Firm Dewan Sugar Mills vs The Government Of The State Of Uttar ... on 5 March, 1953

Equivalent citations: AIR1953ALL531, AIR 1953 ALLAHABAD 531

JUDGMENT

Sapru, J.

(1) These are two applications under Article 226 of the Constitution and the, applicants have claimed various reliefs which are mentioned in the applications. In writ No. 119 of 1952 the applicant is Firm Dewan Sugar Mills and in writ No. 120 of 1952 the applicant is the Dewan Sugar & General Mills Ltd. The lasti opposite party in writ no. 119 is the Company, whereas in writ No. 120 the last opposite-party is the Firm. The opposite-parties 6 to 20 in both the writs are the employees of the Mills which was managed until 30-6-1951 by the Firms and thereafter by the Company which is the petitioner in Writ No. 120.

(2) Between the employees and the management some differences arose so much so that the employees went on strike on 20-1-1951. The employers served four notices on them between 20-1-1951 and 23-1-1951 reminding them that the strikes were illegal and that they would be liable to dismissal if they did not stop the strike. By these notices, twenty-four hours were given to the employees to resume their duties if they wanted to continue in the service of the Company. On' 24-1-1951 the services of the employees were terminated in terms of the standing order. Thereafter, the employees appear to have reconsidered the position and they called off the strike unconditionally on 27-1-1951. Subsequent to this, i.e., on the 28th January 1951, the employees were given to understand by the Company that they would be re-employed by it. There is a controversy between the employees and the Company as to whether this re-employment constituted a continuation of their old employment or was a fresh employment on a temporary basis.

(3) The sugar season came to an end about the end of April. On 24-4-1951, the employees were informed by their employers that their services would not be required thereafter as their conduct had been unsatisfactory and they had been engaged only on a temporary basis. On the service of this notice, the employees presented to 'the Regional Conciliation Board an application on 2-5-1951 requesting the Board to take up the matter. The intervention of the Board proved ineffective and thereafter the State Government had to refer the matter to the adjudication of Shri M. P. Vidyarthi, Regional Conciliation Officer, Meerut. This officer gave his award on 2-7-1951.

Shortly put, his conclusions were that the dismissal on 24-4-1951 of the employees by the management was unjustified and illegal. He, therefore, declared that they had not been legally dismissed and were entitled to the wages during the period of enforced unemployment. In arriving at his findings, the adjudicator took into consideration the statement of local officials who had not

been subjected to any cross-examination by the management. It is not denied that the attention of the management was not drawn to this evidence at all.

(4) On the basis of this circumstance, as also certain other circumstances, the employers went in appeal to the Labour Appellate Tribunal. This appeal was preferred by them under Section 7 of the Industrial Disputes (Appellate Tribunal) Act, 1950. The Labour Appellate Tribunal came "to the conclusion that the appeal preferred by the management could not be entertained by them as no substantial question of law was raised by it. It is against that order of the Labour Appellate Tribunal that the applicants have come up in the exercise of our writ jurisdiction to this Court.

(5) The question which we have, therefore, to consider is whether the decision of the Labour Appellate Tribunal dismissing the appeal which was preferred by the employers is one against which a writ can be directed by this Court. Learned counsel for the applicants has argued that it was not within the competence of the labour Appellate Tribunal to decide finally whether an appeal lies to it or not so as to preclude this Court from interfering with its decision, should it come to the conclusion that that decision is, in fact, erroneous. Learned counsel for the applicant contends that the point raised by the applicants raised a substantial question of law upon which the jurisdiction of the Labour Appellate Tribunal depended and that the Labour Appellate Tribunal has wrongly decided that question. Reliance has been placed by him upon a case, -- 'P. S. Pandit v. Labour Appellate Tribunal of India at Bombay', 1952-2 Lab L J 579 (Bom) (A), and he has referred to the discussion of this question by Tendolkar J. at pages 581 and 582 of that Journal.

(6) Reference was also made by learned counsel for the applicants to a case -- 'Ran-gannathan v. Madras Electric Tramways (1904) Ltd.', AIR 1952 Mad 659 (B). On the basis of that case, learned counsel has argued that the question whether there is a substantial question of law involves a collateral question and not a part of the very issue which the Labour Appellate Tribunal in this case had to enquire. It has been contended that inasmuch as Section 7, Industrial Disputes (Appellate Tribunal) Act, 1950, merely confers a conditional jurisdiction on the Tribunal, it could not by wrongly deciding the question of jurisdiction raised appropriately or deny to itself a jurisdiction which it possessed or did not possess.

We may say that we are not impressed with this argument. The law on this point has been laid down by the Supreme Court in -- 'Ebrahim Aboobakar v. Custodian General of Evacuee Property, New Delhi', AIR 1952 S C 319 (C). That decision is binding on this Court. The law as laid down by their Lordships of the Supreme Court is that before a writ of cer-tiorari' can be granted to quash the decision of an inferior Court within its jurisdiction, the applicant must show that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice. Once it has been established that the court has jurisdiction but, while exercising it, made a mistake, the wronged party cannot ask this Court to set matters right, as a court having jurisdiction can decide rightly as also wrongly. Reliance has however been placed by learned counsel upon the following observations of the Supreme Court :

> "Like all courts of appeal exercising general jurisdiction in civil cases, the respondent has been constituted an appellate court in the words of the widest amplitude and the

> legislature has not limited his jurisdiction by providing that such exercise will depend on the existence of any particular state of facts. Ordinarily, a court of appeal has not only jurisdiction to determine the soundness of the decision of the inferior court as a court of error, but by the very nature of things it has also jurisdiction to determine any points raised, before it in the nature of preliminary issues by the parties. Such jurisdiction is inherent in its very constitution as a court of appeal. Whether an appeal is competent, whether a party has 'locus standi' to prefer it, whether the appeal in substance is from one or another order and whether it has been preferred in proper form and within the time prescribed, are all matters for the decision of the appellate court so constituted."

Learned counsel contends that these observations were made by the Supreme Court with respect to a tribunal of the amplest power, namely, that of the Custodian General. His contention is that the powers of the Labour Appellate Tribunal are of a circumscribed nature and that these observations cannot have any application to that tribunal. We are unable to accept that argument as entirely correct. It will be noticed that Mahajan J., who delivered the judgment of the Supreme Court, specifically remarks that the question whether an appeal is competent or not is a proper matter for the decision of the Appellate Tribunal. The question before the Labour Appellate Tribunal in this case was not whether the strikes were legal or illegal or whether the employers had acted legally or illegally in dismissing the employees but whether the appeal preferred by the employers was a competent one; and for that the Labour Appellate Tribunal had to decide the question, not as a collateral and extrinsic issue but as a direct and intrinsic issue, whether the appeal raised any substantial question of law or not.

(7) In the case of --'Sundar Lal Saxena v. Hindustan Commercial Bank Ltd.', AIR 1953 All 260(D), it was held that where the jurisdiction of the court below depended, not upon some preliminary proceedings, but upon the existence of some particular fact, then by deciding that collateral fact in a wrong manner the court could not assume jurisdiction which it did not possess. The question whether any substantial question of law was raised by the appeal before it was not however a collateral matter but was one of the issues which the Labour Appellate Tribunal had to decide. For these reasons, we think that this case is covered by the authority of the judgment of the Supreme Court referred to by us, as also by the case reported in 'AIR 1953 All 260(D)'. This being our view, it is unnecessary to consider the other questions which have been raised by these writ petitions.

(8) Before we part with this case, we may point out that the applicants had another remedy open to them, namely, that of preferring an application for special leave to appeal against the judgment of the Labour Appellate Tribunal to the Supreme Court. It cannot be said that the Supreme Court's discretionary power to grant special leave cannot be regarded as an effective remedy which the petitioners could have resorted to.

(9) For the reasons given above, these applications are dismissed with costs.