Bharat Glass Factory (Through B.P. ... vs M.P. Vidyarthi And Ors. on 21 March, 1955

Equivalent citations: (1957)ILLJ212ALL

JUDGMENT

M.B. Chaturvedi, J.

1. This is a petition under Article 226 of the Constitution.

2. The petitioner is a partnership firm doing the business of glass manufacture at Naini, in the district of Allahabad. Respondent 2 was in service of the petitioner on a salary of Rs. 100 per mensem in addition to travelling allowance when going out of station. A copy of the letter of his appointment has been filed, which shows that the petitioner was appointed as an accountant-clerk with effect from 22 July 1950. The petitioner's case is that respondent 2 was in its employment only till June 1951, after which he started another firm at Banaras and then he was working with Bharat Glass Agencies, Banaras. It is said in February 1952, the respondent 2 again joined the petitioner's service and worked till 17 March 1952, when he suddenly stopped the petitioner's work and joined Tribeni Glass Works, Naini, a rival concern. The case of respondent 2 is that he continued in service of the petitioner from July 1950 till 30 March 1952. when his services were dispensed with. He says that he then made a demand for certain dues which the petitioner was not prepared to pay. On 28 May 1952, the respondent 2 sent a letter to the regional conciliation officer saying that the petitioner firm had employed him and there was an agreement for the payment of certain amenities like conveyance allowance and compensation for work on Sundays, but on 30 March the petitioner terminated his services without any reason and without giving any notice, and that the said respondent had asked the petitioner to settle his accounts, but it paid no heed to this. He claimed commission on sales, conveyance allowance, Sunday allowance and a month's salary in lieu of notice, and the approximate total of the dues, according to him, was Rs. 1,000. On 24 November the respondent sent another communication to the regional conciliation board giving the details of top amounts due to him, and the entire sum claimed on this date was Rs. 1,720. A third claim was submitted on 25 March 1953, in which the claim made on 24 November was repeated, but the amount of compensation for wrongful dismissal was not specified. The conciliation proceedings proved infructuous and the usual report was sent to the Government. The State Government issued a notification purporting to act under Section 3 of the U.P. Industrial Disputes Act on 6 March 1953, referring the dispute for adjudication to Sri M.P. Vidyarthi, respondent 1. The adjudicator fixed 25 March 1953 for the hearing of the case and then adjourned it to 17 April 1953. The present petition was filed on 16 April 1953 praying for the issue of a writ of certiorari quashing the Government notification dated 16 March 1953, and for the issue of a writ of certiorari quashing the proceedings before the. conciliation board.

3. The argument of the learned Counsel for the petitioner is that the Government had no jurisdiction to refer the matter to an adjudicator because the dispute in the present case was not an industrial dispute. In support of his case he urged two points. His first submission is that the dispute was merely an Individual one and the second is that respondent 2 not being a workman on the date the dispute arose, the dispute could not be called 4n industrial dispute. As regards the first point it does appear that the dispute, as to the amount payable to respondent 2 by the petitioner, has not been taken up by another workman or employee of the petitioner. It has been stated in Para. 15 of the affidavit, filed along with the petition, that no trade union or group of workmen has taken up the case of respondent 2 and the case has no concern in any manner with employment or non-employment of the petitioner. In Para. 13 of the counter affidavit has been stated that the allegations in Para. 15 were not correct and that the dispute between the respondent 2 and the petitioner centred round the illegal dismissal of the former and amounted to victimization of the respondent by the petitioner. There is no assertion anywhere in the counter-affidavit to the effect that any other workman or group of workmen have taken up this dispute on behalf of respondent 2. In this state of evidence, I am inclined to hold that the dispute of respondent 2 with the petitioner has not been taken up by any other workman of the petitioner or any association of workmen. The question is whether, under these circumstances, it can be said that the dispute is an industrial dispute. The U.P. Industrial Disputes Act refers back to the definition of the expression "industrial dispute" to the Central Industrial Disputes Act of 1947. In Section 2(k) of the Central Act, the expression "industrial dispute" is defined as under:

> 'Industrial dispute' means 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.
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> The words used in the definition are very wide, and what they say is that the dispute would be an industrial dispute which is connected with the employment, or non-employment, or the terms of employment or with the conditions of labour of any person. It further appears that the use of the words "employers," "employees" and "workmen" in plural dots not necessarily mean that the employers or the workmen must be more than one. It is an ordinary rule of interpretation of the statutes that the singular includes the plural and the plural includes the singular. So far, there appears to be no difference between the different High Courts in India, and the High Courts all appear to be agreed that technically speaking, every dispute between a single workman and single employer would come within the definition of the expression, provided it is connected with the employment or non-employment or the terms of employment or conditions of service. But some of the High Courts have taken the view that looking into the scheme of the Act, and the object with which it was passed, the definition must be confined to those cases where the dispute is between a substantial number of workmen and one or more employers.

4. In the case of J. Chowdhry v. M.C. Banerjee 55 C.W. 256 in the course of the judgment, the learned Judge observed that according to the ordinary meaning of the definition of the expression

"industrial disbute" the dispute of a single employee would be covered by it, but the approach to a proper construction of the definition should be founded not only upon the language of the relevant section but also upon the scheme of the several other provisions of the Act. The view of the learned Judge was that, taking the scheme of the Act into consideration, the dispute of an individual workman, which was not taken up by other workmen, could not be said to be an industrial dispute. He held that an individual dispute did not come within the definition of the expression "industrial dispute." The learned Judge was also of the View that the dispute in the case before him arose after the dismissal of the employee and the employee, therefore, would not come within the definition of a "workman," as given in the Industrial Disputes Act. His decision on both the points was in favour of the petitioner. The same view was taken in another Calcutta case Bilash Chandra Mitra v. Balmer Lawrie & Co., Ltd. I.F.J. (V) 73 : 1953 I L.L.J. 337.

5. The High Court at Madras appears to have taken the same view in the case of the Manager, United Commercial Bank, Ltd. v. Commissioner of Labour, Madras I.F.J. (II) 204 : 1951 I L.L.J. 1. The second point did not arise for consideration in this case, but on the first point the Court was of the view that:

> It may be that the dismissal of even one workman can become the subject of an industrial dispute, but then it is no longer an individual dispute, between the dismissed workmen and the employer only : it becomes a dispute between the workmen on the one hand and the employment on the other. Such dispute, it may be called a collective dispute, certainly cannot be the subject-matter of an appeal under Section 41 of the Madras Act.
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> Reference was made to a previous Madras case in which it was held that something more than an individual dispute between a workman and an employer was required to make the dispute an industrial dispute. The previous case, on which reliance is placed, is the case of Kandan Textiles, Ltd. v. Industrial Tribunal Madras 1949 (2) M.L.J. 789 : 1949 L.L.J. 875. The learned Chief Justice in this case was of the opinion that the language of the definition of "industrial dispute" was very wide and, if the words were given their ordinary meaning, even a dispute between an employer and one of the workmen would fall within it, and as regards the scheme of the Act and object behind it, he observed:
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> We, however, do not think it safe to construct the language of the definition in the Act by something which might be implied from the statement of objects and reasons. It has been often pointed out that in constructing an enactment such statement of objects and reasons would be irrelevant. Not frequently the objects and reasons Of a legislation as announced at the initial stage of a Bill coincide with the enactment when finally passed.
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> But after referring to certain other provisions of the Act he was inclined to hold that these provisions suggested that something more than an individual dispute between a worker, or a few workers, and the employer was meant by the expression "industrial

dispute."

6. As far as this Court is concerned, a learned single Judge in a writ case which was the subject-matter of special appeal No. 8 of 1954 took the view that an individual dispute came within the definition of the expression "industrial dispute" and his view was that such a dispute came within the definition. A special appeal was filed against his decision and the Chief Justice agreed with the view of the learned single Judge, but another Judge doubted its correctness. The matter was then placed before a third Judge, who did not decide this point finally, and the case was decided on the ground that a group of workmen, employed in a different undertaking of the same nature, had taken up the case of that employee, and the dispute had, therefore become an industrial dispute. The position, therefore, at the present moment, is that there is clearly a decision of a learned single Judge of the Court, which has taken a view different from that taken by the High Court of Calcutta and Madras. I am bound by that decision and must, therefore, hold that an individual dispute may be an industrial dispute.

7. The second point urged by the learned Counsel for the petitioner is that the dispute was not an industrial one, because respondent 2 had ceased to be a workman before the dispute had been raised. A "workman" is defined in the Industrial Disputes Act, as-

'Workman' means any persom employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward and includes, for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military or air force of the Crown.

A workman, who was discharged during the dispute would be included in the definition provided he was discharged during the dispute and not before the dispute had arisen. If the dispute is of the single workman, and the other workmen in the present employment of the concern did not take up that dispute, then the dispute cannot be said to be an industrial one, unless the particular employer came within the definition of a workman and he would be outside the ambit of that definition, if the dispute started after his discharge. This is the view taken both by the Calcutta and Madras High Courts, Already mentioned above, and there is no decision of this Court to the contrary on this point. The wordings of the definition of the word "workman" also make it clear and a discharged workman would come within the definition only if he was discharged during the dispute. The question therefore for consideration is whether in this case the dispute had arisen before the discharge of respondent 2 or after his discharge.

8. The petitioner has stated in the affidavit filed along with the petition, that respondent 2 was paid his full salary and dues till the And of February 1952, and in March 1952, the respondent himself stopped working for the petitioner after 17 and there was, therefore, no question of payment of his salary for March 1952. Respondent 2 has said in the counter-affidavit, Paras. 8 and 9, that it was wrong to allege that the respondent worked only up to 17 March and, as a matter of fact, he worked up to the end of March 1952, when his services were terminated by the petitioner and that on 30 March the respondent demanded his commission on the sales effected by him when he was orally discharged. In his claim filed before the regional conciliation officer, the respondent does not claim

reinstatement; but he merely claims the payment of certain dues. In his claim dated 28 May 1952, he has just vaguely mentioned that he was also to get commission on sales and was to be provided with conveyance or conveyance allowance in lieu of conveyances, and that he was entitled to get some wages for having worked on Sundays. The a mount That he mentioned was an approximate amount of Rs. 1,000 for all the items under which the claim was made. The items under different claims were specified nearly six months later when, for the first time, it was stated that he was entitled to a commission it the rate of 3 per cent on all sales made through him during the period of his service. It is true that he wants salary for the month of March 1952, and one month's salary in lieu of notice, but all the claims made by respondent 2 appear to be the result of afterthought. He had been working, according to himself, since July 1950, and, according to his own claim, he was never given any commission on the sales effected from July 1950 to March 1952. He was also never granted any conveyance allowance, nor Sunday allowance that he subsequently claimed. In the order of his appointment dated 21 July it is clearly stated that he was appointed on a salary of Rs. 100 per mensem, and if he went out of Allahabad, in connexion with the petitioner's business, he was to get third-class railway fare plus actual expenses for lodging, boarding and conveyance, etc., for the period he remained out of station. On 4 January 1952, he gave a receipt certifying that he received all the dues on account of pay, travelling allowance and fooding allowance from Kejariwal Agencies up to 31 December 1951. According to the petitioner, Kejariwal Agencies is a different concern but, according to respondent 2 this is also the petitioner's concern. Then in January 1952, the respondent 2 was on leave in connexion with the marriage of his son, and it is clearly stated in the affidavit filed along with the petition that the respondent was paid his full salary and dues till the end of February 1952. It is not denied in the counter-affidavit that the respondent received his salary and also travelling allowance for the month of February 1952. The claim of commission at 3 per cent and the conveyance allowance as put forward by the respondent before the conciliation officer, appear to be false, and this circumstance makes it likely that these claims were not made till the date of the respondent's termination of service. The respondent gave no notice to the petitioner claiming any of these amounts, and his mere assertion in the counter-affidavit or in the application dated 28 May 1932, that he claimed these amounts from the petitioner, is not sufficient for showing that any such claim had actually been made before the respondent's discharge from service, whether the respondent's service came to an end on 17 March or 30 March 1952. The claim put forward before the conciliation officer was not made at any time in writing to the petitioner at all. As far as documentary evidence goes, the claim was made for the first time nearly six months after the respondent's discharge and I am not prepared to accept what he has said in his counter-affidavit that he made any claim on 30 March to the petitioner. This would show that no dispute had arisen on the date of the respondent's discharge from service and the claims that have now been made before the regional conciliation board are the result of an afterthought. This being the position, the respondent cannot be said to be a workman and the dispute concerning him, therefore, would not be an industrial dispute.

9. The learned Counsel for respondent 2 argued that this was a matter which the State Government itself has taken into consideration and the mere fact, that it referred the case for adjudication, shows that the State Government has held that this industrial dispute existed. In the order of references issued by the State Government there is no mention of the above point, or has any affidavit been filed on behalf of the State of Uttar Pradesh, cited as respondent 3 to the petition, saying that the

State was of the opinion that a dispute had arisen before the respondent's discharge from the employment of the petitioner. The likelihood appears to be that the question was never considered before the order of reference was passed. The jurisdiction of the State Government depends upon the decision of this question favour of the respondent. The order of references does not show that this question was considered by the State Government and no affidavit has been filed on behalf of the. Government saying that it has considered this question. The point has been taken as the very first ground in the petition. Considering the evidence and the circumstances of the case, I am of opinion that there was no dispute between the petitioner and respondent 2 on the date of his discharge.

10. The result is that this petition is allowed and a writ of certiorari and prohibition should be issued quashing the proceedings of this case before respondent 1 and prohibiting respondent 1 from proceeding to enter into the determination of the references made by the State Government by the G.O. No. 726 (IC)/XVIII-LA-146 (A.L.R.) 1953, date 6 March 1953. The reference also is set aside.

11. The petitioner will be entitled to costs of this petition from respondent 2.