Lakshmi Devi Sugar Mills Ltd. vs U.P. Government And Ors. on 29 March, 1954

Equivalent citations: AIR1954ALL705, AIR 1954 ALLAHABAD 705

Author: V. Bhargava

Bench: V. Bhargava

ORDER

V. Bhargava, J.

1. The petitioner, Lakshmi Devi Sugar Mills, Ltd., Chitauni, District Deoria, is an incorporated company engaged in the manufacture of sugar at Chitauni in the district of Deoria and Had, amongst its employees, opposite party No, 3, Ram Nath Koeri, during the first quarter of the year 1948. In the month of April, 1948, the services of Ram Nath Koeri were terminated by the petitioner company on the allegation that he had been deliberately absent for a long time without permission and his name was accordingly struck off from the register of employees. Opposite party No. 4, the Chini Mill Mazdoor Sangh, Chitauni, district Deoria, thereupon applied to the Regional Conciliation Board (Sugar), Gorakhpur, for the re-instatement of Ram Nath Koeri on 16-6-1948. That application was made under the U. P. Industrial Disputes Act (U. P. Act 28 of 1947) read with the order of the State Government contained in Notification No. 781(L)/XVIII, dated 10-3-1948. The Board entertained this industrial dispute. The petitioner appeared before the Board and contested the claim of opposite party No. 4 for the re-instatement of opposite party No. 3.

On 4-7-1948, the Board passed an order, requiring the Regional Conciliation Officer to make enquiries into the case and to make efforts to bring about reconciliation between the parties. Against this order of 4-7-1948, an appeal was filed by the petitioner to the Industrial Court (Sugar), Lucknow, and that Court, by its order, dated 4-8-1948, set aside the order of the Board, dated 4-7-1948, on a preliminary ground. The State Government, by its order dated 16-9-1948, enforced that order of the Industrial Court (Sugar), Lucknow.

Thereafter, in December, 1948, opposite party No. 4, the Chini Mill Mazdoor Sangh, filed another case before the Regional Conciliation Board (Sugar), Gorakhpur, on the same subject of reinstatement of Ram Nath Koeri. The petitioner put in appearance on 15-1-1949, and contested that case. On the same date, the Board passed an order, saying that an application had been received that the Union did not want to pursue that case and, consequently, the parties were to be informed to treat the notices for calling the case to the Board as cancelled.

Thereafter, on 22-4-1949, opposite party No. 4 filed one more case before the Regional Conciliation Board (Sugar), Gorakhpur, seeking to revive the previous dispute about the re-instatement of Ram Nath Koeri. The petitioner again appeared and contested the case and, on 23-5-1949, the Board once more passed an order, referring the case to the Regional Conciliation Officer for decision at the request of opposite party No. 4. On 26-5-1949, the petitioner preferred an appeal against that order of 23-5-1949, before the Industrial Court (Sugar), Lucknow.

While this appeal was still pending, opposite party No. 4 filed yet another case with the same request for re-instatement of Ram Nath Koeri opposite party No. 3. That case was dealt with by the Regional Conciliation Board (Sugar), Gorakhpur, itself and, on 6th July, 1949, the Board gave a decision against the petitioner, directing the petitioner to re-instate Ram Nath Koeri and to pay him arrears of salary for the period which elapsed between the order of dismissal and his re-instatement. On 13-7-1949, the petitioner filed an appeal against this order before the Industrial Court (Sugar), Lucknow. On this appeal, the findings were given by the Industrial Court (Sugar), Lucknow, on 15-9-1949, and the Court sent its recommendations to the Government.

On 3-12-1949, the Government issued a notification, directing that the findings of the Industrial Court (Sugar), Lucknow, be enforced. While all these proceedings were going on, the appeal previously filed by the petitioner against the order of the Board, dated 23-5-1949, was still pending. On that appeal, the findings were given by the Industrial Court (Sugar), Lucknow, on 14-12-1949, and those findings were enforced by the Government by its order, dated 30-12-1949. By the notification of 3-12-1949, mentioned above, the Government had directed the petitioner to comply with the directions given in that order within six months of the notification of that order. Subsequently, it appears that the time for compliance was further extended so that the order was not complied with, at least, upto 17-8-1950, on which date this writ petition for issue of writs under Article 226 of the Constitution was presented on behalf of the petitioner.

Under these circumstances, the petitioner prayed for the issue of a writ in the nature of certiorari to the Industrial Court (Sugar), Lucknow, to produce the whole record of the case relating to the re-instatement of Ram Nath Koeri for the purpose of quashing its order of 15-9-1949, a writ in the nature of mandamus to the U. P. Government, commanding it to forbear from enforcing its order of 3-12-1949, and a writ in the nature of prohibition, forbidding the U. P. Government from enforcing its order of 3-12-1949. The petition has been contested by opposite party No. 1, the U. P. Government, and by opposite party No. 4, the Chini Mill Mazdoor Sangh, Chitauni, district Deoria. Appearance was not put in by opposite party No. 2, Industrial Court (Sugar), Lucknow, and opposite party No. 3, Ram Nath Koeri. Though opposite parties Nos. 1 and 4 appeared and contested the case, no counter-affidavit was filed on behalf of either of them, challenging the correctness of the allegations made on behalf of the petitioner. Consequently, the facts given on behalf of the petitioner have to be accepted as correct and the case decided on their basis.

2. Shri Pathak, learned counsel for the petitioner, wanted to urge, in support of this petition a legal ground that the provisions contained in Clauses (b) and (c) of Section 3, U. P. Industrial Disputes Act (U. P. Act No. 28 of 1947) are ultra vires as they contain delegation of essential legislative power to the executive but, on this point, he could not be heard in support of this petition because there are

decisions of this Court which are binding on me, holding that Clauses (b) and (c) of Section 3, U. P. Industrial Disputes Act, 1947, are valid and not ultra vires the legislature. A full Bench of this Court in -- 'Basti Sugar Mills Co., Ltd. v. State of Uttar Pradesh', AIR 1954 All 538 (A) has held that the provisions of Clause (b), Section 3, U. P. Industrial Disputes Act, 1947, are valid and not ultra vires the legislature.

Subsequently, a Division Bench of this Court in -- 'British India Corporation Ltd. v. Govt. of the State of Uttar Pradesh', AIR 1954 All 550 (B) has held that cl. (c), Section 3, U. P. Industrial Disputes Act, 1947, is valid and not ultra vires. Those decisions of the Full Bench and the Division Bench on these two clauses are binding on me and, consequently, the contention of Shri Pathak that these provisions of law are ultra vires the legislature nas to be rejected.

3. When this petition was heard, two preliminary points were raised by the opposite parties against its being entertained by this Court. One objection was that the petition was belated and, on account of laches on the part of the petitioner, this Court should refuse to issue any writ as prayed by the petitioner. It, however, appears that the order of enforcement, which is being challenged by this writ petition, was passed by the U. P. Government on 3-12-1949. Thereafter, the petitioner wrote successive letters to the Government, making representations against that order and it was only on 21-6-1950, that the Government sent its final reply, refusing the request of the petitioner to reconsider that order. Thereafter, the petitioner took about two months' time to obtain legal advice and prepare the petition. The petition was presented on 17-8-1950. Upto that date, the order had not been carried out and the State Government was still insisting that the petitioner should comply with it. In these circumstances, it cannot be said that the petition was very much belated and that the delay in filing it would be a sufficient ground to throw it out.

4. The second point, that has been urged as a preliminary objection on behalf of the opposite parties, is that, by this writ petition, the petitioner is seeking to challenge the order of 3-12-1949, which was passed before the Constitution came into force and this Court is not entitled to exercise its powers under Article 226 of the Constitution for the purpose of vacating such an order passed before the enforcement of the Constitution. In support of this proposition, reliance has been placed by learned counsel for opposite parties on a decision of the Supreme Court in -- 'Janardhan Reddy v. State of Hyderabad', AIR 1951 SC 217 (C).

In that case, the matter went up before the Supreme Court by a petition under Article 32 of the Constitution as well as by an application for special leave to appeal to the Supreme Court against an order of the High Court, rejecting a petition under Article 226 of the Constitution. In both those proceedings, what was challenged was an order of the High Court of Hyderabad, passed before the merger of the State of Hyderabad with the Indian Union, by which the High Court had confirmed the conviction and sentences of the petitioners passed by a special tribunal. That order of the High Court was challenged on various grounds and none of them was accepted by the Supreme Court. When dealing with that case, one of the aspects, dealt with by the Supreme Court, related to the difficulty that the judgment of the High Court confirming the convictions and sentences of the petitioners had acquired finality in the fullest sense of the term before 26-1-1950, and, by reason of that finality, no one could question the decision of that Court on the date when the Constitution

came into force and, consequently, after the enforcement of the Constitution on 26-1-1950, that order of the High Court could not be challenged. Their Lordships of the Supreme Court, dealing with this point, held as follows:

> "Can then a new law or a change in the old law entitle us to re-open a transaction which has become closed and final? It is common ground that the provisions of the Constitution which are invoked here, were not intended to operate retrospectively, and, therefore, something which was legally good on the 25th January, 1950. cannot be held to have become bad on the 26th January, 1950. If we had no jurisdiction to sit in appeal over the judgment of the Hyderabad High Court, can we now re-investigate the cases and pass orders which cannot be passed without virtually setting aside the judgments of the High Court which have become final. Can we, in other words, do indirectly what we refused to do directly? It is argued that we are asked not to reopen a past transaction but to deal with the present detention of the petitioners, i.e., their detention at this moment. But, how can we hold the present detention to be invalid, unless we re-open what could not be re-opened prior to the 26th January, 1960. This is, in our opinion, one of the greatest difficulties which the petitioners' have to face, and it rests not merely on technical grounds but on sound legal principles which have always been, and should be, respected."

It was submitted that this decision of the Supreme Court makes it clear that an order passed before 26-1-1950, could not be challenged by a petition for a writ under Article 226 or 32 of the Constitution subsequent to the passing of the Constitution. This contention is not, in my opinion, supported by the decision of their Lordships of the Supreme Court. It was made clear in that case that what could not be challenged after 26-1-1950, was only an order which was legally good on 25-1-1950, which had acquired finality in the fullest sense of the term before 26-1-1950, and the validity of which could not be questioned on the date when the Constitution came into force by reason of that finality.

In the case before me, it cannot be contended that the order of 3-12-1949, had acquired finality in the sense in which the order of the High Court assailed in that case before the Supreme Court had acquired finality. Further, it cannot be said that the order of 3-12-1949, was a legal and good order on 25-1-1950. In fact, this petition is based on the contention that this order was not a valid and legal order even on 3-12-1949, when it was passed by the Government. The present case is, therefore, in no way, governed by the decision of the Supreme Court cited above.

5. Reliance was placed on a decision of the Privy Council in -- 'Delhi Cloth and General Mills Co., Ltd. v. Income-tax Commr., Delhi', AIR 1927 PC 242 (D). There the only question, that came before their Lordships of the Privy Council, was whether the provisions of a statute, which, if applied retrospectively, would deprive of their existing finality orders which, when the statute came into force, were final, should be interpreted to be retrospective in the absence of express enactment or necessary intendment. There is no question of that principle being applied to the present case because it has not been contended on behalf of the petitioner that Article 226 or 32 of the Constitution should be read as having retrospective applicability.

Learned counsel for the opposite parties also cited a number of decisions of the Calcutta, Madras, Nagpur, Punjab, Orissa and Assam 'High Courts reported in -- 'Rishindra Nath v. Sakti Bhusan', AIR 1950 Cal 512 (E); -- 'Bimala Pro-sad v. State of West Bengal', AIR 1951 Cal 258 (SB) (F); -- 'Mahamad Beary v. Hassan Kutty', AIR 1951 Mad 280 (G); -- 'Rajaram Dadu v. The State', AIR 1951 Nag 443 (FB) (H); -- 'Mahabir Parshad v. Commr. of Income-tax', AIR 1953 Punj 16 (I); -- 'Jagahandhu Das v. Babaji Jena', AIR 1953 Orissa 274 (J) and -- 'The State v. Judhabir Chetri', AIR 1953 Assam 35 (FB) (K). It does not appear to be necessary to discuss these cases individually. In all these cases, the prayer was for issue of writ under Article 226 of the Constitution or an order of superintendence under Article 227 of the Constitution for the purpose of vacating a judicial or quasi-judicial order passed before the Constitution came into force, by a judicial or quasi-judicial tribunal which had acquired finality under the law as it existed before the Constitution came into force. None of these cases, therefore, deals with the point that arises in the present case in which the order challenged is not a judicial or quasi-judicial order but an order of the executive Government in exercise of its powers granted to it by Section 3 of the U. P. Industrial Disputes Act (U. P. Act No. 28 of 1947), which order had not acquired finality before the commencement of the Constitution and which is challenged on the ground of not being valid in law at the time when it was passed. On the other hand, there is a series of decisions of various High Courts where it has been held that such an order can be challenged by a petition under Article 226 of the Constitution. I was referred by learned counsel for the petitioner to an unreported decision of a Division Bench of this Court, of which I was a member in -- 'Shri Sri Nath Das v. U. P. Govt.', Civil Misc. Writ Case No, 315 of 1950, D/- 30-4-1952 (All) (L), where it was held:

> "In judging whether the order, dated 12th February 1949, was or was not in accordance with law, we can, of course, only look at the state of law as it existed on the date on which that order was passed. If that order was then not in accordance with law and the petitioner's rights are being affected by that order even after the Constitution has come into force, the petitioner can certainly invoke the powers of this Court under Article 226 of the Constitution. The effect of that order of refusal dated 12-2-1949, continues even to-day because the petitioner has not yet been granted a licence and the U. P. Controlled Cotton Cloth and Yarn Dealers' Licensing Order, 1948, still continues in force. We have, therefore, only to see whether that order of 12-2-1949, was validly passed at that time."

The view taken in that case was also taken by a learned Judge of the Calcutta High Court in -- 'the Calcutta Pinjrapole Society v. Section Banerjee', AIR 1952 Cal 891 (M). Dealing with this question, the learned Judge observed:

> " It has been submitted by the learned Advocate appearing for the opposite parties that inasmuch as the Notifications under sections 4 and 6 were made before the Constitution of India came into force, the petitioner cannot take advantage of Article 226 of the Constitution of India for the purpose of challenging the validity of those Notifications, because Article 226 is not made expressly retrospective and, therefore, it cannot have retrospective operation. If the Notification had been otherwise a good and a valid notification, and had been made after complying with the requirements of

> Rule 5(2), then there can be no doubt that such a Notification would not be open to challenge, but, as pointed out before by me, the Notification under Section 6 was ultra vires and any step taken to enforce such Notification or any action taken pursuant to such Notification, in my view, can be challenged under Article 226 of the Constitution of India, Being an ultra vires Notification, it gives a recurring cause of action to the petitioner, and, therefore, this Court has power under Article 226 to give relief to the petitioner in this case."

6. At this stage, I may take notice of the distinction that arises in cases where a writ of cer-tiorari is sought & in cases where relief is sought by issue of a writ of mandamus. In cases where a writ of certiorari is sought, this Court in exercise of its powers under Article 226 of the Constitution, has to examine the validity of a judicial or quasi-judicial order and it is obvious that, if that judicial or quasi-judicial order had attained finality before the Constitution of India came into force, this Court would not be entitled to exercise the powers which are exercised to issue a writ in the nature of certiorari. On the other hand, in the case of a writ of mandamus, this Court only issues direction to a public servant either to act according to law or to refrain from acting against law. Such an order can be passed by this Court whenever occasion arises and makes it necessary that such a direction be issued. If the occasion for the issue of such a direction arises after the Constitution came into force, the powers can certainly be exercised by this Court under Article 226 of the Constitution. The occasion may arise when the order, having been passed before the Constitution came into force, is sought to be enforced after the commencement of the Constitution. If the order is not a legal and valid order, the act of enforcing it after the commencement of the Constitution would be an act of a public servant against the provisions of law and such an act sought to be committed after the commencement of the Constitution can be restrained by issue of a writ in the nature of mandamus under Article 226 of the Constitution. The case before me is exactly of this type. The order challenged was passed on 3-12-1949, before the Constitution came into force but the opposite parties have been insisting on its enforcement and its compliance by the petitioner even after the commencement of the Constitution. The threat against the petitioner, if he fails to comply with that order, of prosecution or other action is continued even after the Constitution has come into force. The petitioner can, therefore, seek protection of this Court under Article 226 of the Constitution against the opposite parties on the ground that they are seeking to have an order enforced which, is not warranted by law and which was not warranted by law when passed and are threatening to take action against the petitioner for non-compliance with that order. Learned counsel for the petitioner also referred me to two other decisions of the Calcutta High Court in -- 'Rajendra Kumar v. Govt. of West Bengal'. AIR 1952 Cal 573 (N) and -- 'Hurdeodas Agarwala v. State of West Bengal', AIR 1952 Cal 857 (O), a decision of the Rajasthan High Court in -- 'Manohar Lal v. Custodian, Rajasthan, Jodhpur', AIR 1953 Raj 185 (P) and a decision of the Madhya Bharat in --'Harendranath Sharma v. State of Madhya Bharat', AIR 1950 Madh-B 46 (Q). It is not necessary to examine these cases in detail. They all follow or lay down the same principle which was laid down by the Calcutta High Court in --'AIR 1952 Cal 891 (M)' mentioned above. This preliminary point taken against the petition also, therefore, fails.

7. One of the grounds, on which the order, dated 3-12-1949, was challenged by the petitioner, was that the Government was not competent to pass such an order during the pendency of an earlier

appeal against an earlier decision of the Regional Conciliation Board (Sugar), Gorakhpur, in respect of the same dispute and further that the order of 3-12-1949, was in conflict with the order passed on that earlier appeal subsequently on 30-12-1949, so that the order of 3-12-1949, had been nullified and its effect cancelled by that subsequent order dated 30-12-1949. When the case came up for hearing before me, this point was not pressed by learned counsel for the petitioner and was given up. Further, it could not be properly dealt with in the absence of a copy of the order of the 30th of December, 1949, and no proper copy of that order was produced before the Court. I need not, therefore, deal with this ground and reject it as it was not pressed.

8. One other point, that was taken in the petition and which can be disposed of quickly, is that relating to the effect of the order passed by the Regional Conciliation Board on 15-1-1949. It was contended on behalf of the petitioner that, on that date the Chini Mill Mazdoor Sangh opposite party No. 4 had withdrawn its complaint against the petitioner, claiming re-instatement of Ram Nath Koeri from the Regional Conciliation Board and, consequently, no fresh industrial dispute in respect of that matter could have been referred by opposite party No. 4 to the Regional Conciliation Board. This point also could not be seriously pressed by learned counsel as there is no provision in the U. P. Industrial Disputes Act (IT. P. Act 28 of 1947) or in the orders passed under that Act, laying down that a dispute once withdrawn from the Regional Conciliation Board cannot be referred to it afresh. Further, this point loses its force altogether when the nature of the order, dated 3-12-1949, is examined which shall be done by me hereafter. It is only in cases where there might have been a decision of the industrial dispute by an award that a question may arise whether that award is or is not valid on the ground that a previous dispute had been withdrawn. No such question would arise where there has been no award at all and the order sought to be enforced is not an award in an industrial dispute but an order of the State Government in the exercise of other powers granted to it by the statute.

9. This takes me to the next point which raised the question of the nature of the order, dated 3-12-1949. and the nature of the powers that this State Government could exercise for parsing such an order. The facts narrated above show that the proceedings, which culminated in the order of 3-12-1949, started with the reference of the industrial dispute by opposite party No. 4 to the Regional Conciliation Board (Sugar), Gorakhpur, on 16-5-1948. This reference to the Board was obviously made under the provisions of the order of the Government of U. P. contained in Notification No. 781 (L)/ XVIII, dated 10-3-1948, which was published by the U. P. Government in exercise of powers conferred by Clauses (b), (c), (d) and (g) of Section 3, U. P. Industrial Disputes Act, 1947. Clause (5) of that notification provided that a registered trade union of employers or workmen would move the Board to enquire into any industrial dispute.

In this case, the move was made by opposite party No. 4 which is a registered trade union of workmen. Under Clause (6), the Board was required to make an endeavour to bring about a settlement of the dispute and, under Clause (7), if the dispute could not be settled, the Board was en-joined to make such enquiry as may appear to the Board necessary for the purpose of determining the issues upon which the parties may be at variance. After the enquiry, the Board was required to record its findings on each issue. Even thereafter there is a provision mentioning that the Board, if successful in bringing about amicable settlement between the parties on all or any of

the questions at issue, should prepare memorandum which was to be signed by all the members of the Board. Where no amicable settlement could be reached on one or more issues, the Board was required to record an award and the reasons for such an award.

Section 6 of the U. P. Industrial Disputes Act, 1947, lays down the effect of such an award. Under Sub-section (1) of Section 6 of the Act, the authority, to which an industrial dispute has been referred for adjudication, has, on completion of enquiry, to submit its award to the State Government within such time as may be specified. Sub-section (2) of that section lays down that 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 re-consideration. The power of the State Government under Sub-section (2) of Section 6 of the U. P. Industrial Disputes Act, 1947, for enforcing an award has been partly exercised by a general order contained in Clause (16) of the Government Notification, dated 10-3-1948, mentioned above. That clause lays down:

> ".....or where no settlement has been reached but an award has 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. ..... 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 effect of this clause is that as soon as an award is made and in case no appeal is filed, parties to the award become bound to comply with the terms of the award for a period of six months in the first instance and even subsequently until the terms of the award are determined by a notice by one party to the other party under Clause (16). This clause does not, however, deal with a case where an appeal against an award is filed. Clause (12) of that order permits any party, feeling aggrieved by an award, to file an appeal against the award in a court having jurisdiction. In this case, the Industrial Court (Sugar), Lucknow, had jurisdiction and an appeal against the award, dated 6-7-1949, was actually filed before that court on 13-7-1949. Consequently, the award did not become binding under Clause (16) of the notification. What would happen on the filing of an appeal is laid down under other clauses of that notification. Clause (13) of the order, which follows Clause (12) granting the right of appeal to one party aggrieved, lays down that "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."

It was under these clauses that the Industrial Court (Sugar), Lucknow, in the present case, recorded its findings on 15-9-1949, and forwarded them to the State Government. Neither the Act nor the order of 10-3-1948, clearly lays down what the State Government is to do when it receives the findings of the Industrial Court under Clause (13) mentioned above. It was contended by learned counsel for the opposite parties that the findings, recorded by the Industrial Court under Clause (13) and forwarded to the State Government, must be deemed to be an award which would also have the

same effect as an award given by the Regional Conciliation Board (Sugar), Gorakhpur, under Sub-clause (4) of Clause (7) and would be binding on the parties under Clause (16), of the General Order of 10-3-1948.

It was also contended that, even if the award is not binding under Clause (16), the State Government would be competent to pass an order, enforcing the decisions in the award under Sub-section (2), Section 6, U. P. Industrial Disputes Act, 1947. These contentions cannot, however, be accepted because it is clear from the General Order, dated 10-3-1948, that the Industrial Court, constituted under that order, was not given any power to give an award or even to decide the appeal filed before it against the award of the Regional Conciliation Board.

10. Clause (7), which deals with the proceedings before the Regional Conciliation Board, envisages two stages where no settlement is reached. The first stage is when the Board is required to frame issues, make necessary enquiries and record its findings on each issue. The second stage comes when, after the recording of the findings, the Board is required to record an award and the reasons for such an award. It is clear that this order itself makes a distinction between the findings and an award. When dealing with the powers granted to the Industrial Court constituted under that order, the order merely requires the Court to record its findings and does not go on to mention that the Court has to give an award or record an award or a decision.

Further, a perusal of the actual report of the Industrial Court dated 15-9-1949, which is sought to be interpreted as an award by learned counsel for the opposite parties, shows that the order was worded in such a manner that it cannot possibly be interpreted to be an award. In that order, the Industrial Court mentioned two issues which had been framed by the Regional Conciliation Board and, after dealing with the preliminary points raised in the appeal, proceeded to discuss those issues. We are only concerned with the first issue which was to the following effect:

> "Issue No. 1: Is Shri Ram Nath Koeri entitled for re-instatement? If so, subject to what terms and conditions?"

The Industrial Court discussed the material which had come before it in connection with the appeal relating to this issue and, finally, recorded its finding in the following words :

> "I. therefore, agree with the decision of the Board below that Shri Ram Nath Koeri, who was a permanent hand of the factory, should be reinstated to his post with continuity of service and the entire wages paid to him for the period of his involuntary unemployment within 15 days from the date of the enforcement of this report by the Government, and I recommend accordingly."

It would be seen that the Court purported to record its finding relating to the right of Shri Ram Nath Koeri to be reinstated and to be paid wages for the period of his involuntary unemployment and'all that the Court did was to make a recommendation in those terms to the State Government. In an award, the adjudicator Jays down the directions for the parties, directly calling upon them to carry out those directions. The adjudicator does not make a recommendation to some authority to pass

the order. In this case, the Industrial Court (Sugar), Lucknow, merely gave its findings on issues without giving any directions and left it to the State Government to make the directions or pass the orders which were to be carried out by the parties to the dispute.

It is, therefore, clear that what the Industrial Court did on 15-9-1949, was to record its opinion on the points in dispute, frame its recommendations and forward them to the Government for orders. It was, therefore, in the nature of a report by the Industrial Court to the State Government containing its recommendations with reasons therefor. There was no adjudication of any industrial dispute or an award in any such dispute. Consequently, Section 6, U. P. Industrial Disputes Act, 1947, would not apply to it at all and that report could not be enforced by the Government as an award under Section 6 of the Act. No doubt, when issuing the notification on 3-12-1949, the Government purported to exercise the powers conferred on it by Section 3 read with Section 6 or the U. P. Industrial Disputes Act (U. P. Act No. XXVIII of 1947) but the mere mention of the powers under Section 6 of the Act would not make that order an order under Section 6. As has been shown by me above, there was no award before the Government made by the Industrial Court in respect of which an order under Section 6 could have been passed by the State Government and, consequently, the mention of Section 6 in that notification of 3-12-1949, was entirely inappropriate. The powers under Section 6 could not be invoked for the purpose of enforcing the findings which had been recorded by the Industrial Court (Sugar), Lucknow. The notification, however, mentions that the Governor exercised powers conferred by Section 3, U. P. Industrial Disputes Act, 1947. The only Clause of Section 3, which can be applied to an order of the nature of the order of 3-12-1949, is Clause (b). It was not contended on behalf of the opposite parties that if this order could not be passed under Section 6, there was any -other provision, besides Clause (b) of Section 3, under which the Government could have purported to pass that order. Consequently, for the purpose of examining the validity of that order, all that need be seen is whether that order is in proper exercise of the powers conferred by Clause (b) of Section 3, U. P. Industrial Disputes Act, 1947, and is within the scope of that provision of law.

11. At this stage, I may also take notice of another alternative argument, which was advanced by learned counsel for the opposite parties, that, by the order and notification, dated 3-12-1949, what the Government actually did was to enforce the award of the Regional Conciliation Board to which the dispute had been referred for adjudication and not to pass an independent order under Clause (b) of Section 3 of the Act. This contention has no force in view of the plain language of that order. The order does not even purport to lay down that the award of the Regional Conciliation Board is being enforced by that order. In the preamble of the order, it is mentioned that the Industrial Court had heard the industrial appeals preferred by the petitioner against the award of the Regional Conciliation Board (Sugar), Gorakhpur, in the matter of the industrial dispute between the said concern and its employees and had given its findings in the said appeals and, in the opinion of the Governor, it was necessary, for purposes mentioned in the order, to enforce the said findings of the Court contained in its report of 15-9-1949.

This language of the preamble makes it perfectly clear that, at the time when the order was passed, the Governor was only considering the findings of the Industrial Court (Sugar), Lucknow, contained in its report and was of the opinion that it was necessary to enforce those findings. There was no

mention at all that any award was required to be enforced by the Government. Further, in the actual order itself, all that is stated is that "the said findings of the Industrial Court contained in the schedule annexed herewith are hereby enforced." This again makes it clear that what the Government, by that order, did was to enforce the findings of the Industrial Court and not the award of the Regional Conciliation Board. In this connection, it may be noticed that the report of the Court, dated 15-9-1949, dealt with several matters including the matter in dispute of the petitioner. There was issue No. 2 relating to the dispute of another employee, Shri Bunna Gond.

In this case also, an award had been given by the Regional Conciliation Board, and in its report, the Court recommended that that award given by the Board should be set aside. When the Government passed the order, dated 3-12-1949, it enforced the findings of the Court with the result that, in the case of opposite party No. 3, the decision, which had been given in his favour by the Regional Conciliation Board and which was also recommended by the Industrial Court in its report, was enforced but, in the case of Bunna Gond, the decision given by the Regional Conciliation Board in its award was not enforced and the recommendation of the Industrial Court that the case be decided against him was enforced. It is impossible to hold that, when the report of the Industrial Court in one case concurred with the award and, in another case, recommended the setting aside of the award of the Board, that report can be held to be an order enforcing the award of the Conciliation Board because if that be so, then, in the case of Bunna Gond, it would mean that the award was enforced even though the findings of the Industrial Court were against the award. Obviously, therefore, this contention of learned counsel would lead to an absurd position and must be rejected.

12. For the purpose of examining whether the order impugned could or could not be passed validly within the provisions of Clause (b) of Section 3 of the U. P. Industrial Disputes Act, 1947, this order may be divided into two parts. The order of the State Government contained in the notification of 3-12-1949, is to the effect that the findings of the Industrial Court (Sugar), Luck-now, are enforced and, as has been said above, the finding of the Industrial Court was that Ram Nath Koeri opposite party No. 3 should be reinstated to his post with continuity of service and the entire wages paid to him for the period of his involuntary unemployment within 15 days from the date of the enforcement of the report by the State Government. The second part of the recommendation of the Industrial Court is for payment of wages for the period of unemployment which had already expired on the date on which the findings are enforced by the State Government.

This part of the order of the State Government was, therefore, clearly retrospective as it related to payment of wages for a past period which had expired before the order under Section 3 (b) of the U. P. Industrial Disputes Act, 1947, was passed by the Government. According to the view taken by a Full Bench of this Court in AIR 1954 All 538 (A), such orders for payment of wages in respect of periods already expired cannot be validly passed under Section 3(b) of the U. P. Industrial Disputes Act, 1947, and this part of the order is, therefore, clearly illegal and its enforcement must be restrained by issue of a writ of mandamus.

13. The other part of the order relates to the reinstatement of opposite party No. 3 to his post with continuity of service with effect from the date of the order. So far as this part of the' order is concerned, the submission of learned counsel for the petitioner was that, under Clause (b) of Section

3 of the U. P. Industrial Disputes Act, 1947, even a prospective order, that can be passed by the State Government, must relate to the observance of "such terms and conditions of employment as may be determined in accordance with the order" and an order, directing reinstatement of an employee, is not covered by these words used in the statute. It is argued that an order of reinstatement is an order relating to non-employment or re-employment of an employee and not an order relating to terms and conditions of employment and, consequently, the order impugned could not be passed by the State Government in exercise of its powers under Section 3(b) of the Act.

In support of this contention, learned counsel referred me to the definition of the word 'industrial dispute' in the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) which definition has been adopted in the U. P. Industrial Disputes Act, 1947 (U. P. Act No. 28 of 1947) also. 'Industrial Dispute' has been defined to mean "any dispute or difference between employers and employers or between employers and workmen, or between workmen 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."

This definition uses the various words, employment, non-employment, terms of employment . and conditions of labour, and learned counsel submitted that the use of these different words and expressions was an indication that each expression conveyed a different meaning not conveyed by other expressions. Since the words, 'employment' and 'non-employment', were also used in addition to the expression 'terms of employment', the legislature must be deemed to have laid down that employment and non-employment are not covered by the expression, terms of employment.' In support of this contention, learned counsel referred me to a decision of the Federal Court in -- 'Western India Automobile Association v. Industrial Tribunal, Bombay', AIR 1949 FC 111 (R). The Federal Court, in that case, had to consider the question whether a dispute as to reinstatement was outside the jurisdiction of the Industrial Tribunal under the Industrial Disputes Act, 1947. It was held:

> "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 terras 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."

This decision was further followed by the Federal Court in the case of -- 'India Paper Pulp Co., Ltd. v. India Paper Pulp Workers' Union', AIR 1949 FC 148 (S), where, relying upon the earlier case, the Federal Court held that a claim for compensation for wrongful dismissal is clearly a dispute in connection with non-employment. Learned counsel wanted to draw an analogy in order to support his argument that the words, 'terms and conditions of employment' used in Section 3(b) of the U. P. Industrial Disputes Act, 1947, must beheld not to include employment or non-employment because these words were considered necessary in the definition of 'industrial dispute' where the other two expressions used were 'terms of employment, and 'conditions of labour'. I do not consider that such an analogy exists or that this-argument can be accepted. Section 3(b), U. P. Industrial Disputes Act,

1947, uses the words, 'terms and conditions of employment' and not 'terms of employment' and 'condition of labour'. Extending the argument advanced by learned counsel himself, it would be necessary to hold that the words 'terms of employment' cover a field of interpretation which is not covered by the words, 'conditions of employment' and vice versa and so the two are complementary to each other and and do not overlap.

In the definition of the word 'industrial dispute', the expression 'conditions oi; employment" was not used and, obviously, the expression 'conditions of labour' is different from the expression 'conditions of employment'. It would appear to me to be more appropriate to hold that, in Section 3(b) I of the U. P. Industrial Disputes Act, 1947, the expression 'conditions of employment' was used in order to cover the words 'employment, non-employment and conditions of labour' which were used in the definition of an industrial dispute.' In this connection, it may be profitable to take an example. If a workman is employed and, at the time of his employment, conditions of employment are agreed upon between the employer and the workman which also lay down that the service of the workman are not to be dispensed with except under certain conditions, I do not think any one would contend that such a term in the agreement would not be held to be a term or condition of employment. Once a man has been employed, his removal from employment would always be subject to the terms and conditions of employment and, similarly, if he has beers wrongly removed from service, his re-instatement would also be clearly a matter to be dealt with in accordance with the terms and conditions of employment.

It does not appear to be necessary for me to go any further and examine the question whether the conditions regulating the employment of a workman i'or the first time, or, his re-employment 'would also be 'terms and conditions of employment' within the meaning oi' this expression used in Section 3(b) of the U. P. Industrial Disputes Act, 1947. Even, under the Government of India Act, 1935, and the Constitution, the provisions, dealing with the civil services, usually mentioned recruitment or appointment and conditions of service. It may be that conditions regulating recruitment or initial appointment may not be treated as being parts of conditions of service but once recruitment or appointment has taken place and a person has entered into the civil service of the state, all disciplinary matters, including terms relating to removal from service and dismissal, would be governed by conditions of service applicable to that person subject, of course, to the special provision that has been made in the Government of India Act or the Constitution, specifically, for the purpose of placing limitations on the powers of removal and dismissal.

In my opinion the words 'terms and conditions of employment' used in Section 3(b) of the U. P. Industrial Disputes Act, 1947, cannot be considered to be narrower than the expression 'conditions of service' used in the Government of India Act, 1935," and the Constitution and, therefore, would surely cover terms and conditions relating to removal and dismissal of the workmen. Re-instatement is different from re-employment. In the case of re-employment, a person, at the time of his re-employment, is not deemed to be in service and his re-employment really amounts to a fresh recruitment or appointment. The position in the case of re-instatement is different as reinstatement implies continuance of previous service. It is true that the effect of re-instatement in one respect is the same as the effect of re-employment, viz., that the person re-instated or re-employed comes back into the service of the employer from the date on which the order for

re-instatement or re-employment is made effective but there is one very important distinction. In the case of re-instatement, there is continuity with the previous service whereas, in the case of re-employment, there is a fresh start of a new service. Re-instatement and re-employment cannot, therefore, be dealt with on the same basis and even if the word 're-employment' be held to be covered by the words 'recruitment or appointment', there is no reason to hold that the word 're-instatement' must also be similarly covered by these words. Re-instatement in service, which brings into effect continuity of the previous service, is clearly an order relating to terms and conditions of service, or, terms and conditions of employment. Learned counsel's contention that an order relating to re-instatement is not an order relating to terms and conditions of employment cannot, therefore, be accepted.

14. The case has, however, to be examined in an entirely different aspect and that is whether the particular order now impugned can be said to be an order directing the petitioner "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."

T he expression 'to observe for such period as may be specified, such terms and conditions of employment as may be determined' gives an indication that Clause (b) of Section 3 of the U. P. Industrial Disputes Act, 1947, is meant for the purpose of passing orders by which the Government gives directions about 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.

It appears from the language that this provision was not meant for the purpose of dealing with individual disputes arising out of the application of a term or condition of employment and no power was granted to the State Government, under this provision of law, to sit as an adjudicator to decide a dispute that might have arisen relating to the working and actual application of terms and conditions of employment already in force. The provision was for the purpose of enabling the State Government to vary the agreed terms and conditions of employment for purposes specified in Section 3, U. P. Industrial Disputes Act, 1947, under the pressing necessities or expediency justifying such course of action.

For cases, in which there might be a dispute relating to the enforcement or manner of application of any specific term or condition of employment, provision was made separately in Clauses (c) and (d) of Section 3, U. P. Industrial Disputes Act, 1947, under which that particular dispute could be referred for conciliation or adjudication and industrial Courts could be appointed in order to deal with such dispute. It, however, appears that the State Government, while it did grant powers to the Regional Conciliation Board by its notification dated 10-3-1948, to settle industrial disputes by conciliation or to adjudicate upon industrial disputes by giving an award, did not, for some reason or the other, consider it appropriate to grant a similar power to an industrial Court before which the dispute might go up in appeal.

The function of the industrial Court was limited to giving findings on the points in dispute without adjudicating upon them. The State Government itself had no power of adjudicating on such industrial disputes either under the U. P. Industrial Disputes Act (U. P. Act No. 28 of 1947) or under

the Central Industrial Disputes Act, 1947 (Central Act No. 14 of 1947). The State Government had, therefore, to fall back upon the provisions of Section 3(b), U. P. Industrial Disputes Act, 1947, and, in doing so, obviously, it went wrong as Section 3(b) was not so framed by the legislature as to permit the State Government to appropriate to itself the functions of the appellate authority deciding appeals from awards by the Regional Conciliation Board. It may be noticed that the State Government was itself aware of this difficulty and. in Clause (25) of the notification of 10-3-1948, the State Government laid down that "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 United Provinces Industrial Disputes Act, 1947."

Obviously, the State Government could have no power to pass orders in the appeal which lay to the Industrial Court (Sugar), Lucknow, and not the State Government. Further, no order in the appeal need be notified under Section 3(b), U. P. Industrial Disputes Act, 1947. By framing Clause (25) in this manner, the State Government intended to convey that, though the appeal would not be decided by the Industrial Court at all and could not be decided by the State Government, the appeal must be deemed to be disposed of as soon as the State Government after perusing the findings, chose to pass its orders under Section 3(b), U. P. Industrial Disputes Act, 1947.

The whole scheme adopted by the State Government shows that the Government wanted to keep to itself full powers of passing whatever order it liked whenever there was an appeal from an award given by the Regional Conciliation Board and, consequently, preferred to act under Section 3(b), U. P. Industrial Disputes Act, 1947, however inadequate may be the power granted by that provision of law. It is obvious that there can be industrial disputes which might not relate to terms and conditions of employment at all. For example, if there be a dispute between employers and employers, or, between workmen and workmen, such a dispute is not likely to be a dispute relating to terms and conditions of employment. Even, in such cases, according to the order dated 10-3-1948, the dispute has to be settled by conciliation or adjudicated upon by an award by the Regional Conciliation Board, but once an appeal is filed against the award made by the Regional Conciliation Board, there can be no decision of that dispute at all.

The State Government has no power to decide the appeal and can only pass orders under Section 3(b) of the U. P. Industrial Disputes Act, 1947, on the basis of the findings of the Industrial Court (Sugar), Lucknow. and this power does not cover cases where the dispute does not relate to terms and conditions of employment. A great lacuna was left in this order. Whatever be the reason for this defect in the order, the effect of it is that, after an appeal from an award of a Regional Conciliation Board has been filed before the Industrial Court, the matter ceases to be dealt with as an industrial dispute which is to be decided, and final orders can be passed only in those cases in which the dispute if of such a nature that orders passed by the State Government under Section 3(b), U. P. Industrial Disputes Act, 1947, would meet the requirements for disposing of the dispute.

In the present case, as I have said earlier, the order passed on 3-12-1940, was not an order of the nature contemplated by Section 3(b) of the U. P. Industrial Disputes Act, 1947. It was an order of the State Government which, in effect, gave its decision on the industrial dispute relating to the enforcement of certain terms and conditions of service and not an order requiring the petitioner to

observe terms and conditions of service specified in the order. This part of the order is, therefore, beyond the competence of the State Government, acting in exercise of its powers under Section 3(b) of the U. P. Industrial Disputes Act, 1947. Enforcement of that part of that order after 26-1-1950, would be action taken on an order I which had no validity in law even when passed and such action by the opposite parties must be restrained by the issue of a writ of mandamus.

15. As a result, I allow this petition and direct that a writ of mandamus shall issue to the opposite parties not to take any action to enforce the order dated the 3rd of December, 1949. The petitioner shall be entitled to its costs which I assess at Rs. 300/-.