Ganesh Das Ram Gopal vs The Government Of The State Of Uttar ... on 15 April, 1952

Equivalent citations: AIR1952ALL992, (1953)IILLJ1ALL, AIR 1952 ALLAHABAD 992

JUDGMENT

Bind Basni Prasad, J.

1. This is an application under Article 226 of the Constitution by a proprietor of an industrial establishment directed against the State of Uttar Pradesh, the Additional Regional Conciliation Officer, Lucknow, and one Ramdeo who was once an employee of the applicant.

2. The relevant facts are as follows: The applicant carries on business of manufacturing iron and steel material and other finished products and owns a workshop in Hazratganj, Lucknow, and in that connection employed a number of workmen. Ramdeo was appointed a peon in the Stores Department on or about 28-7-1948. It is alleged that on 10-1-1951 Ramdeo absented himself from duty, after half time. A charge-sheet was served upon him on 11-1-1951. Another charge-sheet of misconduct was served upon him on 18-1-1951. Ramdeo took leave on medical grounds on 19-1-1951. On 19-1-1951 the applicant sought for permission from the Regional Conciliation Officer to dismiss Ramdeo. This was necessary because another dispute between the applicant and another employee was pending before the Regional Conciliation Officer and according to the law during the pendency of such an industrial dispute he could not dismiss an employee without the permission of the Regional Conciliation Officer. Ramdeo joined duty on 31-4-1951 but he was suspended from service the same day. As the Regional Conciliation Officer did not pass any orders on the applicant's petition dated 19-1-1951 another application was made to him on 1-2-1951 asking for permission to dismiss Ramdeo. It so happened that sometime in March, 1951, the case between the applicant and another employee on account of which it had become necessary to ask for permission of the Regional Conciliation Officer for dismissal of Ramdeo was disposed of. It was then no longer necessary according to the law for the applicant to take the Regional Conciliation Officer's permission for Ramdeo's dismissal. On 27-3-1951 Ramdeo was dismissed.

3. Ramdeo's cause was taken up by the General Engineering Workers Union, a trade union registered under the Trade Unions Act. The President of that union applied to the Regional Conciliation Officer, Lucknow, who is the Chairman of the Conciliation Board, under para. 4 of the Order framed by the State Government under Clauses (b), (c), (d) and (g) of Sections 3 and 8, U. P. Industrial Disputes Act, 1947 (U. P. Act XXVIII [28] of 1947) by the Notification No. 615 (LL)/XVIII-7 (LL)/-1951, dated 15-3-1951, for the settlement of the industrial disputes by conciliation. Acting under para. 5 of the said Order the Conciliation Officer tried to bring about a

settlement, but he failed. Under Sub-para. (3) of para. 6 he submitted a report to the State Government and the Labour Commissioner setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about an amicable settlement thereof. On the receipt of that report the State Government referred the dispute under para. 10 of the aforesaid Order for adjudication to the Additional Regional Conciliation Officer, Lucknow, by its order dated 11-7-1951. The question which was formulated by the State Government under this Order is as follows :

> "Whether the services of Sri Ramdeo have been wrongfully terminated? If so, to what relief is he entitled ?"

4. When the case came up for hearing before the Additional Regional Conciliation Officer the applicant raised a preliminary objection that there was no "industrial dispute" within the meaning of that expression as contained in the Industrial Disputes Act, 1947, and as such the Conciliation Officer had no jurisdiction to deal with the case. The Conciliation Officer did not refer the matter to the Government and then the applicant made a petition praying for the stay of proceedings to enable him to bring an order of stay from this Court under its inherent powers under Article 226 of the Constitution. The case was postponed by the Conciliation Officer. This petition was then made. The prayer is that it may be declared that the reference to adjudication under the Notification dated 11-7-1951 is; "invalid, void, illegal and inoperative" and a writ or direction may be issued, to the Additional Regional Conciliation Officer not to proceed with the adjudication.

5. The opposite party contests the application on the following grounds :

> (1) That there is an alternative remedy to the applicant and in view of that the present application for writ under Article 226 is not maintainable.
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> (2) That the applicant has suppressed material facts and on that ground alone the application should be dismissed.
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> (3) That the dispute which has been referred to the adjudicator is an "industrial dispute" within the meaning of that expression as contained in Section 2(k), Industrial Disputes Act, 1947.

6. Taking up the first point, Section 7, Industrial Disputes (Appellate Tribunal) Act, 1950 (48 of 1950) provides that an appeal shall lie to the Appellate Tribunal from any award or decision of an industrial tribunal if, inter alia, the appeal involves any substantial question of law. According to the definition of the term "industrial tribunal" as contained in the Act the adjudicator appointed by the State Government in the present case by the Order dated 11-7-1951, would fall within that term. It is clear therefore that an appeal from the order of the Additional Regional Conciliation Officer would have been competent before the Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950. In fact, as we all know, such appeals are being entertained by the Appellate Tribunal. When the applicant raised the point of jurisdiction before the Additional Regional Conciliation Officer it was incumbent upon him to have given his decision upon that point

and if that decision went against the applicant he could have gone in appeal before the Appellate Tribunal. There was thus an alternative remedy to the applicant to press his point of jurisdiction. This circumstance by itself is sufficient for the dismissal of his application. No reasons have been assigned before us to show as to what was the urgency that this point of jurisdiction should be decided by us in these proceedings for a writ.

7. Coming to the second point, learned Additional Standing Counsel brought to our notice the fact that when the charge was served upon Ramdeo he submitted his explanation to the applicant denying the charges. On 1-2-1951 the applicant sent the following reply :

> "Your reply dated 15-1-1951, to our charge is false and, therefore, not acceptable to us. You went away of your own accord without obtaining the permission and the allegation that you were turned out after being between (beaten ?) is entirely baseless and without any foundation.
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> Again, your reply dated 22-1-1951 to our charge-sheet is also false and as such not acceptable to us. As the charges levelled against you have been fully established you are, therefore, suspended pending permission for your dismissal from the Regional Conciliation Officer."

8. The opposite party Ramdeo has filed documents in support of the above facts and the applicant's learned counsel has admitted them. The facts that Ramdeo disputed the charges levelled against him, submitted his explanations and those explanations were not accepted by the applicant are material for the determination of the question whether or not there was an "industrial dispute"; but strangely enough these facts were suppressed in the affidavit filed in support of the application. It is a well established rule of law that where a party makes an application under Article 226 of the Constitution and suppresses material fact he forfeits his right for a writ, vide Ratan Chandra Nayak v. Adhar Biswas, A. I. R. 1952 Cal. 72. This is another ground upon which this petition is liable to be dismissed.

9. The last question for consideration is whether or not there is an "industrial dispute" in the present case. The State Government has made the reference for adjudication under Sections 3, 4 and 8, U.P. Industrial Disputes Act, 1947 (U.P. Act 28 of 1947). According to Section 2 of that Act the expression "industrial dispute" has the meaning assigned to it in Section 2, Industrial Disputes Act, 1947. The definition of this term as contained in the last mentioned Act is as follows :

> "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."

10. The argument on behalf of the applicant firstly is that in the present case the dispute is between the employer and dismissed workman, hence such a dispute according to the true interpretation of the definition of "industrial dispute" does not fall under it. Secondly, it is contended that the present

dispute is an individual dispute and not a dispute between the employer and the workmen in general or any considerable section of them.

11. Taking up the first contention, it will be seen that in the definition of the expression "industrial dispute" the word "workmen" occurs. According to the definition of this term as given in Clause (s) of Section 2 it includes :

> "for the purposes of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute."

This point came in for consideration before the Federal Court in Western India Automobile Association v. The Industrial Tribunal, Bombay, A. I. R. 1949 F. C. 111. Their Lordships held :

> "The words 'employment and non-employment' in the definition of industrial dispute in Section 2 (k) are of widest amplitude and have been put in juxtaposition to make the definition thoroughly comprehensive. The words 'in connection with' widen the scope of the dispute and do not restrict it by any means. 'Any dispute connected with employment or non-employment' would ordinarily cover all matters that require settlement between workmen and employers, whether those matters concern the causes of their being out of service or any other question and it would also include within its scope the reliefs necessary for bringing about harmonious relations between the employers and the workers."

12. Their Lordships went on to observe :

> "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'. Re-instatement is connected with non-employment and is, therefore, within the words of the definition. It will be a curious result if the view is taken that though a person discharged during a dispute is within the definition of the word 'workman' yet if he raises a dispute about dismissal and re-instatement, it would be outside the words of the definition in connection with employment or non-employment."

13. The case before their Lordships related to certain dismissed employees and the dispute raised by those employees was held to be an "industrial dispute."

14. In the Indian Paper Pulp Co. Ltd. v. The India Paper Pulp Workers' Union, A. I. R. 1949 F. C. 148, it was held that as the question of non-employment was an industrial dispute the claim for compensation for wrongful dismissal, i. e., non-employment was clearly a dispute in connection with non-employment and so an "industrial dispute."

15. These two cases of the Federal Court leave no room for any doubt that a dismissed employee falls within the definition of a "workman" and a dispute raised by him in connection with his non-employment does fall within the purview of the term "industrial dispute." The first contention

raised on behalf of the applicant has no force.

16. Coming to the second contention, the argument on behalf of the applicant is that the object of the Industrial Disputes Act is not to deal with the action taken by employers against an individual workman, but to deal only with such matters as concern the workmen in general or any considerable section of them. On the other hand, learned Additional Standing Counsel appearing for the State contends that the object of the Industrial Disputes Act is to avoid all possibilities of a dispute between employers and workmen, to constitute a machinery for the settlement of such difference and to promote harmonious relationship between them by constitutional methods by providing for a machinery for the settlement of disputes. He goes on to say that as an individual dispute may develop into a class dispute and may lead to a strike and hamper production, so the law has provided that individual disputes would also be taken up and dealt with under it. According to him in the definition of the term, no distinction is made in a dispute between the employer and one workman or a dispute between the employer and a number of workmen. It is immaterial that in the definition of the term "industrial dispute" the word "workmen" occurs in plural, because according to Section 13, General Clauses Act, 1897, a word in plural includes one in singular and vice versa. It is admitted on behalf of the applicant that if an individual dispute is taken up by other workmen of the industrial establishment or by their union then it would become an "industrial dispute." It is, therefore, not necessary for us in the present case to decide whether or not a dispute between an employer and an isolated workman would fall within the purview of the expression "industrial dispute" because it is a question which does not arise before, us in the present case, and what we say may be obiter dicta.

17. Here we have the undisputed fact that Ramdeo's case has been taken up by the trade union known as the General Engineering Workers Union, Lucknow, and it was that trade union which moved the Regional Conciliation Officer for conciliation. The Conciliation Officer submitted a report to the State Government as a result of which the order of reference for adjudication was made by it on 11-7-1951. That there was a dispute between the applicant and Ramdeo admits of no doubt for we have the fact that certain charges were served upon him and he denied them. The applicant did not accept the explanations given. There was a demand by Ramdeo that he should continue in employment and a refusal by the applicant to continue it. The dispute is not only between the employer and Ramdeo, but between the employer and the trade union which represents the workmen in this line.

18. The contention on behalf of the applicant that the trade union did not make any representation to him has no force. When the applicant dismissed Ramdeo even after the submission of his explanation there was hardly any hope that the applicant would have reversed his order of dismissal if a representation were made to him by the Union. The Union adopted the constitutional method of approaching the Regional Conciliation Officer to bring about a conciliation instead of its fomenting a strike. A similar case came up before the Hon'ble Labour Appellate Tribunal of India presided over by Sri J.N. Majumdar and Sri R.C. Mitter in Appeal NO. cAL-178 of 1951 (ALL.), the Benaras Light and Power Co., Ltd., Benares v. Bijlighar Mazdoor Sangh, Benares. Learned Judges observed:

> "As in fact the Union took up his case and moved the Regional Conciliation Board for adjudication and the case involved a question of non-employment, the matter clearly comes within the definition of 'industrial dispute.' We do not see in these circumstances, how it could be considered to be an individual or personal dispute only or that there was no industrial dispute simply because the Union did not make a demand for his re-instatement to the company after his dismissal but before moving the Board."

19. We entirely agree with the observations of the learned Judges of the Hon'ble Labour Appellate Tribunal.

20. Learned counsel for the applicant has relied upon C.P. Sarathy v. State of Madras, A. I. R. 1951 Mad. 191, The Kandan Textile Ltd. v. The Industrial Tribunal Madras, A. I. R. 1951 Mad. 616 and In the matter of J. Chowdhury v. M.C. Banerjee, 55 Cal. W. N. 256.

21. The two Madras cases in our opinion do not help the applicant. In the Kandan Textile Ltd. v. The Industrial Tribunal Madras, A. i. R. 1951 Mad. 616, it was held by Rajamannar C. J. that if a dismissed workman feels aggrieved but makes no demand on the management, or after a demand and refusal does not pursue the matter further then there is no industrial dispute existing. Mack J. observed:

> "The Industrial Disputes Act was never intended to provide a machinery for redress by a dismissed Workman or even by a group of workmen who may be simultaneously punished or dismissed. They cannot by joining in a demand for re-instatement create an industrial dispute after their dismissal. If such a dismissal however even of an individual workman is taken up by a Worker's Union or a substantial body of workmen who continue in employment and espouse his cause then an industrial dispute may arise."

22. In the present case there was a demand for re-employment and refusal by the employer inasmuch as when the employer proposed to dismiss Ramdeo and served upon him the charges, Ramdeo contended that he was innocent and was not liable to be dismissed. Then the cause of Ramdeo has been taken up by his trade Union and so according to the standard laid down by Mack J. the dispute has become an "industrial dispute."

23. In G.P. Sarathy v. State of Madras, A. I. R. 1951 Mad. 191, Basheer Ahmed Sayeed J. observed:

> "For a dispute to arise, the two parties, viz. the petitioner and his workmen, must both come into, conflict and a difference must ensue therefrom ..... It will be improper to assume that a dispute can come into existence by a one-sided demand or a unilateral action of one of the parties, which demand or action has neither been referred to the other party nor even communicated to that party and in respect of which there was no opportunity, nor any occasion for the other party to express any view or indicate any positive or negative relation thereto."

24. The position in the present case, as already stated, is that the applicant and Ramdeo did come into conflict when the charges were levelled against the latter and he requested that his employment should continue. A difference ensued therefrom. This authority is, therefore, of no assistance to the applicant.

25. In the third case in the matter of J. Chowdhury v. M.C. Banerjee, 55 Cal. W.N. 256, Mitter J. held:

> "A dispute which in origin is between the employer and an individual employee may develop into an industrial dispute if the rest of the employees or the majority of them take up the cause of the employee."

26. In this connection the observations of the Madras High Court in the Kandan Textile Ltd. v. The Industrial Tribunal Madras, A. i. R. 1951 Mad. 616 were relied upon and it was observed that it was nobody's case that the employees of the petitioner in that case or even some of them had joined in the dispute as to the dismissal of the respondent. In the present case as the dispute about Ramdeo's re-instatement has been taken up by the Trade Union, according to the standard laid down in the Calcutta case it is an industrial dispute.

27. Further Mitter J. observed:

> "It is argued that there was no dispute when respondent 2 was dismissed. The individual dispute arose after the dismissal and after respondent 2 had failed to get him reinstated. In order to be a 'workman' within the meaning of the Act, one must either be in employment or be discharged during the pendency of an industrial dispute. It is urged that according to this definition respondent 2 could not have been a workman."

This argument was accepted by Mitter J.

28. The principle which has been laid down in this case is, however, contrary to what has been held by the Federal Court in Western India Automobile Association v. The Industrial Tribunal, Bombay, A. I. R. 1949 F. C. 111. We must follow the principle laid down by the Federal Court in preference to that laid down by a learned single Judge of the Calcutta High Court.

29. For the reasons given above the application is dismissed with costs. We assess Rs. 240 as the costs of this application for the opposite-party. The stay order is discharged.