The J. K. Cotton Spinning & Weaving Mills ... vs The State Of Uttar Pradesh & Ors on 12 December, 1960

Equivalent citations: 1961 AIR 1170, AIR 1961 SUPREME COURT 1170, 1961 (1) LABLJ 540, 1961 3 SCR 185, 1960-61 19 FJR 436, 1962 (1) SCJ 417, ILR 1961 2 ALL 493

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Bench: K.C. Das Gupta, P.B. Gajendragadkar, K.N. Wanchoo

PETITIONER:
THE J. K. COTTON SPINNING & WEAVING MILLS CO., LTD.

Vs.

RESPONDENT:
THE STATE OF UTTAR PRADESH & ORS.

DATE OF JUDGMENT:
12/12/1960

BENCH:
GUPTA, K.C. DAS
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GUPTA, K.C. DAS
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.

CITATION:
1961 AIR 1170
CITATOR INFO :

AFR	1977 SC1194	(7)
RF	1979 SC 65	(5)
RF	1980 SC2181	(80)
R	1984 SC1130	(42)
RF	1988 SC1737	(48)
R	1991 SC 855	(51)
RF	1991 SC1256	(15)

ACT:
Industrial Dispute-Proposed dismissal of workmen-Pending dispute-Permission not sought-Reference to adjudication Vaiidity of-U. P. Industrial Disputes Act, 1947 (U. P. 28 of 1947), ss. 3 and 8 Government Order dated March 10, 1948, cls. 5(a), 23.

HEADNOTE:
Under ss. 3 and 8 of the U. P. Industrial Disputes Act, 1947 the Governor issued an Order dated March 10, 1948, making dletailed provisions for the settlement of Industrial Disputes. Clause 5(a) of the Government Order empowered, among others, a recognised association of employers to refer an industrial dispute for adjudication to the Conciliation Board. Clause 23 provided that no employer shall discharge or dismiss any workman during the pendency of an inquiry except with the written permission of the Regional Conciliation Officer, and Cl. 26 provided for penalties for contravention of Cl. 23. The appellant proposed to dismiss certain workmen. Though at the time there was a dispute pending inquiry, the appellant did not seek permission under cl. 23 to dismiss the workmen; but the Employers' Association of Northern India made an application under cl. 5(a) to the Board to adjudicate and give an award that the appellant was entitled to dismiss the workmen. The workmen contended that the reference under cl. 5(a) was incompetent as the appellant had ,not first taken proceedings under Cl. 23.
Held, that the application under cl. 5(a) of the G. O. was not
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maintainable, as the employer could not take advantage of cl. 5(a) during the pendency of an inquiry when Cl. 23 was applicable. If cls. 5(a) and 23 were held to' apply at the same time there would be disharmony as by resorting to cl. 5(a) when Cl. 23 was applicable, the employers would be contravening cl. 23 and rendering themselves liable to the penalties under S. 26. But there was complete harmony if it was held that cl. 5(a) applied in all other cases of dismissal or discharge except where an inquiry was pending within the meaning of Cl. 23. Besides Cl. 23 was a special provision which prevailed over the general provisions in cl. 5(a).
Kanpur Mill Mazdoor Union v. Employers' Association of Northern India, (1952) 1 L.L.J. 195, approved.
De Winton v. Brecon, (1858) 28 L.J. Ch. 598, Churchill v. Crease, (182S) 5 Bing. 177 and United States v. Chase, (1890) 135 U. S. 255, referred to.

JUDGMENT:

CIVIL APPELLATE, JURISDICTION: Civil Appeal No. 157 of 1959. Appeal from the judgment and decree dated January 5, 1956, of the Allahabad High Court in Special Appeal No. 205 of and Civil Appeal No. 158 of 1959.

Appeal by special leave from the judgment and order dated January 15, 1952, of the Labour Appellate Tribunal of India, Allahabad, in Appeal No. Cal. 47 of 1951.

M.C. Setalvad, Attorney-General for India and G. C. Mathur, for the appellant.

M. R. Krishna Pillai, for respondent No. 5 (In C.A. No. 157/1959). C. P. Lal, for the State of U. P. and Respondents Nos. 2 and 4 (In C. A. No. 157/59).

O. P. Verma, for respondent No. 5 (in C. A. No. 158/59). 1960. December 12. The Judgment of the Court was delivered by DAs GUPTA, J.-These two appeals raise the question of the maintainability of an application made by the Employers' Association of Northern India, Kanpur on behalf of , the J. K. Cotton and Weaving Mills Co., Ltd., a member of the Association in connection with the proposed termination of service of certain members of its Watch and Ward Staff. But before we come to the consideration of this question it is necessary to indicate in brief the long and tortuous path this matter has traveled before coming to us. The application of the Employers' Association purported to be under clause 5(a) of the Government order dated March 10, 1948, as amended by a later order of May 15, 1948. This order was issued by the Governor of the United Provinces in exercise of the powers conferred on him by cl. (b), (c), (d) and (g) of section 3 and by s. 8 of the U. P. Industrial Disputes Act, 1947. The application after stating that a number of thefts of Dhoties had taken place in the Mill further stated that it was obvious to the management of the J. K. Cotton Spinning and Weaving Mills Co., Ltd., that this state of affairs could not exist and continue if Watch and Ward staff were carrying out their duties vigilantly, correctly and honestly. It stated further that the management having lost confidence in the honesty of the Watch and Ward Staff had decided to terminate the services of all the per. sons of the Watch and Ward Staff and to recruit fresh men from the employment exchange and that in lieu of notice of termination of service the management would pay to these persons 12 days' wages in accordance with Standing Order No. 17A. The prayer made in the application was that "the Board be pleased to record the award entitling the J. K. Cotton and Weaving Mills Co., Ltd., to terminate the services of all the members of the Watch and Ward Staff whose names appear in Annexure A". During the pendency of the application before the Board the applicant withdrew its prayer as regards 5 of the workmen. As regards the remaining workmen, after rejecting the preliminary objection raised on their behalf that the Board had no jurisdiction to entertain the application, the Board held that "it would not be in the interests of either party or in the interest of industry to allow the remaining 27 sepoys to continue in the employment of the Mills" and the Board accordingly made the award permitting the appellants to terminate the services of these 27 sepoys after giving them compensation at the rates set out by it--starting with 15 days full wages and compensation for those with one year of service with additional amount of compensation on a graduated scale for longer periods of service. Against this order both the parties appealed to the Industrial Court. That court agreed with Board's conclusion on the question of jurisdiction but pointed out that the "procedure adopted by the employers association was defective inasmuch as the mills did not apply to the Regional Conciliation Officer to discharge the sepoys in question". On merits the court held that the evidence justified the conclusion of the Board that the management had lost confidence in the members of the Watch and Ward Staff and that having regard to the Standing Orders their services should be terminated in accordance with the Standing Orders. It accordingly directed in modification of the order made by the Board "that the services of the 27

sepoys in question be terminated in accordance with the Standing Orders and that they would not be paid extra compensation as directed by the Board." The workmen then appealed to the Labour Appellate Tribunal of India. The appellate tribunal held relying on an earlier decision of its own in Kanpur Mill Mazdoor Union v. Employers' Association of Northern India (1) that the application under cl. 5(a) of the Government Order was not maintainable. Accordingly it allowed the appeal and set aside the award of the Board as well as the Industrial Court.

J.K. Cotton and Weaving Mills Co., Ltd., thereupon filed an application under Art. 226 of the Constitution to the High Court of Judicature at Allahabad praying for a writ in the nature of certiorari calling for the records of the case from the Labour Appellate Tribunal of India and quashing the order of the Tribunal which has been mentioned above. Mr. Justice Chaturvedi, before whom this application came up for hearing held that the application under (1)(1952) 1 L.L.J. 195.

cl. 5(a) was maintainable and the Appellate Tribunal had erred in holding otherwise. Being however, of opinion that there had been undue delay in making this application for a writ, he dismissed the petition on that ground. In the Letters Patent appeal preferred by the company against this decision a preliminary objection was raised on behalf of the Union representing the workmen that the Allahabad High Court could not call for the records and quash the order of the Labour Appellate Tribunal of India as those records were in Calcutta and consequently beyond the reach of the Court. The learned Judges who heard the appeal upheld this objection and dismissed the appeal. They however issued a certificate under Art. 132(1)and Art. 133(1)(c) of the Constitution. Thereafterthe company also obtained special leave from this court to appeal directly against the order of the Labour Appellate Tribunal of India. These two appeals preferred -one on the certificate granted by theHigh Court and the other on the strength of the special leave granted by this Court, have been heard together.

The main controversy, as already indicated, is on the question of the maintainability of the application under cl. 5(a) of the Government order. This order issued by the Governor of the United Provinces in exercise of the powers conferred on him by the U. P. Industrial Disputes Act, 1947 'contains detailed provisions as regards the settlement of industrial disputes. The first clause provides for the constitution of Conciliation Boards consisting of three members. Clause 2 provides for the appointment of conciliation officers for specified areas. Clause 5 contains the important provisions as to commencement of proceedings before the Boards. It provides two ways of starting these proceedings: one mentioned in cl.(b) is by an order made in writing by the Provincial Government for enquiring into a matter in respect of which an industrial dispute has arisen or is likely to arise. The other method is by means of an application by an employee or recognised association of employers or-registered trade union of workers or where there is no such registered trade union the representatives not more than five in number duly elected by a majority of the workmen in the industry. Any of these may by an application in writing move the Board to inquire into an industrial dispute. This provision is in cl. 5(a) which may be set out in full:-

> "5(a). Any employee or recognised association of employers or registered Trade Union of workmen or, where no registered trade union of workmen exists in any particular concern or industry, the representatives not more than five in number of

> the workmen in such concern or industry duly elected in this behalf by a majority of the workmen, in such concern or industry as the case may be, at a meeting held for the purpose, may by application in writing move the Board to enquire into any industrial dispute. The application shall clearly state the industrial dispute or disputes which are to be the subject of such inquiry."

Clause 10 provides for the constitution of industrial courts for specified areas. Clause 12 provides for appeals to this Court against the awards made by the Board. The other clauses up to clause 22 deal with the powers and procedure of the Board or the Industrial Court and with the duties of employers to permit certain meetings to be held. Then comes cl. 23 which is in these words:-

> "Save with the written permission of the Regional Conciliation Officer or the Additional Regional Conciliation Officer concerned, irrespective of the fact whether an inquiry is pending before a Regional Conciliation Board or the Provincial Conciliation Board or an appeal is pending before the Industrial Court, no employer, his agent or manager, shall during the continuance of an inquiry or appeal, discharge or dismiss any workman."

Section 24 provides that every order made or direction issued under the provisions of this Government order shall be final and conclusive. Clause 26 provides for penalties for contravention or an attempt to contravene any of the provisions of the order.

A consideration of the scheme of this legislation makes it clear that while two modes are provided in clauses 5(a) and 5(b) for the commencement of proceedings for settlement of industrial disputes generally, a special provision is made in clause 23 that if an enquiry is proceeding before a Regional Conciliation Board or the Provincial Conciliation Board or an appeal is pending before the Industrial Court, no workman shall be discharged except with the written permission of the Regional Conciliation Officer or the Additional Conciliation Officer concerned. The consequence in cl. 26 is that if any workman is discharged or dismissed during the continuance of such enquiry or appeal without such permission the employer shall be liable to fine or to imprisonment not exceeding three years or both. The heavy punishment provided for contravention of the order shows the importance attached by the legislating authority to the directions given by the Order.

In deciding whether an application under cl. 5(a) was maintainable in the facts of the present case two questions arise for consideration. The first is whether an industrial dispute comes into existence as soon as an employer decides on the dismissal of some of the workmen and proposes to give effect to such decision. One view is that it is only the party aggrieved by the proposed dismissal, in other words, the workmen, who by objecting to the same can raise the dispute and that the employer cannot by his own proposal to dismiss the workmen be heard to say that a dispute had come into existence even before the workmen had a chance to object to the dismissal. The contrary view which has found favour with Mr. Justice Chaturvedi of the High Court is that even at the stage the employer proposes to dismiss his workmen it is a case of contemplated non-employment which will come within the expression "industrial dispute". The other question is whether the provisions of cl. 23 of the order bar an application under cl. 5(a) during the con- tinuance of any enquiry before the

Regional Conciliation Board or the Additional Conciliation Board or during the pendency of the appeal before the Industrial Court. There is no dispute that on June 13, 1950 when the application under clause 5(a) was made an inquiry was in fact pending before a Conciliation Officer. It appears that on July 9, 1949 the Governor of the United Provinces made an order directing the Labour Commissioner of the United Provinces or a Conciliation Officer nominated by him in this behalf to redstart the adjudication proceedings between the J. K. Cotton & Weaving Mills Co., and S. N. Shukla, a dismissed employee of the concern. The Adjudica- tor was directed to conclude the adjudication and submit his award by August 15,1949. The time was extended by subsequent orders-first to November 15, 1949 and then to March 31, 1950, again to June 30, 1950 and thereafter to September 30, 1950. It is true that at the time these orders extending time for submission of award were made the Governor had no authority to make these orders and these orders were invalid. They were validated by the provisions of s. 3 of the U.P. Act XXIII of 1953. In view of this position of the law the learned Attorney-General has not disputed that on June 13, 1950 when the application under cl. 5(a) was made an enquiry was actually pending before a Conciliation Officer. Consequently, before the management could make any order discharging or dismissing any of its workmen it was required by cl. 23 to obtain permission for the same from the Regional Conciliation Officer. The question is whether in spite of this provision in cl. 23 the employer could make and the Board entertain an application under cl. 5(a) on this question of proposed dismissal. We propose to consider this question first and for that purpose assume that an industrial dispute comes into existence as soon as the employer decides to dismiss his workmen and proposes to do so and that ordinarily he can make an application in such a dispute to the Board under the provisions of cl. 5(a). If such application is decided against the employer and no permission is given to make the proposed dismissal, no difficulty arises. What however is the position if on such an application the Board makes an order granting the employer the requisite permission to dismiss his workmen? Under cl. 24 this order unless modified in appeal will be final and conclusive and shall not be questioned by any party thereto. So far as the workmen are concerned they will not be able to dispute the correctness of the order except in the mode provided in the Government order itself. What however is the position of the employer if in pursuance of the order made on his application under cl. 5(a) he discharges or dismisses his workmen? By doing so he will have clearly contravened the provisions of cl. 23, and will become liable to the severe penalty provided in cl. 26-a, penalty which might even extend to imprisonment up to three years.

To remove this incongruity, says the learned Attorney- General, apply the rule of harmonious construction and hold that cl. 23 of the order has no application when an order is made on an application under cl. 6(a). On the assumption that under cl. 5(a) an employer can raise a dispute sought to be created by his own proposed order of dismissal of workmen there is clearly this disharmony as pointed out above between two provisions viz., cl. 5(a) and cl. 23; and undoubtedly we have to apply the rule of harmonious construction. In applying the rule however we have to remember that to harmonise is not to destroy. In the interpretation of statutes the court,% always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. These presumptions will have to be made in the case of rule making authority also. On the construction suggested by the learned Attorney-General it is obvious that by merely making an application under cl. (5) on the allegation that a dispute has arisen about the proposed action to dismiss workmen the employer can in every case escape the

requirements of cl. 23 and if for one reason or other every employer when proposing a dismissal prefers to proceed under cl. 5(a) instead of making an application under cl. 23, cl. 23 will be a dead letter. A construction like this which defeats the intention of the rule making authority in cl. 23 must, if possible, be avoided.

It is hardly necessary to mention that this rule in cl. 23 was made with a definite purpose. The provision here is very similar to s. 33 of the Industrial Disputes Act before its amendment, though there are some differences. It is easy to see however that the rule making authority in making this rule was anxious to prevent as far as possible the recrudescense of fresh disputes between employers and workmen when some dispute was already pending and that purpose will be directly defeated if a fresh dispute is allowed to be raised under cl. 5(a) in the very cases where cl. 23 in terms applies.

There will be complete harmony however if we hold instead that cl. 5(a) will apply in all other cases of proposed dismissal or discharge except where an inquiry is pending within the meaning of cl. 23. We reach the same result by applying another well known rule of construction that general provisions yield to special provisions. The learned Attorney-General seemed to suggest that while this rule of construction is applicable to resolve the conflict between the general provision in one Act and the special provision in another Act, the rule cannot apply in resolving a con- flict between general and special provisions in the same legislative instrument. This suggestion does not find support in either principle or authority. The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as regards all the rest the earlier direction should have effect. In Pretty v. Solly (1) (quoted in Craies on Statute Law at p. 205, 5th Edition) Romilly, M.R. mentioned the rule thus:"The rule is, that whenever there is a particular enactment and a general enactment in the same statute and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment (1) (1859) 26 Beav. 606, 610.

must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply". The rule has been applied as between different provisions of the same statute in numerous cases some of which only need be mentioned: De Winton v. Brecon (1), Churchill v. Crease (2), United States v. Chase (3) and Carroll v. Greenwich Ins. CO. (4).

Applying this rule of construction that in cases of conflict between a specific provision and a general provision the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision, we must hold that cl. 5(a) has no application in a case where the special provisions of cl. 23 are applicable.

As in the present case an inquiry was in fact pending before a Conciliation Officer, cl. 23 applied in respect of any discharge or dismissal of a workman and the employer could not take advantage of cl. 5(a) of the Government Order and such an application could not in law be entertained by the Board.

In view of this conclusion it is unnecessary for us to consider the other question that was raised, viz., whether an industrial dispute within the meaning of cl. 5(a) comes into existence as soon as an employer decides on the dismissal of some of its workmen and proposes to give effect to such a decision.

On the above conclusions we hold that the Labour Appellate Tribunal of India rightly held that the application under cl. 5(a) filed on June 13, 1950 was not maintainable and rightly set aside the awards of the Conciliation Board and the Industrial Court. The appeal against the order of the Labour Appellate Tribunal of India is therefore dismissed. As we have already pointed out above the order made by the appellate Bench of the High Court in the writ petition was based on its acceptance of the preliminary objection that the records of the Labour Appellate Tribunal being in Calcutta could not be (1)(1858) 28 L.J. Ch. 598.

(2)(1828) 5 Bing. 177.

(3)(1890) 135 U.S. 255.

(4)(1905) 199 U.S. 401.

reached by any writ of the Allahabad High Court. In view of our conclusion that the application under cl. 5(a) was not maintainable, the appellant was on merits not entitled to any writ and on that ground the appeal against the High Court's order must also be dismissed.

It is unnecessary to consider the question whether the High Court was right in its view as regards the preliminary objection and we express no opinion on the same. Both the appeals are accordingly dismissed with costs to the contesting respondent. There will be one set of hearing fee.

Appeals dismissed.