

(1962) 01 SC CK 0027

In the Supreme Court Of India

Case No : Civil Appeal No. 23 of 1961

Aluminium Factory Workers" Union

APPELLANT

Vs

Indian Aluminium Co., Ltd.

RESPONDENT

Date of Decision : 24-01-1962

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 10(4), 19(6)

Citation : (1962) KLJ 347

Hon'ble Judges : K.N. Wanchoo, J;Gajendragadkar, J;A.K. Sarkar, J

Bench : Full Bench

Advocate : A.V. Viswanatha Sastri and Sardar Bahadur, for the Appellant; C.K. Daphtary, Solicitor-General of India and M.R. Krishna Pillai, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sarkar, J.—The Appellant is a union of the workmen of the Indian Aluminium Co., Ltd., the Respondent in this appeal. The appeal concerns certain industrial disputes. The question raised is whether the order of reference of these disputes under the Industrial Disputes Act, 1947, was competent. It appears that on 28 March 1951, the Government of the State of Travancore-Cochin which later became the State of Kerala, made under the Act two orders of reference of certain industrial disputes between the company and its workmen. The first order of reference concerned disputes between the company and its workmen, represented by a union called the factory staff association and the second concerned disputes between the company and its workmen represented by the Appellant union. After various proceedings these disputes were settled and awards by the industrial Tribunal concerned were made on 19th January 1952 in terms of settlements arrived at. In the case in which the stall" association was concerned, the dispute referred included two points namely:

(1) Was the refusal to promote pot room supervisor P.C. Markose as foreman unjust? and

(2) Does the transfer of M.P. Mathai and C.A. Augustine from the pot room department to the chemical laboratory amount to alteration of the conditions of service to the prejudice of pot room supervisors?

The settlement with regard to the first of these disputes was in these terms :

The principle that supervisors and other employees in the company above their grade are not workmen within the meaning of the Industrial Disputes Act of 1947 is accepted and accordingly, the Indian Aluminium factory staff association undertakes forthwith to exclude all such employees from their membership and inform the fact to the employers in writing. On receipt of the same, the employers shall promote P.C. Markose as a foreman effective from 1st October 1951 on a foreman's initial basic salary plus rupees twentyfive.

The dispute concerning Mathai and Augustine was given up by the settlement.

2. In the second reference in which the Appellant union was involved, two of the terms agreed to were as follows:

(1) The principle that supervisors and other employees in the company above their grade are not workmen within the meaning of the Industrial Disputes Act, 1947, is accepted and accordingly the Aluminium Factory workers' union undertakes to exclude all such employees from their membership.

(2) The employers agree to make an ex gratia payment of rupees twenty each to all workers whose basic wage is rupees one hundred and fifty per month or less on 31st December, 1951.

It is quite obvious that the two references were settled together by one scheme of agreement, and formed one connected whole, the settlement in each case being a consideration for the other.

3. Sometime after the aforesaid awards, the said Mathai was discharged and thereupon the Appellant union raised an industrial dispute concerning it. On 14th July 1954, the Government of Travancore-Cochin made an order u/s 10 of the Industrial Disputes Act, 1947 referring for adjudication the question whether the discharge of Mathai was justifiable and if not, to what relief he was entitled, to the Industrial Tribunal, Ernakulam.

4. When the matter came up for hearing before the Tribunal, the company took three preliminary objections against the reference, namely:

(a) Mathai was not a workman and hence the reference was not competent;

(b) in view of the aforesaid awards, dated 19th January 1952, the workmen were precluded from contending that Mathai was a workman; and

(c) that in any view of the matter there can be no reference or adjudication except after the termination of the aforesaid earlier awards u/s 19(6) of the Industrial Disputes Act.

The Tribunal decided these preliminary objections against the company and proposed to proceed with the reference. The company then moved the High Court of Kerala under Article 226 of the Constitution for an order quashing the reference on the same grounds.

5. The High Court did not decide the first two preliminary objections but quashed the reference on the ground that there could be no reference till the awards had been terminated by notice u/s 19(6) as till then it had to be held in view of the settlement that Mathai was not a workman within the meaning of the Act as it stood in 1954. It had not been disputed before the High Court that Mathai was not a supervisor, nor that no notice terminating the awards had been given. The present appeal is from the judgment of the High Court.

6. Sri Sastri appearing for the Appellant union first contended that "supervisors" mentioned in the awards of 19th January 1952 did not include Mathai and therefore the awards did not bind him. He relied for this purpose on certain departmental orders issued by the company in 1953 which stated that only foremen and supervisory staff above the category of foreman were included in the term "supervisory" and that they formed part of the management. It appears from the evidence that Mathai held a post below that of a foreman. There is no reason to doubt this evidence. Sri Sastri therefore, contended that Mathai was not a supervisor within the meaning of the earlier awards. It seems to us that this contention is unsound. The departmental orders were of the year 1953, that is to say, of later dates than the awards of 1952. These departmental orders cannot therefore prove that Mathai was not a supervisor in 1952. The awards clearly show that Markose who held the post below that of a foreman was considered to be a supervisor. Likewise they indicate that Mathai was, at the date of the awards, a supervisor. The evidence also shows that there were two types of supervisory staff, one below and one above foreman. The fact that Mathai held a rank below that of a foreman did not show that he was not a supervisor. Sri Sastri's first point must therefore fail. So long as the awards of 1952 are not terminated, it cannot be contended that Mathai was a workman. On that basis the reference would be incompetent and, therefore, liable to be quashed.

7. Sri Sastri next contended that the award in the reference to which the Appellant union was a party, in so far as it provides that supervisors would not be workmen was outside the order of reference and was, therefore, of no effect in view of the provisions of Section 10(4) of the Industrial Disputes Act. That section provides that where in an order of reference to an Industrial Tribunal, the Government have specified the points of dispute for adjudication, the Tribunal shall confine its adjudication to those points and matters incidental thereto. It is said that one of the awards though by compromise, in, so far as it decided that supervisors are not workmen was neither within the points of reference nor incidental thereto and was, therefore, to this extent, of no effect. That is the award to which the Appellant union was a party and it is that union only which is contending that Mathai is a workman. This union, it is said, is therefore not

prevented by the award from contending that Mathai though a supervisor was a workman. We are unable to accept this contention. It seems to us that the provision in the award that supervisors shall not be deemed to be workmen was clearly incidental to the points of reference. One of the points of reference resulting in the earlier award to which the staff association was a party was whether Markose, a supervisor, should have been promoted as foreman. The company agreed to promote Markose as a foreman only on the condition that the union would accept the principle that no supervisor would be considered to be a workman. In fact the award provided that promotion would be given to Markose only after the workmen had excluded him from their union. The award settled this point by providing for the promotion of Markose as foreman on the condition that the workmen agreed that supervisors would no longer be regarded as workmen. The company would not have agreed to promote Markose as a foreman unless the workmen had agreed that supervisors would no more be considered to be workmen. One provision was the consideration for the other. Hence the provision that supervisors would not be workmen was clearly incidental to the dispute referred. Again it was as a part of the entire settlement that the dispute concerning Mathai, who was also a supervisor, was abandoned. The two awards had obviously been made together and were connected with each other. Both awards were made in respect of disputes with workmen of the same employer. The Tribunal has recorded that the disputes in the two references had been settled by a joint agreement. The award concerning the Appellant union contained the same provision that supervisors would not be regarded as workmen. It was because of this that the workmen had been given certain ex gratia payment. The learned Solicitor General appearing for the Respondent drew our attention to certain correspondence which passed before and after the awards. This correspondence shows that the Appellant union and the staff association of the company fully accepted the principle that supervisors would no longer be regarded as workmen and that all the supervisors had resigned from membership of the workmen's unions. Indeed one of the letters that the staff association and the workers' union jointly wrote to the company's works manager shows that in terms of the award Markose and Mathai had been excluded from the unions. This is clear evidence that Mathai was a supervisor and further that the provision that supervisory staff should not be regarded as workmen was incidental to the points of reference also in the matter in which the Appellant union was a party.

The result is that this appeal fails and is dismissed with costs.