Newspapers Ltd., Allahabad vs State Industrial Tribunal, U.P., ... on 6 January, 1954

Equivalent citations: AIR1954ALL516, (1954)IILLJ263ALL, AIR 1954 ALLAHABAD 516

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. The petitioner and the opposite-parties in both these writ petitions are identical and both of them relate to the same subject-matter and have, therefore, been heard together.

Both the petitions were filed by the Newspapers Limited, Allahabad, alleging that opposite party No. 3, Tejammul Husain, who was employed in the petitioner's company as a Lino operator, was in the interest of maintaining discipline among the workers who had made complaints against him, dismissed by the petitioner in accordance with Rule 12 (ii) of the standing orders of the workers of the petitioner's company. This order of dismissal was passed on 8-5-1952. Thereupon, a representation was made regarding the propriety of this order of dismissal to the Regional Conciliation Officer, Allahabad, by the U. P. Working Journalists' Union, Lucknow, through one R. K. Sharma who claimed to be its President though Tajammul Husain was not a member of the Union and the Union had nothing to do with the employees of the petitioner.

The Regional Conciliation Board took up the matter on this representation but no settlement was arrived at and consequently the Conciliation Officer submitted his report to the State Government. Thereupon the State Government issued a notification on 3-1-1953 referring the industrial dispute to the Industrial Tribunal, U. P., Allahabad, specifying the matters of dispute in that notification. The Industrial Tribunal, U. P., Allahabad, heard the parties and gave its decision on 13-2-1953.

During the hearing of the dispute by the Industrial Tribunal, Tajammul Husain was represented by R. K. Sharma on the basis of a written authority from Tajammul Husain and the objection of the petitioners that R. K. Sharma had no right to represent Tajammul Husain was overruled. The petitioners went up in appeal to the Labour Appellate Tribunal of India from the order of the U. P. Industrial Tribunal. The Labour Appellate Tribunal of India gave its decision on 24-7-1953.

Before this decision could be given by the Labour Appellate Tribunal and while the proceedings were

pending before it, the petitioner moved the writ application No. 556 of 1953, challenging the validity of the proceedings in the U. P. Industrial Tribunal and asking for the issue of a writ of certiorari to remove the proceedings that were pending in the Labour Appellate Tribunal of India, and for quashing the order made by the U. P. Industrial Tribunal.

The second Writ Application No. 651 of 1953 was moved subsequently after the judgment of the Labour Appellate Tribunal of India had been given. The facts given in support of this petition were also the same but the prayer had to be altered inasmuch as a writ of certiorari was asked for to quash the decision given by the Labour Appellate Tribunal of India.

2. The petitioner's contention in support of these petitions which need be considered are only four in number.

The first contention is that Tajammul Husain was not a workman at all at the time when the dispute was referred by the State Government to the Industrial Tribunal and, since Tajammul Husain was not a workman, there was no industrial dispute which could be referred, so that the reference was incompetent.

3. The second contention is that there was no industrial dispute at all which could be referred, as a dispute between an employer and an individual workman is not an industrial dispute within the meaning of that word, as defined in the U. P. Industrial Disputes Act, 1947.

4. The third contention is that the reference of the case to the Conciliation Board on a representation made by the U. P. Working Journalists' Union, Lucknow, as well as the reference by the State Government to the U. P. Industrial Tribunal were incompetent and not in accordance with the U. P. Industrial Tribunal Disputes Act, or the orders passed thereunder.

5. The 4th contention is that the orders were liable to be set aside on the ground that Tajammul Husain had been wrongly represented by R. K. Sharma during the proceedings before the U. P. Industrial Tribunal.

6. It does not appear to be necessary for me to consider the first contention in detail as that point is now settled by a decision of a Division Bench of this Court which is binding on me, it was held in -- 'Ganeshdas Ramgopal v. Govt. of the State of Uttar Pradesh', AIR 1952 All 992 (A) that a dismissed employee falls within the definition of a "workman" and a dispute raised by him in connection with his non-employment does fail within the purview of the term "industrial dispute". This view was based on a decision of the Federal Court in -- 'Western India Automobile Association v. Industrial Tribunal, Bombay', AIR 1949 FC 111 (B). In accordance with this decision this contention of the petitioners has to be rejected.

7. The main argument on behalf of the petitioner has been on the second point raised in support of this petition. In the U. P. Industrial Disputes Act, 1947 (No. 28 of 1947) the expression "Industrial dispute" is not separately defined. It is laid down in the definition that this expression shall have the same meaning as assigned to it in the Industrial Disputes Act, 1947 (Central Act 14 of 1947). In that

Act the definition is as follows :

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

8. The submission of learned counsel is that this definition uses the words "employers and employees", "employers and workmen" and "workmen and workmen" in the plural and consequently a dispute can be an industrial dispute only if it involves more than one workman, and a dispute between an individual workman and an employer would consequently not be an industrial dispute. It however appears that, if the language of the definition alone is considered, it is wide enough to cover cases of dispute between an individual employer and an individual workman though the definition refers to employers and workmen in the plural, because according to Section 3, General Clauses Act, 1897 a word in plural includes one in singular and vice versa. The mere fact that the .definition refers to 'employers' and 'employees does not, therefore, indicate that a dispute or a difference between one employer and an employee is not be deemed to be included within this definition.

There is no doubt as remarked by the Supreme Court in -- 'D. N. Eanerji, Administrator of Budge Budge Municipality v. P. R. Mukherjee', AIR 1953 SC 58 (C) that "the words 'industrial dispute" convey the meaning to the ordinary mind that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides on some general questions on which each group is bound together by a community of interests--such as wages, bonus, allowances, pensions, provident fund, number of working hours per week holidays and so on."

It was, however, held in the same case that "having regard to the modern conditions of society where capital and labour have organised themselves into groups for the purpose of fighting their disputes and settling them on the basis of the theory that union is strength and collective bargaining has come to stay, a single employee's case might develop into an industrial dispute, when, as of ten happens, it is taken up by the trade union of which he is a member and there is a concerned demand by the employees for redress. Such trouble may arise in a single establishment or a factory. It may well arise also in such a manner as to cover the industry as a whole in a case where the grievance, if any, passes from the region of individual complaint into a general complaint on behalf of all the workers in the industry."

9. In this connection it has to be noted that it is not merely the words "employees" and "workmen" which are used in the plural but even the word "employers" has been used in the definition in plural.

If it be possible to construe this definition as indicating that the use of the plural word "workmen" requires that there should be more than one workman involved in the industrial dispute, it would also have to be held that there could be no industrial dispute which involves one single employer. If two words are both used in plural in the same provision of law, it must necessarily be inferred that the legislature laid down that both the words must be interpreted in the same manner.

Consequently, there can be only two interpretations--either that it is possible for an industrial dispute to arise even if the dispute is between one individual employer and one individual workman or that there can be an industrial dispute only when not only the workmen but also the employers are more than one in number.

The interpretation, which would require that there must be more than one employer as a party for an industrial dispute to come into existence would, on the face of it, defeat the purpose of the Industrial Dispute Act altogether. Cases of industrial dispute in which more than one employer as well as more than one employee is involved are not very frequent. There are of course very frequent cases where the employer is only one and the employees are large in number and it is difficult to hold that this Act was not meant to govern the latter class of cases. The legislature could not have intended to restrict the application of this Act to the few cases where a large number of employers, on the one side, and a large number of employees or workmen, on the other side, happen to be parties to the dispute.

The narrow interpretation sought to be given on behalf of the petitioner to the word "workmen" so as not to include cases of dispute involving only one single workman, is, therefore, clearly one that would almost nullify the provisions of this Act and make it useless for the purpose for which it Was enacted. This result follows because, once it is held that the word "workmen" cannot be interpreted to refer to a single workman, it will have to be necessarily held that the plural word "employers" cannot be held to refer to one single employer.

In this connection, reference may be made to Clause (c) of Section 18 of this Act. Section 18 lays down the persons on whom settlement and awards arrived at in the course of conciliation proceedings under the Act or an award which is declared by the appropriate Government to be binding under Sub-section (2) of Section 15, shall be binding.

It defines four classes of persons on whom settlements or awards are binding. Clause (a) makes it binding on all parties to the industrial dispute; Clause (b) on all other parties summoned to appear in the proceedings as parties to the dispute except in cases where the Board or the Tribunal records the opinion that such parties were summoned without proper cause; Clause (c) lays down that where a party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates, would also be bound by the settlement or award.

The use of the word "employer" in the section in this clause is a clear indication that the Act contemplated a single employer as a party to the industrial dispute the settlement of which or the award in which is made binding on persons under Section 18 of the Act. Clause(d) then refers to the settlement or award being binding, where a party is composed of workmen, on all persons who were employed in the establishment or part of the establishments, as the case may be, which the dispute relates on the date of the dispute and an persons who subsequently become employed in that establishment or part.

10. It appears to me that it is not necessary that in respect of every industrial dispute there must be persons of all the four classes mentioned in Clauses (a) to (d) of Section 18 so as to be bound by the settlement or award. There can certainly be cases where there may be persons who fall within, Clause(a) alone and none who fall within the other three clauses. Occasions must frequently arise when, no other parties are summoned to appear in the proceedings as parties to the dispute besides those who were originally parties to the industrial dispute and in such cases Clause (b) of Section 18 would not come into operation at all. The inclusion of the class of persons in Clause(b) of Section 18 cannot be deemed to make it compulsory for the Conciliation Board or the Tribunal to summon parties, whether necessary or not, as additional parties to the dispute so as to have persons covered by this clause.

Similarly, there can be cases where a party referred to in Clause (a) or (b) may not be composed of many workmen but may consist of a single workman. In such a case there would be no persons covered by Clause (d) of Section 18 who could be bound by the settlement or the award. The mere non-existence of such a body of persons would not make this Clause (d) redundant or bring it into conflict with other provisions. Obviously, Clause (d) has been provided for cases where the dispute happens to be of a general nature which could be settled between the employer and all his workmen concerned with that dispute and to ensure that, if any such dispute is settled or adjudicated upon, it should not be necessary to have a fresh settlement or adjudication at the instance of other workmen, similarly situated.

This clause, therefore cannot be taken to give an indication that there can be no dispute between an individual workman and his employer. On the other hand, as I have held earlier, the language of Clause(c) of Section 18 leads to the contrary view that an individual employer is contemplated as being the sole party to an industrial dispute and, if there can be one individual employer, there is no reason why there cannot be one individual workman in that capacity.

11. Learned counsel for the petitioner places reliance on a decision of a Division Bench of the Madras High Court in the -- 'Kandan Textile Ltd v. industrial Tribunal (1) Madras'. AIR 1951 Mad 616 (D), in which, this point was considered by the Madras High Court. Bajamannar C. J. in that case remarked--

> "I must confess that the language of the definition of "industrial dispute" is so wide that, giving the words their ordinary meaning, even a dispute between an employer and one of the workmen or between one workman and another workman which is connected with one or other of the matters mentioned therein would fall within the definition."

With this view I entirely agree. The learned Chief Justice goes on to deal with the contention that, in construing the definition, the objects of the Act and the scheme of the several provisions of the Act have to be taken into consideration. He then rejected the contention that the statement of objects and reasons attached to the bill which was enacted as Industrial Disputes Act can be resorted to in order to discover the intention of the legislature. He clearly held that it has been often pointed out that in construing the enactment such statement of objects and reasons would not be relevant. Not

infrequently, the object and reasons of a legislation, as announced at the initial stage of a Bill, do not coincide with the enactment when finally passed.

Thereafter, the learned Chief Justice went on to consider whether assistance could be sought from the provisions of Section 10(2) of the Industrial Disputes Act which provides that-

> "where the parties to an industrial dispute apply in the prescribed manner, whether jointly or separately, for a reference of the dispute to a Board, Court or Tribunal the appropriate Government, if satisfied that the persons applying represent the majority of each party, shall make the reference accordingly."

The learned Chief Justice was of the opinion that this provision did not necessarily lead to the conclusion that there could be no industrial dispute unless the majority of workmen is ranged as one of the parties and in this connection he drew attention to the fact that in Section 10(1) of the Act there is no such condition which requires to be fulfilled before the Government makes an order, referring a dispute to a Tribunal.

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12. who was the other learned Judge associated in that decision, however, was of the view that the use of the words "majority of each party" in subjection (2) of Section 10, gave an indication that there could be no Industrial dispute unless the workmen summoned were more than one in number and they represented the majority of the workmen concerned in the dispute.

13. With respect, I must say that I am unable to agree with this view. When interpreting the words used in the statute, the effect of the interpretation is to be considered not only with reference to one party but with reference to all the parties, as the words used are "majority of each party". In every industrial dispute one party must be either "an employer or employers" and the other "a workman or workmen".

If it is held that the use of the words "majority of each party" implies that there must be more than one workman, it will necessarily have to be held that there must also be more than one employer also so that we would again arrive at the result that this Act would not apply to industrial dispute unless both the employees and the workmen were more than one in number. In fact, as the word "majority" is also applied to both, it would require that the majority of the employers as well as the workmen would be necessary parties to the industrial dispute.

Such a result, in my opinion, as I have already mentioned earlier, would defeat the purpose of the Act, and consequently an interpretation, which gives rise to this result, should not be accepted.

14. The learned Chief justice also referred to some decision of the courts in England where the word "industrial dispute" is defined in very much the same words as in the Industrial Dis-putes Act, 1947, in this country. It, however, appears that in none of these cases was it held in clear terms that there can be no industrial dispute between one individual workman and one individual employer.

In -- 'National Association of Local Govt. Officers v. Bolton Corporation', 1942-2 All E B 425 (E), all that Lord Wright said was that the Industrial Disputes Act dealt with collective bargaining, trade practices and so forth. This sentence cannot be construed as laying down that the Industrial Disputes Act was inapplicable to individual disputes between an employer and an employee as long as it related to matters connected with the industry or the employment in the Industry.

In the other case, -- 'Ex parte Keable Press, Ltd.', 1943-2 All E B 633 (P), the point was not considered at all because in that case the Union had taken up the dispute of an individual workman and no question arose whether, if the dispute had been taken up by the Union it would have been an industrial dispute or not.

15. On the other hand, Lord Atkinson in his speech in the case of -- 'Conway v. Wade', 1909 AC 506 (G) said :

> "In order that a dispute may be a trade dispute at all, a workman must be a party to it on each side, or a workman on one side and an employer on the other."

It may be that, in this context in which these words occur, Lord Atkinson did not intend to lay down specifically that a dispute between an individual workman and an individual employer would be a trade dispute but the language used is in line with the view taken by me above.

16. I was also referred by learned counsel to a decision of a learned single Judge of the Calcutta High Court in the matter of -- 'J. Chow-dhry v. M. C. Banerjee', 55 Cal W N 256 (H), but I find that in that case the question was hardly discussed at all and the learned Judge merely relied on and followed the view of the Madras High Court in the case mentioned by me above, with which I find I am unable to agree.

I consequently hold that an industrial dispute can come into existence even if the parties to the dispute be a single employer and a single workman provided, of course, other conditions are satisfied. In this case, there was no argument that the dispute was of such a nature that it could not be held to be an industrial dispute. Clearly it was not a private dispute between two individuals but was a dispute relating to the employment or non-employment of the workmen in an industry run by the petitioner. This contention of the petitioner also, therefore, fails.

17. The third point raised by learned counsel is that in this case the matter was taken up by the Conciliation Board on the basis of a representation by the U. P. Working Journalists' Union, Lucknow, which could not have been done, as a Conciliation Board could only take cognizance of an industrial dispute if the dispute was brought up before it in accordance with Clause (4) of the order constituting Conciliation Board and Industrial Courts, published in Notification. No, 615 (LL)/ XVIII-7(LL)/51, dated 15-3-1951.

Conciliation Boards and industrial courts were constituted in this State by this notification which was issued by the State Government in exercise of its powers conferred by Clauses (b), (c), (d) and (g) of Section 3 and Section 8, U. P. Industrial Disputes Act, 1947. There can be no doubt that the

representation on behalf of Tajammul Husain sent by the U. P. Working Journalists' Uaion, Lucknow, was not the proper method of referring the dispute to the Board as laid down by Clause 4 of this Order. The report of the Conciliation Officer on failure to arrive at a settlement of the dispute would also, therefore, not be a report under clause 6 of that Order.

The invalidity of the proceedings before the Conciliation Board or of the report of the Conciliation Officer are, however, not material at all for the de'cision of these writ cases. In. these cases writs are sought against the orders of the U. P. Industrial Tribunal and the Labour Appellate Tribunal of India. The reference to the U. P. Industrial Tribunal was made by the State Government by Notification NO. 8177(ST)/XVIII-(LA)-261(ST)/52, dated 3-1-1953, in exercise of the powers conferred by Sections 3, 4 and 8 of the Industrial Disputes Act, 1947 and in pursuance of the provisions of Clause 10 of the Notification dated 15-3-1951, mentioned above. Clause 10 lays down that--"the State Government if it is satisfied that an industrial dispute exists may either of its own motion, or after considering the report of the Conciliation Board made under Sub-rule (3) of Rule 6 or on an application made to it, by order in writing, refer any dispute to the Industrial Tribunal, or if the State Government considering the nature of the dispute or the convenience of the parties so decides, to any other persons specified in that behalf for adjudication." The notification referring a dispute to the Industrial Tribunal clearly mentioned that the State Government was satisfied that the industrial dispute existed and while examining the proceedings in connection with the exercise of powers of this Court under Article 226 of the Constitution, this Court cannot go into the question whether that satisfaction was right or wrong.

It has not been contended that the satisfaction of the Government was arrived at without any material altogether or was a fraud on the statute or statutory orders. The contention of learned counsel that there was no competent report of the Conciliation Board made under Sub-rule (3) of Rule 6 of that Order must be accepted but the notification does not mention that the reference was being made in pursuance of any such report. The State Government was competent to make a reference to the Industrial Tribunal of its own motion and, while nothing is said in the notification, it must be held that the reference was made by the State Government of its own motion and consequently the powers exercised were properly invoked by the Government. The reference to the Industrial Tribunal was, therefore, competent and it had jurisdiction to decide the industrial dispute referred to it. Thereafter, naturally the Labour Appellate Tribunal of India also had jurisdiction to decide the appeal against the decision of the U. P. Industrial Tribunal.

18. The last contention on behalf of the petitioner that the TJ. P. Industrial Tribunal wrongly permitted Tajammul Husain to be represented by R. K. Stiarma in the proceedings before it, needs little consideration. Even if there was wrong representation before the Industrial Tribunal, the appellant had his remedy before the Labour Appellate Tribunal of India, and he could have sought vacation of the order of the Industrial Tribunal from that proper court on this ground too.

A printed copy of the decision of the Labour Appellate Tribunal of India was produced before me and it shows that the Appellate Tribunal had no occasion to deal with any such point. Very likely no such point was raised in the appeal before it.

The question whether B. K. Sharma was a competent person to represent Tajammul Husain was a question of fact. It, was decided against the petitioners by the Industrial Tribunal, as is clear from their order. This point cannot, therefore, be considered now in connection with the prayer for the issue of a writ of certiorari.

In any case, the order of the U. P. Industrial Tribunal has now merged in the order of the Labour Appellate Tribunal of India and there is no grievence at all that there was any irregularity in the procedure before the Labour Appellate Tribunal of India. It is that order which has now to be given effect to and that is at least an order which is valid and without any defect. This contention also, therefore, fails.

19. Both the writ petitions are, therefore, dismissed with costs to opposite party No. 2 which are fixed at Rs. 80/- in each case and to opposite-party No. 3 which shall be assessed in each case according to the rules of this Court.