

(1976) 10 P&H CK 0044
In the Punjab And Haryana At Chandigarh

Algu Ram

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 11-10-1976

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12, 2A, 39

Citation : (1977) 2 LLJ 207

Hon'ble Judges : O. Chinnappa Reddy, J;M.R. Sharma, J

Bench : Division Bench

Judgement

O. Chinnappa Reddy, J.—The General Secretary, Labour Union, Gobindgarh, issued a notice to (i) The manager, M/s. Bhiman Steel Rolling Mills, Gobindgarh; and (ii) the Conciliation Officer, Ludhiana, which was as follows:

We hereby tender the following demands notice against M/s. Bhiman Steel Rolling Mills, Gobindgarh:

That the management has wrongfully terminated the services of Shri Algu Ram, tongaman, on 19.4.67 without any rhyme and reason.

The union demands that his wrongful termination be set aside and he should be reinstated on his old post with compensation for the period of forced unemployment.

2. On the failure of the conciliation proceedings the Labour Commissioner, Punjab, made a reference to the Labour Court, Jullundur, for adjudication of the following dispute:

Whether the termination of services of Shri Algu Ram, tongaman, by the management is justified and in order? If not to what relief/exact amount of compensation is he entitled?

The Labour Court held that the action of the management in terminating the services of Algu Ram was mala fide and illegal and that the workman was entitled to be reinstated with back wages.

3. The management filed Civil Writ Petition No. 3357 of 1968 questioning the award of the Labour Court primarily on the ground that the reference by the Labour Commissioner was itself without jurisdiction as the dispute was raised by the union and it was, therefore, a collective dispute and not dispute between an individual workman and management. According to the management only individual disputes could be referred by the Labour Commissioner for adjudication and not collective disputes. Reliance was placed upon the decision of Balraj Tuli, J., in *British India Corporation Ltd. v. Mohd. Sadiq* (1953) 44 F.J.R. 43. This contention was accepted by the learned single Judge and the award of the Labour Court was quashed. The workman Algu Ram, has preferred this appeal under clause "X" of the Letter Patent.

4. The conclusion of the learned single Judge that the dispute was a collective dispute and not an individual dispute was based solely on the circumstance that the demand notice was sent by the union and not by the individual workman, the underlying assumption being that there should first be a demand notice by the individual workman concerned before it could be said that there was an individual dispute within the meaning of Section 2A of the Industrial Disputes Act, We are unable to hold that the issue of a notice of demand is a condition precedent to the reference of an industrial dispute for adjudication. The statute does not prescribe any such condition precedent. On the other band, Section 10 of the Industrial Disputes Act is clear that even an apprehended dispute may be referred for adjudication: *Vide State of Madras Vs. C.P. Sarathy and Another*, . A dispute may exist or may be apprehended even without a formal demand having been made upon the management. The existence of a dispute or an apprehended dispute is a question which has to be answered on the facts of each case by the Tribunal with reference to the evidence adduced before it, if such a question is raised before the Tribunal It is true that in *Sindhu Resettlement Corporation v. Industrial Tribunal Gujarat* (1967) 33 F.J.R. 332, Bhargava, J., observed (at page 30):

...An industrial dispute, as defined, must be a dispute between the employers and employees, employers and workmen, and workmen and workmen. A mere demand to a Government, without a dispute being raised by the workmen with their employer, cannot become an industrial dispute.

It will be seen that Bhargava, J., did not stipulate that a reference of an industrial dispute for adjudication must necessarily be preceded by a formal demand made upon the management. All that was Said was that a demand addressed to the Government would not by itself create an industrial dispute, if in fact there was no dispute between the management and the workmen. The observations of Bhargava, J., have to be understood in the context of the circumstance that the workmen had demanded retrenchment compensation from the management in the claim put forward before the management, but the demand put forward before the Government was for reinstatement and it was the question of reinstatement that was referred by the Government for adjudication. Thus the

question referred by the Government for adjudication was not the question in regard to which there was a dispute between the management and the workmen. However, the observations of the Supreme Court have been understood by the Delhi High Court in *Fedders Lloyd Corporation Private Limited v. Lieutenant Governor Delhi* (1969) 37 F.J.R. 69, as establishing finally the position that a demand by the workmen must be raised first on the management and rejected by them before an industrial dispute can be said to arise and exist and that the making of such a demand to the Conciliation Officer and its communication by him to the management, who reject the same is not sufficient to constitute an industrial dispute. We are unable to agree with the view expressed by the Delhi High Court. We agree that what has been said by the Rajasthan High Court in *Goodyear India Ltd. v. Industrial Tribunal Jaipur* (1968) 35 F.J.R. 305 and *Rodio Foundation Engineering Ltd. v. State of Bihar* (1969) 39 F.J.R. 461, regarding the fleet of the observations of Bhargava, J., in *Sindhu Resettlement Corporation v. Industrial Tribunal Gujarat* (1967) 33 F.J.R. 332. In the Patna case *Untwalia, J.*, observed (at pages 471-472):

...I may also add that I am inclined to think that the sine qua non of the exercise of the power u/s 10 of the Act is that in the opinion of the appropriate Government any industrial dispute must exist or there must be an apprehension in regard to that. In all cases it is not necessary that the dispute must be preceded by a demand and a refusal in express terms by the parties concerned. If on the evidence adduced before the Tribunal it is found that the industrial dispute did not exist or was not apprehended, the reference may be held to be incompetent. But, at this stage, to say that merely because in express terms no such dispute was raised before the management by the workmen, there was in fact no dispute and hence the reference is incompetent, will not be correct. The question of the existence of a dispute or an apprehended one has got to be decided with reference to the facts of each case. If merely the workmen make a demand before the Government that they are entitled to get such and such wages or such and such amount of bonus, without making this demand before the management, it can be legitimately said, if I may say so with respect, as was said by a Bench of this Court in the case of *Members of the Sasamusa Workers Union Vs. State of Bihar and Others*, , that no dispute had actually cropped up, because no demand was made before the management, there was no refusal of the demand and hence there was no dispute.

It may also well be that if a different kind of demand is made before the management and the reference is of a different kind, then also the reference is incompetent, as was the case before the Supreme Court in *Sindhu Resettlement Corporation Ltd. v. Industrial Tribunal Gujarat* (1967) 33 F.J.R. 332.

We respectfully agree with *Untwalia, J.*

5. The learned single Judge, and *Balraj Tuli*, who decided the *British India Corporation Ltd. v. Mohd. Sadiq* (1973) 44 F.J.R. 433, held that there was no dispute between the individual workman and the management as contemplated

by Section 2A of the Industrial Disputes Act, which could be referred for adjudication by the Labour Commissioner, since it was espoused by the union and it, therefore, became a collective dispute. We are unable to agree with the view expressed by Balraj Tuli, J., which was followed by the learned single Judge.

6. Before the Industrial Disputes Act was amended by the introduction of Section 2A by Act XXXV of 1965 the Courts had taken the view that a dispute between an individual workman and the management would not be an industrial dispute unless it was espoused by the other workmen. Since it was not an industrial dispute, it was held that it could not be referred to an Industrial Tribunal for adjudication. To overcome this difficulty at least to the extent of termination of the services of an individual workman, the Industrial Disputes Act was amended in 1965 by introduction of Section 2A, which runs as follows;

2A. Dismissal, etc, of an individual workman to be deemed to be an industrial dispute.-Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workman is a party to the dispute.

The Government of Punjab, in exercise of its powers u/s 39 of the Industrial Disputes Act, issued a notification dated August 11, 1967, empowering the Labour Commissioner to exercise the powers exercisable by the State Government under Sections 10 and 12(5) of the Industrial Disputes Act in relation to an industrial dispute falling u/s 2A of the Act. It was in pursuance of the powers so conferred that the Labour Commissioner referred the dispute for adjudication in the present case. The view of the learned single Judge was that the dispute did not fall within Section 2A as it had been espoused by the union. The language of Section 2A does not appear to support the conclusion of the learned single Judge. The employer had terminated the services of an individual workman. There was a dispute between the workman and the employer in connection with the termination of services, though a notice of demand was issued not by the workman himself, but by the union, apparently on his behalf. The espousal by the union of the dispute between the workman and the employer would not take it out of Section 2A merely on that account. The espousal by the other workman may also make it a collective dispute, but it does not on that account cease to be a dispute between the individual workman and the management. What Section 2A really means is that a dispute between an individual workman and the management in regard to the termination of the services of the workman shall be deemed to be an industrial dispute, whether or not other workmen join the dispute. It does not mean that so soon as other workmen join the dispute it goes out of the purview of Section 2A. In this view we disagree with what has been said by the learned single Judge and Balraj Tuli, J., in *British India Corporation Ltd. v. Mohd. Sudiq* (1973) 44 F.J.R. 433. The

judgment of the learned single Judge is, therefore, reversed and the award of the Labour Court is affirmed. The workman is entitled to get his costs both in the Civil Writ Petition and in the Letters Patent Appeal. The appeal is allowed.

M.R. Sharma, J.

I agree.