Kastoor Chand Gupta vs State Of Uttar Pradesh And Ors. on 9 February, 1954

Equivalent citations: (1955)ILLJ132ALL

JUDGMENT

1. This is a petition under Article 226 of the Constitution. On 8 February 1950, the petitioner was appointed a sub-editor on the staff of the Amrita Patrika, a Hindi daily newspaper published in Allahabad, on a remuneration, including dearness allowance, of Rs. 200 a month. On 3 May 1952, he was suspended, but the order of suspension was shortly afterwards withdrawn. On 25 February 1953, he was again suspended on the ground of repeated breaches of discipline, and on 4 March the charges against him were put in writing and he was asked to furnish an explanation. On 27 February the Allahabad Journalists' Association, and on 17 March the Uttar Pradesh Working Journalists' Union, a registered trade union to which the Allahabad Journalists' Association is affiliated, sent applications to the regional conciliation officer asking him to institute conciliation proceedings in the dispute which had arisen between the petitioner and the management of the Amrita Patrika newspaper, the Amrita Bazar Patrika, Ltd. Conciliation proceedings took place before the regional conciliation officer who in due course submitted his report to the State Government. The State Government, however, by an order, dated 27 June 1952, refused to refer the dispute to the industrial tribunal on the ground that the petitioner was not a workman within the meaning of the Industrial Disputes Act, 1947. In this petition the petitioner seeks to challenge the correctness of that order and prays that the State Government may be directed by a writ of mandamus to refer the dispute to the State industrial tribunal or to an adjudicator. It is argued on behalf of the petitioner that the latter is a workman as denned in the Act and that the State Government must therefore refer the dispute to an industrial tribunal.

2. There are in force in this State two Acts relating to industrial disputes, the industrial Disputes Act, 1947 (Central Act XIV of 1947), and the United Provinces Industrial Disputes Act, 1947 (U.P. Act XXVIII of 1947). Under Section 10(1) of the former Act, prior to its amendment in 1952, the "appropriate Government" was empowered, if any industrial dispute existed or was apprehended, to refer the dispute to a board, court or tribunal for settlement, inquiry or adjudication. The power to make an order of reference under the State Act is to be found in Clause 10 of an order, dated 15 March 1951, made under Sections 3 and 8 of the State Act. That power can be exercised by the State Government if it is satisfied that an industrial dispute exists.

3. The nature of an order of reference made under the unamended Section 10(1) of the Central Act was considered by the Supreme Court in State of Madras v. C.P. Sarathy 1953 I L.L.J. 174. In that case Patanjali Sastri, C.J., delivering the judgment of the Court, said:

> But, it must be remembered that in making a reference under Section 10(1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the

> discharge of its function does not make it any the less administrative in character. The Court cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial determination.... But, if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon....
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> That case was the converse of that which is before us. The Government of Madras had made an order of reference to an industrial tribunal; that order was quashed by the High Court on the ground, inter alia, that there was no dispute between the parties concerned. The decision was reversed by the Supreme Court on the ground that it was not competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters. We can see no sufficient reason why the decision as to whether an order of reference should be made under Clause 10 of the order made under Sections 3 and 8 of the Uttar Pradesh Act is any less an administrative order than one made under Section 10(1) of the Central Act; nor does it appear to us possible to distinguish between the case of an order making a reference and an order refusing to make a reference. Both, in our opinion, are administrative orders.

4. The State Act adopts the definition of "workman" to be found in Section 2(s) of the Central Act which, so far as it is relevant, defines a "workman" as any person employed (including an apprentice) in any industry to do any skilled or unskilled manual or clerical work for hire or reward....

5. Whether a person comes within the definition of workman is, in our opinion, a question of fact which is part of the larger question whether an industrial dispute exists. That question, and the further question whether a reference should be made to an industrial tribunal or some other person, are matters primarily for the Government to decide. It is not therefore necessary for us to decide whether the petitioner is a workman within the meaning of the Act, but on the meagre evidence before us we should hesitate before coming to the conclusion that he has made out his claim. The petitioner says that although he is dignified with the title of sub-editor that is really a misnomer, for what he is employed to do is skilled clerical work. The post of sub-editor is the case of many newspapers no doubt involves the performance of important and responsible duties, but what has to be considered are the actual duties the petitioner was required to perform. His employers say that in addition to clerical duties the petitioner also performs certain responsible supervisory duties; the fact that he had some duties which were supervisory in character appears to be not denied, but as to what exactly those duties were both Bides are remarkably reticent. The evidence is vague and unsatisfactory.

6. It is urged for the petitioner that the State Government has not applied its mind to the question whether the petitioner is a workman and reliance is placed on the order of the State Government,

dated 27 June 1953. This order reads as follows:

> The applicant is hereby informed that as Sri K.C. Gupta was a member of the editorial staff of the Amrita Bazar Patrika, Ltd., Allahabad, he does not come within the definition of the term 'workman' as laid down in the industrial Disputes Act, 1947.

7. This order is certainly open to some criticism. Apart from the fact that it is difficult to see how a limited company can have an editorial staff at all, it appears to gloss over the fact that the petitioner was not a member of the staff of the English newspaper the Amrita Bazar Patrika but of the lees influential Hindi newspaper the Amrita Patrika. It is not, however, for this Court, in the words used by Patanjali Sastri, C.J., to canvass the order closely to see if there was any material before the Government to support its conclusion. We do not know what was the report made by the conciliation officer to the Government, and we do not think that we should be justified, on the material before us, in concluding that the Government did not give consideration to the question whether the petitioner was a workman before making the order in question.

8. In our opinion the petition fails and must be dismissed with costs.