Ram Nath Koeri And Anr. vs Lakshmi Devi Sugar Mills And 2 Ors. on 25 November, 1955

Equivalent citations: (1956)IILLJ11ALL

JUDGMENT

Mootham, C.J.

1. I had the advantage of reading the judgment prepared by my brother; I agree with his conclusion for the reasons which he has given and there is little that I can usefully add. The principal question is whether the findings of the industrial court can be enforced as an award under Section 6 of the Uttar Pradesh Industrial Disputes Act, 1947. That section deals with awards and the action to be taken on them, and it is to be noted that the word "award" is not defined in the Act, nor is it used elsewhere in the Act than in this section. The word must there-fore bear its ordinary meaning which is defined by Murray as " a decision after examination of a judicial sentence, especially that of an arbitrator or umpire" and in Webster's International Dictionary as "judgment," sentence or final decision, specially the decision of arbitration in a case submitted. The question is therefore whether the finding of the industrial court under Clause 13 of the Government notification dated 10 March, 1948, is an award as so defined.

2. That notification refers both to "findings" and "an award" and in my opinion both expressions are used in the same sense. Sub-clause (1) of Clause 7 requires a conciliation board to record its findings on each issue; Sub-clause (3) and (4) of the same clause refer to these findings as an award and Clause 12 provides for an appeal from such award. The notification by Clause 13 requires the industrial court after hearing the appeal to do what the board was required to do after making an enquiry, namely, " to record its findings." I see no sufficient reason why this phrase should bear construction different in Clause 13 to what it bears in Clause 7; and in any case the finding of the industrial court is, in my opinion, a determination of, or a decision on, the matters before it and is therefore an award within the meaning of Section 6 of the Act.

3. Clause 25 of the notification certainly contemplates an order being made by the Government under Clause (b) of Section 3 of the Act after an appeal has been heard, for until such an order is made, the appeal will, it seems, be deemed to be still pending with the consequence that under Clause 23 of the notification the employer cannot, while that state of affairs exists, discharge or dismiss any workman without the permission of the industrial court. I agree however with my brother that there is nothing in the notification or the Act which is a bar to the Government making an order under Clause (b) of Section 3 and at the same time enforcing the award under Section 6 of the Act.

4. In the circumstances, I do not find it necessary to express a final opinion on the question whether the order made by the Government in this case under Clause (b) of Section 3 is a valid order; but I must not be taken as dissenting from the view expressed by Agarwala, J.

Agarwala, J.

5. This is a special appeal from the judgment of a learned single Judge of this Court, allowing a writ petition and directing a writ of mandamus to issue to the State Government, the Chini Mill Mazdoor Sangh and Ram Nath Koeri, secretary of the Chini Mill Mazdoor Sangh, restraining them from taking any action to enforce the order of the Uttar Pradesh Government, dated 3 December 1949.

6. The facts of the case are as follows. The respondent Lakshmi Devi Sugar Mills, Ltd., is engaged in the manufacture of sugar at Chitauni in the district of Deoria. The appellant Ram Nath Koeri who is the secretary of the Chini Mill Mazdoor Sangh was one of the employees of the said mills. His services were terminated in April 1948 on the ground that he used to be deliberately absent for a long time without permission. On 16 June 1948 the Chini Mill Mazdoor Sangh took up his cause and filed an application before the regional conciliation board (sugar), Gorakpur, seeking his reinstatement and payment to him of arrears of salary. This application was made under the Uttar Pradesh Industrial Disputes Act (Act XXVIII of 1947) read with the order of the State Government contained in notification No. 781(L) XVIII dated 10 March 1948. This application as well as some other applications somehow became infructuous and thereafter a fresh application was made in or about the month of July 1949 with the same prayers as before. This application was dealt with by the regional conciliation board (sugar), Gorakpur, and as there was no reconciliation between the parties the board gave its award on 6 July 1949 directing the sugar mills to reinstate Ram Nath Koeri with continuity of service and to pay him arrears of salary for the period elapsing between the order of dismissal and his actual reinstatement.

7. On 13 July 1949 an appeal was filed by the sugar mills before the State industrial court (sugar). The industrial court confirmed the findings of the regional conciliation board by an order dated 15 September 1949.

8. On 3 December 1949, the Government purported to give effect to the findings of the industrial court by issuing a notification under Sections 3 and 6 of the Industrial Disputes Act directing that the findings of the industrial court (sugar) be enforced. The sugar mills challenged this order by means of the writ petition which has given rise to this appeal.

9. The reliefs prayed for in the writ petition were that a writ in the nature of certiorari be issued quashing the order dated 15 September 1949 passed by the industrial court (sugar), Lucknow, and a writ in the nature of mandamus be issued to the Uttar Pradesh Government commanding it to forbear from enforcing its Government order aforesaid dated 3 December 1949

10. The grounds alleged in support of the petition in so far as they have been relied upon in this appeal were that the State Government's order dated 3 December 1949 enforcing the findings of the industrial court was ultra vires because the order could be made neither under the provisions of

Section 6 of the Uttar Pradesh Industrial Disputes Act as the findings of the industrial court did not amount to an award within the meaning of that section, nor could it be made under Clause (b) of Section 3 of the aforesaid Act because the findings did not relate to a matter falling within the purview of that clause,

11. A preliminary point was raised on behalf of the appellant that the Court could not exercise its writ jurisdiction in respect of an order which was passed before the commencement of the Constitution.

12. The preliminary objection was overruled and the learned single Judge held that the order of the industrial court was not an award within the meaning of the Uttar Pradesh Industrial Disputes Act and therefore could not be enforced under Section 6 of the Act and further that the subject matter of the order, namely, the reinstatement of Ram Nath Koeri, with continuity of service and payment of wages to him from the date of his dismissal up to the date of reinstatement could not be ordered under Section 3(b) of the Act. In the result the learned single Judge, without quashing the order of the industrial court (sugar) dated 15 September 1949, issued a writ of mandamus to the State Government not to take any action to enforce the order dated 3 December 1949. Against this order this special appeal has been filed by Ram Nath Koeri and the Chini Mill Mazdoor Sangh.

13. In order to decide the points in controversy between the parties it is necessary to state the relevant provisions of the Uttar Pradesh Industrial Disputes Act and the notification of the State Government dated 10 March 1948 issued under the Act.

14. The Uttar Pradesh Industrial Disputes Act (Act No. XXVIII of 1947) was passed in order to provide for powers to prevent strikes and lockouts, to settle industrial disputes and for other incidental matters. Section 3 so far as is material provides:

> If in the opinion of the State Government it is necessary or expedient so to do for securing the public safety or convenience, or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment, it may, by general or special order, make provision
>
> (a) * * *
>
> (b) for requiring employers and workmen or both to observe for such period as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order;
>
> (c) for appointing industrial courts;
>
> (d) for referring any industrial dispute for conciliation or adjudication in the manner provided in the order;
>
> (e) * * *

> (g) for any incidental or supplementary matters, which appear to the State Government necessary or expedient for the purpose of the order;

Provided that no order made under Clause (b)"

> (i) shall require an employer to ob-serve terms and conditions of employment less favourable to the workmen than those which were applicable to them at any time within three months preceding the date of the order;
>
> (ii) shall, if an industrial dispute is referred for adjudication under Clause (d), be enforced after the decision of the adjudication authority is announced by, or with the consent of, the State Government.

Section 4 provides that an order made under Section 3, referring an industrial dispute for adjudication shall specify, as far as may be practicable, the matters upon which adjudication is necessary or desired.

15. Section 6 provides for awards and actions to be taken on them:

> (1) When an authority to which an industrial dispute has been referred for adjudication has completed its inquiry, it shall, within such time as may be specified, submit its award to the State Government"
>
> (2) The State Government may either enforce for such period as it may specify all or any of the decisions in the award; or, either of its own motion or on application made to it, remit the award for reconsideration.
>
> (3) The adjudicating authority shall, after reconsideration and within such period as may be specified by the State Government, submit its award and the State Government may then enforce for such period as it may specify all or any of the decisions in the award.

16. The phrase "industrial dispute" is not specifically defined in the Act, but the Act refers to its definition in the Industrial Disputes Act XIV of 1947 (Central Act) which defines the phrase as follows:

> "Industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

17. In exercise of the powers conferred upon the State Government by Clauses (b), (c), (d) and (g) of Section 3 of the Uttar Pradesh Industrial Disputes Act, 1947, the Government of Uttar Pradesh issued a notification No. 781(L) XVIII dated 10 March 1948 (hereinafter referred to as the

notification). Under this notification two sets of Industrial courts were established and the manner in which Industrial disputes should be referred for conciliation or adjudication was laid down. There were first to be conciliation boards consisting of three members, a conciliation officer as president, a representative of the employers and a representative of the workmen. Appeals from the decisions of these boards were to lie to the industrial court.

18. The procedure provided for the reference and decision of disputes was as follows.

19. An industrial dispute may be referred by an employee or a registered trade union of employers or workmen or by representatives not more than five in number of workmen in an industrial concern to the conciliation board. The State Government may also refer an industrial dispute to the board for enquiry (Para. 5). The board was to enquire into the dispute and try to bring about a settlement (Para. 6). The board was to obtain the reply of the opposite party, and then frame issues on the questions upon which the parties were at variance and to make such enquiry as appeared to the board necessary and after the enquiry was concluded the board was to record its findings on each issue. If the board was successful in bringing about an amicable settlement between the parties, it was to prepare a memorandum correctly setting out the terms of the settlement. Where any amicable settlement was not reached, the board was to record an award and the reasons for such award on the issues on which the parties were unable to reach an amicable settlement. One copy of the award was to be supplied to each of the parties and one copy was to be displayed at a conspicuous place of the premises where the board last held its enquiry (Para. 7). Paragraph 7 may be quoted here:

> 7. (1) The board before which the dispute has been preferred or to which it has been referred under the last preceding clause shall, after reading the application and the reply, if any, filed by the other party, ascertain upon which questions the parties are at variance and shall then frame issues, and shall make such inquiry (which shall be concluded within ten days excluding gazetted holidays), as appear to the board necessary for the purpose of determining the issues. After the inquiry is concluded the board shall record its findings on each issue.

(2) In cases where the board is successful in bringing about an amicable settlement between the parties on all or any of the questions at issue, it shall prepare a memorandum correctly stating the terms of the settlement which shall then be signed by all the members of the board.

(3) Where no amicable settlement can be reached on one or more issues, the board, if all the members thereof agree or if they do not so agree the majority of the members agreeing or if no two members agree, the chairman alone, shall record an award and the reasons for such award, on the issues on which the parties were unable to reach an amicable settlement.

(4) The memorandum and the award shall be completed not later than twelve days from the commencement of the inquiry (excluding gazetted holidays) and one copy each duly authenticated by the chairman shall be supplied immediately to the parties to the inquiry and one copy shall be displayed at a conspicuous place on the premises where the board last held the inquiry.

20. Any party feeling aggrieved had the right to appeal against the award to the industrial court (Para. 12). The industrial court was to hear the appeal and record its findings and forward the same to the State Government (Para. 13). Paragraph 13 may be quoted here:

> 13. The court shall then, within ten days (excluding gazetted holidays) from its being filed, hear the appeal and shall, within a further period of ten days (excluding gazetted holidays), record its findings and forward the same immediately to the Provincial Government.

21. Where a settlement had been reached and a memorandum has been prepared or where no settlement had been reached an award had been made but no appeal had been filed therefrom, the terms and conditions of the employment specified in the memorandum or the award, as the case might be were to be observed by the employer and the workmen for at least six months (Para. 16). Paragraph 16 may be quoted here:

> 16. Where a settlement has been reach-ed and a memorandum has also been prepared under Sub-clause (2) of Clause 7 or where no settlement has been reached but an award had been made under Sub-clause (4) of Clause 7 and no appeal has been filed under Clause 12, both the employer and the workmen concerned shall observe the terms and conditions of employment specified in such memorandum or the award, as the case may be, for six months next following in the first instance, and thereafter until such time as either party determines the whole or any part of such settlement or award by twenty-one days' notice given to the other party in writing.

The party giving the notice shall also send a copy of the same to the board concerned and to the Labour Commissioner.

22. How the Government was to give effect to the findings of the appellate court was not expressly or directly stated in the notification, but Para. 25 contemplated that the State Government shall notify the orders passed by it in that connexion under Section 3(6) of the Uttar Pradesh Industrial Disputes Act, 1947. Paragraph 25 says:

> For the purposes of this order an appeal shall be deemed to have been decided on the date on which the Provincial Government shall notify the orders therein passed by it under Section 3(b) of the Uttar Pradesh Industrial Disputes Act, 1947.

23. The notification did not refer to the provisions of Section 6 of the Act.

24. In the present case the industrial court, after recording its findings on the issues involved in the dispute in the same terms as the conciliation board had done and agreeing with the latter's findings, observed ;

I recommend accordingly.

25. The learned single Judge held that the appellate court's "findings" were not an "award" within the meaning of Section 6 of the principal Act as they were merely recommendations and that therefore they could not be given effect to under that section. He further held that although the words "terms and conditions of employment" mentioned in Section 3(6) of the Act did include the employment or re-employment or reinstatement, and the payment of wages or compensation to an employee, Section 3 (b) of the Act was "not meant for the purpose of dealing with individual disputes arising out of the application of the terms and conditions of employment.

26. The contention of the appellants firstly is that the word "findings" used in Paras. 7 and 13 of the notification and the word "award" used in Paras. 7 and 16 have one and the same meaning and that the "findings" of the industrial court are "an award" within the meaning of Section 6 of the Act and as such the same can be enforced under that section; secondly, that where the findings of the appellate court are the same as the findings of the board, the order of the Government enforcing the findings of the appellate court in fact enforces the findings of the board; and thirdly, that the findings of the industrial court could be enforced by means of an order under Section 3(b) of the Act.

27. In my opinion the word "findings," as used in the notification and the word "award" as used in the notification and in the Act connote the same thing and have been used to denote the same idea. The word finding means "the result of a judicial examination or enquiry, a verdict" (see Webster's International Dictionary), The word "award also mean the same thing, a judgment, sentence or final decision; specially the decision of arbitrators in a case submitted" (Webster's International Dictionary). It will be noticed that in Clause (1) of Para. 7 of the notification the board is to record its findings on each issue and these very findings on each issue are designated as an award in Clause (3) of that paragraph. The award in Clause (3) is not a consolidated final order of a case like a decree of a civil court, but is a decision on each issue. The appellate court's findings are presumably on the issues referred to it in appeal. The word "findings" used in Para. 13 cannot have different meaning from the same word used in Para. 7.

28. It is not correct to say that the appellate court does not decide the appeal. Paragraph 13 directs the court to hear the appeal and to record its findings. The recording of the findings is the decision of the appeal. The notification itself contemplates that the appellate court shall give its decision (vide Para. 25). The mere fact that the industrial court has to submit its findings to the State Government and it is in the power of the State Government to give effect or not to give effect to those findings does not alter the nature of the findings. Section 6 of the Act contemplates that the award shall not take effect of its own force, but shall be given effect to by the order of the State Government. The State Government has been given power under that section to remit the award for reconsideration of the Court and it may give effect to the award or it may not. It is not bound in all cases to give effect to the award even after reconsideration by the industrial court concerned. It is true that under Para. 16 of the notification the award of the board takes effect automatically provided there has been no appeal. But this is so because the Government has chosen to give effect to the award of the board. It need not have given to it that effect. The mere fact that certain findings or of a tribunal do not become binding upon the parties of their own force does not take away from them the character of findings or of an" award. "Even under the Arbitration Act, an award made during the pendency of a suit must be given effect to by the court by passing a decree on its terms,

and it does not bind the parties otherwise. The mere fact that the industrial court, in the present case, after giving its findings, used the phrase "I recommend accordingly" should not be given undue importance because the nature of the findings recorded by the industrial court is to be judged by the provisions of the notification and not by the phraseology employed by the industrial court. As already stated, the notification calls the determination of the industrial court on each issue as "findings" and the disposal of the appeal as the "decision" of the appeal (vide Para. 25), The phraseology employed by the industrial court in the present case was erroneous. It should have said "I find accordingly" instead of saying "I recommend accordingly" and then should have sent its decision to the State Government. I am, therefore, of opinion that the words "award" and "findings" used in the notification are interchangeable and mean the same thing, namely, verdict or determination or decision, and that the findings of the appellate court amount to an award within the meaning of Section 6 of the Act. The finding's of the industrial court being an award, there is nothing to prevent the Government from enforcing them under Section 6 of the Act.

29. The only ground upon which it was said that the findings of the industrial court could not be given effect to under Section 6 of the Act was that such findings do not amount to an award, and this was also the only ground urged before us in appeal on behalf of the respondent. It was not urged that the industrial court could not be an "authority to which an industrial dispute could have been referred for adjudication" or that the arguments heard by the industrial court could not be termed "an enquiry" within the meaning of Section 6 of the Act. Indeed such objections could not be raised in view of the fact that when an appeal is filed against the award of the conciliation board, the dispute is referred to the industrial court for adjudication and the enquiry contemplated in Section 6 need not necessarily consist of hearing of evidence but may also be confined to the hearing of arguments. Further, when there is an appeal and the industrial court confirms or alters the award of the conciliation board, the award of the conciliation board merges in the decision of the industrial court and that decision is the final award in the industrial dispute. There is nothing in Section 6 to prevent it from being given effect to by the State Government as provided in that section. Paragraph 25 of the notification does not prevent the Government from enforcing the award under Section 6 of the Act. It is true that the notification does not itself expressly provide for enforcing the decision of an appeal under Section 6 of the Act. On the contrary, Para. 24 of the order contemplates that when there has been an appeal against the award of the board, the Government may enforce the appellate court's findings under Section 3(6) of the Act, But this paragraph is merely enabling and is not prohibitive. It does not place any restriction upon the Government to avail of Section 6 of the Act to enforce the findings of the industrial court. That power is given to the Government by statute and the provisions of the notification should not be read in such a way as to deprive it of that power.

30. Reliance was placed on behalf of the respondent upon a decision of a Bench of this Court in writ No. 7413 of 1951 Lakshmi Devi Sugar Mills, Ltd. v. State of Uttar Pradesh and Ors. 1955--II L.L.J. 1, In that case the matter in dispute was whether the State Government could issue an order under Clause (b) of Section 3 of the Uttar Pradesh Industrial Disputes Act, 1947, directing the employers to observe for a certain period such terms and conditions of employment as may be determined in accordance with the order with respect to the medical staff and the watch and ward staff. The question was whether the doctor and the compounder attached to the medical staff could be designated workmen for the purposes of the Uttar Pradesh Industrial Disputes Act. The Bench held

that they were not workmen and on this ground the award of the board and the order of the Labour Appellate Tribunal were quashed. In passing, however, the Bench also expressed the opinion that there could have been no appeal to the Labour Appellate Tribunal because the industrial court gives no "decision." It may be noted that an appeal lies to the Labour Appellate Tribunal against "an award or a decision" under Section 7 read with Section 2(c) of the Industrial Disputes (Appellate Tribunal) Act. This view of the Bench was founded upon the judgment of the learned single Judge which is in appeal before us and another judgment of the same learned Judge in writ petition No. 54 of 1952 [Krishna Prasad. Bhargava v. G.G. Industrial Masdoor Union, Agra] decided on 24 February 1955 in which the learned Judge had held that no appeal lay to the Labour Appellate Tribunal against the findings of the industrial court. The Bench approved of the decision in the latter case. The observations of the Bench were, however, by way of obiter dicta and are also distinguishable on facts, as in the present case we have not to consider whether the findings of the appellate court amount to an "award or decision" within the meaning of Section 2(c) of the Industrial Disputes (Appellate Tribunal) Act, 1953. What we have to consider in the present case is whether the findings of the appellate court amount to an award within the meaning of Section 6 of the Uttar Pradesh Industrial Disputes Act. I am clearly of opinion that they do amount to an "award" within the meaning of that section.

31. The argument of Mr. Shanti Bhushan, learned Counsel for the appellants, that the appellate court having affirmed the award of the board, the Government order of 3 December 1949, though purporting to enforce the findings of the appellate court in substance and effect, enforces the findings of the board which it admittedly could do under Section 6 of the Act, cannot be accepted. The Government order of 3 December 1949 must be read according to its terms and as it does not purport to enforce the findings of the board it cannot be said that in effect it enforces those findings.

32. Assuming, however, that the order of the appellate court could not be given effect to under Section 6 of the Uttar Pradesh Industrial Disputes Act, the question to be considered is whether the Government had power to make the order it did under the provisions of Section 3(b) of the Act. This question depends for its determination upon the scope of the phrase "terms and conditions of employment" as used in the aforesaid section. Does the direction regarding reinstatement of a dismissed employee and payment to him of wages for a certain period fall within the purview of "terms and conditions of employment" or not? The learned single Judge has, with respect, given very good reasons for holding that the phrase "terms and conditions of employment" does include the subject-matter of employment or reemployment or reinstatement and payment of wages. Besides, there are two indications in the notification of 10 March 1948 itself in support of this view. Paragraph 16 of the notification directs both employer and workmen concerned to observe the "terms and conditions of employment" specified in the memorandum or award of the conciliation board and again Para. 25 contemplates that the findings of the appellate court shall be given effect to by an order under Section 3(b) of the Act. If the contention on behalf of the employers were to be accepted that although there may be an industrial dispute relating to reinstatement or payment of wages, the dispute is not with regard to the "terms and conditions of employment," the 'result would be that even the award of the conciliation board could not have been given effect to. The contention of the learned Counsel for the respondent that the findings of the industrial court could not be given effect to at all by the Government, would render the creation of the industrial court nugatory. Such a

result could not have been intended by the Government when it issued the notification of 10 March 1948 and unless we are forced to accept the interpretation contended for by the learned Counsel for the respondents, we should not readily accept it.

33. The expression "terms of employment" has reference to the propositions or premises in the contract of employment which when assented to or accepted, settles the contract between the parties. The word "terms" presupposes the existence of a contract of employment. Where there is in existence a contract of employment, all that can form the subject-matter of the contract, i.e., all the points of agreement between the parties relating to the employment, are the "terms" of the employment. The payment of wages is one of the essential ingredients of a contract of employment. So is the dismissal of the employee.

34. The word "conditions" is a word of wider import. It means "that which must exist as the occasion or concomitant of something else; that which is requisite in order that something else should take effect; an essential qualification; stipulation; terms specified" (see Webster's International Dictionary). The word "conditions" includes the idea conveyed by the word " terms" but goes beyond it and is not confined to what is included in that word. Conditions of employment may be laid down by law or by an order of Government. The conditions may be general or particular, may refer to a class or an individual. They may lay down in what circumstances and on what terms a person shall be employed or shall not be employ-ad or reinstated.

35. The expression "terms and conditions of employment" is wider in scope than the expression "terms and conditions of labour". The idea that matters relating to employment or non-employment are not included within the scope of the expression "terms and conditions of employment" is derived from certain authorities which had to consider not the expression" terms and conditions of employment" but altogether a different expression, namely, "employment" or "non-employment" or "terms of employment" or "conditions of labour" as used in the definition of an "industrial dispute" in Section 2 of the Industrial Disputes Act XIV of 1947. It will be noticed that the definition of "industrial dispute" does not employ the phrase "conditions of employment." The expression "conditions of labour" mentioned in the definition is very much limited in its scope as compared to the expression "conditions of employment." The expression "conditions of labour" has reference to the amenities to be provided to the workmen and the conditions under which they will be required to work. In Western India Automobile Association v. Industrial Tribunal, Bombay, 1949 L.L.J. 245 the Federal Court had to consider whether a dispute as to reinstatement was outside the jurisdiction of the industrial tribunal under the Industrial Disputes Act, 1947. In considering this matter, the Court held that reinstatement was within the jurisdiction of the industrial tribunal, as it fell within the purview of the terms "employment "or" non-employment." Their lordships observed:

> Employment or non-employment constitutes the subject-matter of one class of industrial disputes, the other two classes of disputes being those connected with the terms of employment and the conditions of labour. The failure to employ or the refusal to employ are actions on the part of the employer which would be covered by the term 'employment' or 'non-employment' Reinstatement is connected with non-employment and is therefore within the words of the definition.

36. This decision was followed in the India Paper Pulp Co. Ltd. v. India Paper Pulp Workers' Union 1949 L.L.J. 258 in which it was held that a claim for compensation for wrongful dismissal is a dispute in connexion with non-employment.

37. It may be noticed that their lordships had not to interpret the phrase "conditions of employment" in those two cases. Similarly, in the English case, National Association of Local Government Officers v. Balson Corporation, 1943 A.C. 166 at 169 the same expression was considered and not the phrase "conditions of employment." These decisions, therefore, do not afford any assistance to us in interpreting the phrase "terms and conditions of employment" as used in Section 3(b) of the Act. In my judgment the phrase " terms and conditions of employment" as used in Clause (b) of Section 3 of the Industrial Disputes Act includes all questions which fall within the purview of an "industrial dispute.

38. The learned single Judge, though holding that the expression "terms and conditions of employment" was wide enough to cover the subjects of "employment," "non-employment" and "conditions of labour" which were used in the definition of the industrial dispute, was still of opinion that the language of Clause (b) of Section 3 denoted that the clause was "meant for the purpose of passing orders by which the Government gave directions with respect to what the terms and conditions of employment should be and not how a particular term and condition of employment already in existence should be acted upon," and further that Section 3(b) was not meant for dealing with individual disputes arising out of the application of a term or condition of employment and that the provision in Section 3(6) was " for the purpose of enabling the State Government to vary the agreed terms and conditions of employment.

39. With respect, I find little justification in limiting the normal connotation of the words "terms and conditions of employment" as used in Section 3 (b). It was said that the limitation arose from the expression "to observe for such period as may be specified.' It is not, however, clear to me how those words limit the scope of the section to general orders and why an order cannot direct in an individual case that certain terms and conditions of employment which had been already agreed upon should be observed in their entirety or with such modifications, alterations, additions or omissions and "for such period as may be prescribed." It was observed by the learned single Judge that the subject-matter of an individual dispute was dealt with separately in Clauses (c) and (d) of Section 3 and that any decision in such disputes could not be the subject-matter of an order passed under Section 3(b). This position was not taken up by the learned Counsel for the respondent who conceded that the subject-matter of an industrial dispute could also be the subject-matter of Section 3(b), but he urged that the order must relate to the "terms and conditions of employment" and that the subject of reinstatement did not fall within those terms. I have already pointed out that the subject of "reinstatement" falls within the expression " terms and conditions of employment. In my opinion (and I say so with due respect) it would not be correct to say that the subject-matter of an individual industrial dispute could not be made the subject of an order under Section 3(b). The various clauses of Section 3 of the Act should not be read as if they excluded the subject-matter covered by every other clause. They should all be read together as conferring a power upon the Government to make orders falling within one or other or all or some of the clauses. It was said that the State Government had no power of adjudicating upon an industrial dispute and that this had to

be done by industrial courts. It is true that the State Government is not to decide the dispute in the manner in which courts decide such disputes, but there can be no doubt that after the findings of the courts it is the State Government which would enforce such decisions in such manner and to such an extent as it considered fit. This could be done under Section 6 of the Act, and I can find no adequate reason why it could not also be done by an order under Section 3(b) of the Act. The mere fact than an order under Section 3(b) enforces an order of the industrial court will not make the order invalid, provided it is in respect of" terms and conditions of employment." It was said that there might be industrial dispute which did not relate to the "terms and conditions of employment" at all; and to illustrate the point, reference was made to a dispute between employers and employers or between workmen and workmen and it was pointed out that such a dispute could not be a dispute relating to the ''terms and conditions of employment." With respect I may point out that according to the definition of an industrial dispute as given in Section 2 of the Industrial Disputes Act XIV of 1947, there can be a dispute between employers and employers or between workmen and workmen which may relate to the terms and conditions of employment. For instance, one of the conditions of employment may be that a person who has been dismissed for grave dereliction of duty shall not be reemployed by any other employer for a particular period. Contrary to this condition, the dismissed employee is employed by an employer. This may give rise to a dispute between the employer who had dismissed the employee and the employer who has reemployed the employee. So also there may be a dispute between workmen and workmen. One of the conditions of employment may be that no employee shall accept wages below a certain minimum. An employee who contravenes this condition may be challenged by other employees and a dispute between an employee and employees may arise.

40. It was said that a great lacuna was left in the notification of 10 March 1948. With respect, there would be no lacuna if Section 3(b) and the notification were interpreted as I have endeavoured to interpreted them. It is well settled that law should be so interpreted that the object of the legislature is carried into effect rather than nullified.

41. In the Full Bench case of Basti Sugar Mills Co. v. State of Uttar Pradesh 1954--II L.L.J. 279 it has been held that the State Government can make an order under Section 3(b) of the Act to be operative retrospectively. This means that no order can be made for the payment of wages that had accrued prior to the date of the order. This Bench is bound by this decision and therefore the claim for wages which had accrued due before the date of the order could not have been awarded by the State Government by an order made in exercise of the powers vested in it under Section 3(b) of the Act. But this does not affect the order relating to wages which have fallen due after the date of the order. If it were held that the findings of the industrial court are not an "award" within the meaning of Section 6 of the Act, the appellant would be entitled to be paid at least the wages which have become or will become due to him from 3 December 1949 up to the date on which he is reinstated. There is nothing in the Full Bench case referred to above to affect the wages for the period after the date of the order made under Section 3(b).

42. The preliminary objection raised by the appellant before the learned single Judge that the Court had no jurisdiction to issue a writ under Article 226 in respect of an order which was made before the commencement of the Constitution has to be rejected. If the order of 3 December 1949 was ultra

vires, it was invalid in law and could be challenged by a suit. What the Constitution has done is to provide the High Court with a summary remedy to issue writs, directions or orders for quashing orders which are illegal or ultra vires or to prevent something being done which is illegal or ultra vires. Where an order which is ultra vires was passed before the commencement of the Constitution and the Constitution provides a new remedy in addition to an existing one for the aggrieved party, the recourse to the new remedy does not mean that the Constitution is given effect to retrospectively. The decision of the Supreme Court in Janardan Reddy v. State of Hyderabad is distinguishable. In that case the order which was passed before the commencement of the Constitution had become final and could not have been challenged in any court of law according to the law then in force.

43. As I am of opinion that the State Govern-men has power to enforce the order of the industrial tribunal under Section 6 of the Act, I would allow this appeal, set aside the order of the learned single Judge and dismiss the writ petition with costs throughout.