J.K. Cotton Manufacturers Ltd., Kanpur vs J.N. Tewari And Ors. on 6 August, 1958

Equivalent citations: AIR1959ALL639, AIR 1959 ALLAHABAD 639

ORDER

V.G. Oak, J.

1. This is a petition under Article 226 of the Constitution for the issue of writs in the nature of certiorari and mandamus. Messrs. J. K. Cotton Manufacturers Limited, Kanpur are the petitioners. Sri Singhal, who is Mill Manager of the petitioner company, filed an affidavit on behalf of the petitioners.

2. According to Sri Singhal's affidavit, the petitioners are a public limited company carrying on business of the manufacture of cotton yarn at its factory at Kanpur. The company employs a number of permanent workmen. It also employs a number of substitutes and temporary workmen according to exigencies of work. 159 persons were employed by the Company as substitutes and temporary workmen, after obtaining written contracts for specific periods of service. There was shortage of raw material during the period from 17-11-1953 to 8-12-1953. No work was available for temporary and substitute workmen during this period. So substitutes and temporary workmen left service of the petitioner company.

3. On 25-1-1954, Kanpur Mazdoor Congress, Kanpur raised a dispute on behalf of the temporary and substitute workmen urging that those workmen should be permitted to go back to work. An appli-cation was made to the Regional Conciliation Officer, Kanpur for constitution of a Conciliation Board. No settlement, however, could be arrived at in the conciliation proceedings. So in 1954, U. P. Government referred the dispute to the State industrial Tribunal, U. P., Allahabad for adjudication. The Industrial Tribunal gave its award in December, 1954. The petitioner Company filed an appeal against that award D/-11-12-1954. The appeal was allowed by the Labour Appellate Tribunal of India (Lucknow Bench).

4. Thereafter the U. P. Government issued a fresh notification dated 6-2-1956 referring the dispute to adjudication by Sri J. N. Tewari, Deputy Labour Commissioner, U. P. Sri J. N. Tewari gave an award holding that the workmen in question were permanent employees. The Adjudicator directed the petitioner company to pay the workmen compensation for the period for which they remained unemployed for no fault of theirs. The present writ petition is primarily directed against the award delivered by Sri J. N. Tewari Adjudicator. It has been prayed that the award should be quashed. There is also a prayer for directing the U. P. Government to withdraw its order of reference dated 6-2-1956.

5. Sri Chandrika Prasad, who is a Member of the Executive Committee of Suti Mill Mazdoor Sabha, Kanpur, filed a counter-affidavit on behalf

-- of opposite party No. 3 (the workmen of the peti-

tioner company). Sri Satish Narain Saxena, who is Regional Conciliation Officer at Allahabad, filed a separate counter-affidavit on behalf of opposite parties Nos. 1 and 2 (Sri J. N. Tewari and U. P. Government). All the opposite parties supported the award.

6. The first contention of Mr. Gopal Swarup Pathak appearing for the petitioners was that, the U. P. Government failed to apply its mind to the question whether the dispute should be referred to adjudication by an Adjudicator instead of by the State Industrial Tribunal The Government Notification dated 6-2-1956 ran thus :

> "Whereas an industrial dispute ..... Now, therefore, in exercise of the powers conferred by ..... Clause 11 of G. O. No. .... dated 14-7- 1954, the Governor is pleased to refer the said dispute to Sri J. N. Tewari, I. A. S., Deputy Labour Commissioner, U.P., Kanpur, who shall adjudicate on the following issue ....."

The reference by U. P. Government was made under Clause 11 of Government Notification dated 14-7-1954. Clause 11 of the said notification provides for reference of disputes for adjudication, and runs) as follows:

> "Where the State Government is of opinion that any industrial dispu'e exists or is apprehended, it may at any time ..... by order in writing refer any dispute to the Industrial Tribunal, or, if the State Government, considering the nature of. the dispute or the convenience of the parties, so decides, to any other person specified in that behalf for adjudication (hereinafter called the Adjudicator)".

7. Under Clause 11 of Government Notification dated 14-7-1954, a dispute has ordinarily to be referred to an Industrial Tribunal. But in special cases the State Government may refer a dispute to adjudication by any other person. This course may be adopted if the State Government considers it expedient in view of the nature of the dispute and convenience of the parties.

8. The Government Notification dated 6-2-1956 issued in the present case does not indicate why it was considered expedient to refer the dispute to an Adjudicator rather than to an Industrial Tribunal. The Government Notification gives no indication that the State Government considered the nature of the dispute or convenience of the parties before referring the dispute to Sri Tewari for adjudication.

9. In order to meet this objection, a counter affidavit by Sri O. N. Misra was filed on behalf of the U. P. Government. Sri O. N. Misra was then the Labour Commissioner and Joint Secretary to U, P. Government in the Labour Department, In paragraph 4 of his courter-affidavit Sri O. N. Misra deposed:

> "That accordingly the Government Notification No.....dated 6-2-1956, referring the said dispute for adjudication to Sri J. N. Tewari ..... was issued by the deponent in exercise of the powers conferred ..... and the same was passed after taking into consideration the nature of the dispute and the convenience of the parties."

According to the counter-affidavit, Sri O. N. Misra took into consideration the nature of the dispute and the convenience of the parties before referring the dispute for adjudication by Sri J. N. Tewari.

10. Mr, G. S. Pathak urged that the counter-affidavit merely quotes the expression used in Clause 11 of Government Notification dated 14-7-1954. It was urged for the petitioners that, Sri Misra's counter-affidavit does not disclose details of the facts examined by him. In my opinion, it was not necessary to disclose, either in the Government Notification dated 6-2-1956 or in the counter-affidavit, details of facts from which Sri Misra concluded that it would be convenient to parties to refer the dispute to adjudication.

At one stage the dispute was referred to an Industrial Tribunal. At a subsequent stage the dispute was referred to Sri J. N. Tewari for adjudication. Parties are residents of Kanpur. ft appears that Sri J. N. Tewari, Adjudicator, also works at Kanpur. So prima facie the decision to refer the dispute to adjudication by Sri J. N. Tewari does not appear unreasonable. Sri O. N. Misra's counter-affidavit to the effect that the dispute was referred to adjudication after taking into consideration the nature of the dispute and the convenience of the parties may be accepted. The reference to adjudication was in accordance with Clause 14 of Government Notification dated 14-7-1954.

11. Mr. G. S. Pa'thak's second contention was that the reference was vague. The matter of dispute referred to adjudication was described in the Government Notification dated 6-2-1956 thus:

> "Whether the employers have wrongfully and/ or unjustifiably kept their workmen given in the Annexure unemployed from the various dates, mentioned against their names, up to 31-1-1954? If so, to what relief are the workmen entitled? The Government Notification contained an Annexure containing names of 159 workmen. Various dates were noted in Column 6 of the Annexure.

12. Mr. Pathak contended that the Government Notification did not disclose the period, for which each workman remained unemployed due to the fault of the petitioners. This contention is not correct. The date of commencement of the period o£ unemployment was noted against the name of each workman in the Annexure. For example, the date noted against Shyam Sunder's name was 21-1-1953. According to the Government Notification, the period of unemployment ended on 31-1-1954. Thus according to the Govt. notification Shyam Sunder remained unemployed from 21-1-53 to 31-1-54. The period of unemployment was thus specified for each workman. There was no vagueness on the point.

13. In this connection, Mr. Pathak pointed out that the periods of unemployment noted in the Government Notification are not correct. For example, the Government Notification gave the impression that Shyam Sunder remained unemployed for a period exceeding one year. But that was

not the true position. When this matter was examined by the Adjudicator, he found that the period of unemployment commenced from some date after 20-11-1953. The period ended on 31-1-1954. It was not, therefore, correct to say that Shyam Sunder remained unemployed from 21-1-1953 to 31-1-1954.

14. The reference made by U. P. Government in the year 1954 also suffered from such a defect. For that reason the award given by the Industrial Tribunal was set aside by the Labour Appellate Tribunal of India. Annexure 'B' to the petition is a copy of the judgment of the Labour Appellate Tribunal dated 14-9-1955. In the previous order of reference the matter of dispute referred to the Tribunal ran thus :

> "Whether the employers have wrongfully and/ or unjustifiably kept their workmen given in the annexure unemployed on the various dates mentioned against their names? If so, to what relief are the workmen entitled?"

The order of reference did not specify the date of termination of the period of unemployment. The Tribunal itself looked into the point, and fixed 31-1-1954 as the date of termination of the period. The Labour Appellate Tribunal took exception to this procedure. The Appellate Tribunal held that the Industrial Tribunal ought to have referred the matter back to the State Government for clarification.

In the order of reference dated 6-2-1956, 31-1-1954 was expressly mentioned as the date of termination of the period of unemployment. So the defect in the present reference is not so serious as that in the previous reference. It appears that when the matter was examined by Sri J. N. Tewari, there was no serious dispute between the parties about the period for which the workmen remained unemployed. The petitioners do not appear to have been prejudiced due to the fact that the periods of un-employment were wrongly described in the order of reference dated 6-2-1956. It is not, therefore, necessary to interfere with the order of reference.

15. Mr. G. S. Pathak's main contention was that the removal of the workmen was in accordance with their contracts. The Adjudicator noted that it was admitted by the workmen before him that all the workmen are made to sign certain forms at the time of recruitment. Annexure 'A' to the petition is the specimen form. The prescribed form is in Hindi. It may be translated in English thus :

> "To The Director, J. K.. Cotton Manufacturers Ltd., Kanpur.
>
> Sir, I wish to serve in your Mill. The Standing Orders of the Company have been fully explained to me. I shall always follow them as long as I serve in the Mill, I fully understand that I am being engaged as a temporary workman, and that I shall be given work only when necessary. It has been clearly explained to me that the period of my service is from today dated ..... up to date .....
>
> only. The Company can discharge me without notice or wages in lieu of notice, on or before .....

> whenever my services are not required. I shall have no objection whatsoever on being then discharged from service. I have understood the matters noted above, and I accept them voluntarily."

16. At the commencement of the prescribed form there is a reference to Standing Orders. In the next sentence it is stated that the applicant was being engaged as a temporary worker. This matter is further clarified by other provisions contained in the prescribed form. There is a clear indication in the prescribed form that, notwithstanding Standing Orders, the employee has the status of a temporary workman. Each of the 159 workmen signed this form before joining service. Signing the prescribed form amounted to a contract of employment.

17. The Adjudicator was aware of the existence of these contracts entered into by the workmen before joining service. But the Adjudicator thought that these contracts had to be ignored for various reasons. The Adjudicator examined the various forms filled up by the workmen, and noticed that the form contained an expression "temporary substitute". The irrelevant word was struck off at the time of filling the form. The Adjudicator noticed that the striking off did not bear initial. Further, in some of the forms the word, which did not apply in that case, had not been struck off. Now, upon the terms of the special agreements, it did not matter whether a workman was described as a substitute or a temporary worker. The important condition was that the employee could be discharged without notice whenever the Company decided that there was no sufficient work for him.

18. The Adjudicator observed in his award:

> "At the time of giving employment to a worker the employer is definitely in a strong bargaining position and he can easily get any number of forms prescribed which may or may not determine the real nature of the employment of a worker." In the first place it is difficult to make a general statement to the effect that every employer is in a strong bargaining position. Secondly, even if it is assumed that the employer is in a strong bargaining position, it does not follow that a contract entered into by an employee is to be ignored. According to Section 19 of the Indian Contract Act, "when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable ait the option of the party whose consent was so caused."

19. Now, the fact that one party was in a strong bargaining position does not establish coercion, fraud or misrepresentation. So the contract could not be avoided on that ground.

20. The main consideration that weighed with the Adjudicator was the existence of the Standing Orders. The relevant Standing Orders have been published in the Annual Review of Activities, 1953, Parts I and II, issued by the Department of Labour, U. P.. at page 685. Operatives have been classified in Clause 3 of the Standing Orders. A substitute and a temporary operative have been defined in Sub-clauses (d) and (e) of Clause 3 of the Standing Orders. According to Sub-clause (d), a "Substitute" is one whose name is entered in the Register of Substitutes and who is employed on the post of a permanent operative or probationer, who is temporarily absent on leave or otherwise.

According to Sub-clause (e) of Clause 3, a "temporary" operative is one who is engaged for work of an essentially temporary character.

21. The Adjudicator examined the nature of work performed by the 159 workmen, and concluded that they were engaged in performing work of permanent character. Whether the work was of temporary or permanent character is a question of fact. The Adjudicator's finding of fact may be accepted. If the workmen were employed in performing work of permanent character, the workmen could not be described as substitutes or temporary operatives as defined by the Standing Orders. It must, however, be remembered that, these definitions are for purposes of the Standing Orders only.

22. Thus we find that according to the written contracts entered into by the workmen, they were substitutes or temporary employees. On the other hand, according to the definitions contained in the Standing Orders, they could not be described as substitutes or temporary operatives. The question is; which of these two descriptions should prevail?

23. The Standing Orders in question have been framed as provided in the Industrial Employment (Standing Orders) Act, 1946 (Act No, XX of 1946). The preamble of Act No. XX of 1946 runs thus:

> "Whereas it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them."

It is true that Standing Orders lay down the conditions of employment. But it does not follow that conditions of employment cannot be laid down in any other manner. Section 12 of the Act bars oral evidence in contradiction of Standing Orders. But I do not find any provision prohibiting written agreements. So. in spite of Act XX of 1946 and Standing Orders framed under the Act, it is open to an employer and an employee to enter into a special contract.

24. Standing Orders lay down general conditions of employment. A written agreement may contain special terms of service. In the case of a conflict between general conditions of employment contained in Standing Orders and special terms contained in a written contract, the terms of the special contract will prevail. The result is that the employment of the 159 workmen in the present case was of a temporary character as specified in An-nexure 'A' to the petition.

25. In paragraph 26 of the award the Adjudicator observed:

> ".....All the 159 workers remained unemployed through an arbitrary action of the employers on most of the days from the beginning of the period in reference up to 10-12-1953." This criticism is not borne out by the Adjudicator's finding given in paragraph 30 of the award. The Adjudicator observed in paragraph 30 of the award:
>
> "..... I am satisfied that during the disputed period there was a shortage of raw material which resulted in less production and compelled the management to reduce the staff."

If the management was compelled to reduce the staff due to shortage of raw material, the conduct cannot be described as an arbitrary action of the employers. The Company was entitled to discharge the temporary workmen on finding that there was no work for them. Since the discharge of these workmen was in accordance with the special agreements, the Adjudicator could not award any compensation to them.

26. In Bajpai v. Labour Appellate Tribunal of India, 1957-2 Lab LJ 15 (All), it was held by Desai, J. that, so far as the ordinary law of contract is not repealed or altered in relation to industrial disputes, it must be applied by an Industrial Tribunal while adjudicating an industrial dispute. If an Industrial Tribunal can disregard the ordinary law of contract, it is only by virtue of a power expressly conferred upon it by the Industrial Dis-pu'es Act. It cannot exercise any powers not conferred upon it by the Industrial Disputes Act.

27. In Bharat Bank Ltd. v. Employees of Bharat Bank Ltd., AIR 1950 SC 188, Mahajan, J. observed on page 204 that benevolent despotism is foreign to a democratic Constitution.

28. In Western India Automobile Association v. The Industrial Tribunal, Bombay, AIR 1949 FC 111, it was held by the Federal Court on page 120 that adjudication does not mean adjudication according to the strict law of master and servant. The award of the Tribunal may contain provisions for settlement of a dispute which no Court could order if it was bound by ordinary law, but the Tribunal is not fettered in any way by these limitations. Industrial arbitration may involve the extension of an existing agreement or the making of a new one, or in general the creation of new obligation or modification of old ones.

29. This decision of the Federal Court was quoted with approval by their Lordships of the Supreme Court in J. K. Iron and Steel Co. v. Maz-door Union, (S) AIR 1956 SC 231. At p. 235 Bose, J. observed thus : --

> "All the same, wide as their powers are, these Tribunals are not absolute, and there are limitations to the ambit of their authority ..... Their powers are derived from the statute that creates them and they have to function within the limits imposed therein and to act according to its provisions. Those provisions invest them with many of the 'trappings' of a Court and deprive them of arbitrary or absolute discretion and power."

30. In Rohtas Industries Ltd. v. Brijnandan Pandey, (S) AIR 1957 SC 1, their Lordships explained that the discretion which an Industrial Tribunal has must be exercised in accordance with well recognized principles. Industrial arbitration may involve the extension of an existing agreement, or the making of a new one, or in general the creation of new obligations or modifications of old ones. The Courts reach their limits of power when they enforce contracts which the parties have made. An Industrial Tribunal is not so fettered and may create new obligations or modify contracts in the interests of industrial peace, to protect legitimate trade union activities and to prevent unfair practice or victimisation. But an Industrial Tribunal cannot ignore altogether an existing agreement or existing obligations for no rhyme or reason whatsoever.

31. In the present case the adjudicator was aware that the special agreements supported the employer, whereas the Standing Orders supported the employees. If the Adjudicator gave any reasonable ground for ignoring the special agreements, his award could perhaps be allowed to stand. But the Adjudicator did not give any such valid ground. He proceeded on the footing that, in view of the Standing Orders, the special agreements could not be given effect to. As explained above, the view taken by the Adjudicator is erroneous.

32. The question now arises whether the mistake committed by the Adjudicator justifies interference by issuing a writ in the nature of certiorari. The principle underlying the issue of a writ in the nature of certiorari is well settled. In Hari Vishnu Karnath v. Ahmad Ishaque, (S) AIR 1955 SC 233, their Lordships of the Supreme Court explained that a writ of certiorari can be issued to correct an error of law. But it is essential that it should be something more than a mere error. It must be one which must be manifest on the face of the record.

33. In Registrar University of Allahabad v. Dr. Ishwari Prasad, AIR 1956 All 603, the principle was explained by Mehrotra, J. on page 608 in these words :

> "Having declared what the law is on which the decision of a particular controversy depends, it is for the superior Court to examine the decision of an inferior Tribunal and see if the said law has been correctly followed by the inferior Tribunal. If it finds on the face of the order, which is a speaking order, that it had not observed the law as determined by the superior Tribunal inasmuch as it has held contrary to that law, it can quash the order of the inferior Tribunal."

34. In Nagenclra Nath v. Commissioner of Hills Division, AIR 1958 SC 398, their Lordships of the Supreme Court explained that, one of the grounds on which jurisdiction of the High Court on certiorari may be invoked, is an error of law apparent on the face of the record, and not every error either of law or fact, which can be corrected by a superior Court in exercise of its statutory powers as a Court of appeal or revision. Its purpose is only to determine, on an examination of the record, whether the inferior tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer. Mere formal or technical errors, even though of law, will not be sufficient to attract this extraordinary jurisdiction.

35. In the present case the Company engaged the 159 workmen after obtaining their signatures on the prescribed forms. Under these special agreements, the employment of these workmen was of a temporary character. They could be discharged without notice, In November and December 1953 sufficient raw material was not available. So the Company discharged the temporary workers. This is not a case of victimization. There was no justification for compulsory reinstatement of these workmen, The mistake committed by the "Adjudicator can be seen upon a perusal of his award and the special agreement in the prescribed form. This is an error apparent on the face of the record. It is very hard upon the employer to compel him to take back so many workmen, when there was no work for them. This is, therefore, a tit case for quashing the award by issuing a writ in the nature of certiorari.

36. I have shown above that there was no serious defect in the order of reference made by U. P. Government. It is not, therefore, necessary to interfere with the reference itself. In view of my finding that the employment of the workers was of temporary character, it seems doubtful whether there is much point in proceeding with the reference. Since the petition has substantially succeeded, the petitioners are entitled to get costs,

37. The petition is partly allowed. The award made by Sri J. N. Tewari, opposite party No. 1, in Adjudication Case No. 20 of 1956 is quashed. The petitioners shall get their costs, which I assess at Rs. 400/-, from opposite parties Nos. 2 and 3. Half the cost shall be paid by opposite party No. 2, and half the costs shall be paid by opposite party No. 3. The opposite parties shall bear their own costs.