatement, whichever is later, or

(b) to pay to the employee in addition to wages (being wages for the period commencing on the date of his dismissal, discharge, removal, retrenchment or termination of service and ending on the date on which the Labour Court orders such payment), such sum not exceeding four thousand rupees by way of compensation, regard being had to-loss of employment and possibility of getting suitable employment thereafter.

(2) Every offence punishable under this Act shall he tried by the Labour Court within the local limits of whose jurisdiction it was committed.

Explanations dispute falling under clause (a) of paragraph A of sub-section (1) shall be deemed to have arisen if within the period prescribed under the proviso to sub-section (4) of section 42, no agreement is arrived at in respect of an order, matter or change referred to in the said proviso."

Clause D of s. 78(1) was introduced in the Act of Maharashtra Act 22 of 1965. S. 31 of the Act of 1965 not only introduced cl. D but also made changes in paragraphs A and C thereof. The forerunner of Act 22 of 1965 i.e. Bill No. LXVI of 1964, the object of which was to make numerous changes in the Act shows in its Statement of Objects and Reasons that clause 31 of the Bill was meant to "enlarge the powers of the Labour Court under s.78". According to this clause "The Labour Court is empowered (by paragraph D) to direct temporary withdrawal of any change the legality of which is a matter of issue in any proceedings before it, pending its final decision."

The Labour Court was also thereby further empowered "to require an employer to reinstate an employee with full back wages or pay him wages and compensation not exceeding Rs. 2,500/.... if the employee Was dismissed, discharged" etc. The Statement of Objects and Reasons amply demonstrates that by introducing paragraph D in S. 78(1) the legislature was 'Only seeking to arm the Labour Court with further and more effective powers to grant relief.

Under s. 79(1) proceedings before a Labour Court in respect of disputes falling under clause (a) of paragraph A of sub- s. (1) of s. 78 must be commenced on an application made by any of the parties to the dispute etc. and under sub-s. (2) every application under sub-s.(1) has to be made in the prescribed from and manner. Under S. 84 an appeal lies to the Industrial Court against the decision of a Labour Court in respect _ of a matter falling under clause (a) or cl. (c) of paragraph A of sub-s. (1) ,of s. 78 except in the case of lock-out etc. or a decision of such .court under paragraph C of sub-s. (1) of the said section.

Reading s. 78 as a whole, there is no doubt left in our minds 'that the legislature wanted the provision to be a comprehensive one. It contains all the powers of the Labour Court in the matter of

all disputes mentioned and gives it jurisdiction to punish certain offenses under the Act. It does not lay down the procedure for the attraction of such jurisdiction. So far as disputes are concerned, the procedure is as laid down in s. 79.

It will be noted that no mention is made in s. 84 of paragraph D of S. 78(1) but inasmuch as orders of dismissal, discharge, removal ,retrenchment, termination of service or suspension of an employee would come under s. 78(1) paragraph A, the legislature felt it unnecessary to make any mention of an order under paragraph D in s. 84. Paragraph D, so far as we can see, is not referred to anywhere, else in the Act.

The question therefore narrows down to this i.e. whether the legislature by inserting paragraph D in s. 78(1) intended to chalk out a wholly different course of action to that prescribed in Chapter VIII dealing with changes. In our view, there is nothing in the Act which warrants such a conclusion. The scheme of Chapter VIII seems to be that in regard to any "change" in an matter there must be compliance with the provisions of that Chapter. In other words, effort must first be made by the employer intending to effect any change in respect of matters covered by s. 42(1) or an employee desiring a change in respect of any order passed by the employer under standing orders which would of necessity include an order of dismissal, to see whether it was possible to come to any agreement and an application to the labour court could only be resorted to after efforts had been made to settle the dispute and no agreement had been arrived at.

The scheme of S. 7 8 (1) seems to be that a Labour Court is to have power to decide, all the disputes covered by paragraph A. Paragraph B thereof gives the Labour Court the power to try offenses punishable under the Act and cognizance of such offenses .;an only be taken under s. 82. Paragraphs C and D set out what relief the Labour Courts are empowered to give including directions as may be found necessary in that behalf. As already noted, the Statement of Objects and Reasons (A clause 31 of the Bill which later resulted in Act 22 of 1965, shows that the underlying dea was to enlarge the powers of the Labour Court. The Legislature nowhere intended to make a complete departure from the procedure to be adopted when powers under s. 78(1)D were to be exercised.

Rule 5 5 of the Bombay Industrial Relations Rules, 1947 shows how an application is to be made and the period within which it is to be made.

It must be held that a person who is dismissed would be an employee within the meaning of s. 3(13) of the Act and we can see no valid reason for differentiating the case of a dismissed employee from one who complains of some other change. As the scheme of the Act is that disputes should be settled as far as possible and primarily through conciliation and agreement, it does not stand to reason that an employee should be able to side-step all this by a direct reference to the Labour Court. A Labour Court is a creature of the statute and it can only exercise such jurisdiction as the statute confers on it : if there are certain pre- conditions to the exercise of its-jurisdiction, it must refuse to entertain any such application unless such pre- conditions are first complied with.

In the result we set aside the order of the High Court, allow the appeal and quash the orders of the Labour Court and the Industrial Court but do not make any order for consequential relief, in view of

the solemn assurance given to this Court by Mr. Phadke, learned counsel for the appellant that his client does not desire to give effect to the order of termination of service passed on the third respondent. In the circumstances of the case, we make no order as to costs.

K.B.N. Appeal allowed L1031 Sup. Cl/72-2500-25-8-73--GIPF.