
(1959) 07 MAD CK 0020
In the Madras High Court
Case No : Writ Appeal No. 115 of 1957

Arya Bhavan, Madras

APPELLANT

Vs

M.S. Narayana Rao and Another

RESPONDENT

Date of Decision : 31-07-1959

Acts Referred:

Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 10, 10(1), 22, 23
Industrial Disputes Act, 1947 — Section 33

Citation : AIR 1960 Mad 143 : (1959) 2 LLJ 622

Hon'ble Judges : P.V. Rajamannar, C.J; Ganapatia Pillai, J

Bench : Division Bench

Judgement

P.V. Rajamannar, C.J.

(1) This is an appeal against the judgment of Rajagopalan J. dismissing a petition filed by the appellant under Art. 226 of the Constitution for the

issue of a writ of certiorari to quash an order of the Chairman, Central Government Industrial Tribunal, Madras, dated 23-3-1956 in the following

circumstances. The appellant is the management of a Restaurant carrying on business in Madras under the name and style of Arya Bhavan. In

1953, the appellant dismissed one of its employees, one Janardhana Bhatt on the ground that he was engaged in a scuffle with a customer of the

restaurant and assaulted him in the course of the quarrel.

This led to a reference by the Government of Madras of an industrial dispute between the workers and the management of Arya Bhavan, Madras

with respect to the justification of the dismissal of the said Janardhan Bhatt. The workers were represented by the City Hotel Workers

Association. The Industrial Tribunal made an award that the dismissal of Janardhana Bhatt was unjustified and directed that he should be reinstated

with back wages from the date of his dismissal to the date of his reinstatement.

The Government duly notified the award by their order dated 27-1-1954. Against this award the appellant preferred an appeal to the Labour

Appellate Tribunal, Madras on 25-2-1954. While the appeal was pending the appellant dismissed on 29-4-1954 the contesting respondent, M. S.

Narayana Rao, on the ground that he was found guilty of stealing. Thereupon the respondent filed an application before the Labour Appellate

Tribunal under S. 23 of the Industrial Disputes (Appellate Tribunal) Act, 1950.

That application was eventually disposed of by the Chairman, Central Government Industrial Tribunal, Madras by his order dated 23-3-1956.

Before the Appellate Tribunal objection was raised by the management that the respondent was not entitled to file an application as he was not a

workman concerned"" in the appeal but this objection was overruled. The Appellate Tribunal went into the merits of the case also and held that the

dismissal of the respondent was not justified. The Tribunal, therefore, directed the management to reinstate the respondent and pay him arrears of

wages.

To quash this order the appellant filed a petition from which this appeal arises. The main ground taken before Rajagopalan J. before whom the

petition came on for final disposal was that the respondent was not entitled to file any application as he would not be a ""workman concerned"" in the

appeal pending before the Appellate Tribunal in the matter of Janardhana Bhatt. Rajagopalan J., held against the appellant. hence this appeal.

(2) Section 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950 (Act XLVIII of 1950), runs thus:

During the period of 30 days allowed for the filing of an appeal under S. 10 or during the pendency of any appeal under this Act, no employer

shall--(a) alter to the prejudice of the workmen concerned in such appeal, the conditions of service applicable to them immediately before the filing

of such appeal or (b) discharge or punish whether by dismissal or otherwise, any workmen concerned in such appeal save with the express

permission in writing of the Appellate Tribunal."" The contention of Mr. R. M. Seshadri, learned counsel for the management was that the appeal

pending before the Appellate Tribunal related to the propriety of the dismissal of a single workman and it cannot be said that any other workmen

were concerned"" in such an appeal. His contention is thus set out in the affidavit filed by the appellant:

In this case the first respondent is in no manner and by no means connected with or concerned in the appeal pending before the Labour Appellate

Tribunal which was in relation to the personal misconduct of an employee of the petitioner involved in an incident of beating a customer.

On behalf of the workers it was contended that a restricted meaning should not be given to the expression ""workmen concerned"" such appeal. As

the workers in the Arya Bhavan hotel were parties to the appeal pending before the Appellate Tribunal and the first respondent was one of such

workers he was also concerned in the said appeal. Both the learned counsel referred us to several decisions of the Industrial Tribunals and to a

reported decision of Rajagopalan J. After a consideration of all these decisions we have come to the conclusion that the question whether a

particular workman is or is not a ""workman concerned"" in an appeal pending before the Labour Appellate Tribunal is a question of fact.

In some of these decisions it has been pointed out that the word used is ""concerned"" and not ""interested"". Obviously there is a difference in the

meaning of the two words. ""Concerned"" connotes a more intimate and direct relation to the matter than the word ""interested"". The distinction can

well be brought out by giving a concrete instance. If a dispute arises between the management and the workers of a particular industrial

establishment, say as regards the principles on which bonus should be granted it would be not inappropriate to say that even workers in other

industrial establishments are also ""interested"" in the result of the adjudication.

If the matter were to be taken up to a higher court like the High Court or the Supreme Court the interest would be all the greater because if this

Court or the Supreme Court were to say down certain principles they would govern not only the particular establishment but every other

establishment as well. But it will not be right to say that the workers of all the other establishments are workers ""concerned"" in the pending

reference or pending appeal. It is, therefore, necessary to give to the word ""concerned"" a more restricted meaning than to the word ""interested"".

(3) There may be cases in which it would be easy to hold that certain workmen are not concerned in the pending appeal, arising out of a particular

dispute. It has been held for instance that where a dispute relates to the payment of bonus for a particular year, say, 1954-55, the workmen who were employed subsequent to that period would not be "workmen concerned" in the appeal relating to the question of bonus for that year. Vide

Kalachan Talukdar v. Standard Vacuum Oil Co., 1956 1 Lab LJ 616 and also Shankar Rao Domajee v. Model Mills Ltd., Nagpur, 1956 1 Lab LJ 433.

It is equally clear that if a particular company has several branches dealing with different categories of business, workmen employed in one

department would not be concerned in a dispute between the management and the workers of quite a different department. In Bathi Bhura v.

Associated Cement Companies Ltd., 1954 1 Lab LJ 674, it was held that workmen employed in certain quarries (mines) would not be workmen

concerned in a dispute between the workers in a cement factory and the management of that factory though the same company was the proprietor

of both the cement works and the quarries. A similar instance of such a case is found in Jawahar Mills Ltd., Salem v. Subbarayan, 1954 1 Lab LJ

248.

(4) A real difficulty arises when a reference is made by the Government of a dispute which relates to the dismissal or retrenchment of one of a few

of the workers and the dispute is taken up by all the workers represented by their union. It is now well established that the Government cannot

make a reference of a dispute between one employee and the management. It is necessary that the employee's case must be taken up by all the

workers collectively. That is why in several references including that relating to Janardhana Bhatt though the subject-matter for adjudication is the

propriety or the validity of the dismissal of one worker the actual reference to the Tribunal is of an industrial dispute between the workers and the

management of the establishment.

In this sense the workmen, and not only the particular workman who has been dismissed, are parties to the appeal. In this context the observations

of Das J., as he then was in the decision of the Supreme Court in The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others, , as

regards the object of S. 22 of 1950 Act, should be borne in mind. It is true that case the Supreme Court was not called upon to decide the precise

scope of the expression ""workmen concerned in such appeal."" But the object of the section as explained by His Lordship throws considerable light

on the meaning to be attached to the expression ""workmen concerned in such appeal."" His Lordship said:

The object of S. 22 of 1950 Act like that of S. 33 of the 1947 Act as amended is to protect the workmen concerned in disputes which form the

subject-matter of pending proceedings against victimisation by the employer on account of their having raised industrial disputes or their continuing

the pending proceedings. It is further the object of the two sections to ensure that proceedings in connection with industrial disputes already

pending should be brought to a termination in a peaceful atmosphere and that no employer should during the pendency of these proceedings take

any action of the kind mentioned in the sections which may give rise to fresh disputes likely to further exacerbate the already strained relation

between the employer and the workmen.

(5) The management may out of vindictiveness and annoyed by the fact that all the workmen had taken up the cause of the dismissed employee try

to victimise such workmen or the management might by such victimisation try to stifle the pending proceedings by frightening the workers by

disciplinary action against other workmen. In one sense it is correct to say that the other workmen are not directly concerned in the subject matter

of the pending proceedings but having taken up the individual dispute and made it a collective one all such workmen are in a sense concerned in the

appeal. We have received considerable assistance from the elaborate discussion of the question by Rajagopalan J., in *The Management of*

Newtone Studios Vs. T.R. Ethirajulu and Others, . In that case before him 54 workmen were retrenched and the Government made a reference

under S. 10 of the Industrial Disputes Act to the Industrial Tribunal for adjudication of the dispute, namely, whether the retrenchment of the

workmen was justified and whether the workers were entitled to any or what compensation. The parties to the industrial dispute, however, were

described as ""workers"" represented by the Madras State Cinema and Studios employee's Union and the Madras National Cinema and Studio

Workers' Union, Madras, and the management of Messrs. Newton Studios. During the pendency of an appeal pending before the Appellate

Tribunal in the matter, one other workman was dismissed and six more were retrenched. The learned Judge held that the workmen whose services had been terminated subsequently were also workers concerned in the pending appeal. The learned Judge refused to accept the contention on behalf of the management that only the 54 workmen who had originally been retrenched should be deemed to be workmen concerned in the appeal within the meaning of S. 22 of Act XLVII of 1950. As the learned Judge pointed out no question could possibly arise with reference to these 54 workmen who were out of employ even before the reference of the industrial dispute under S. 10(1). Acceptance of the narrow interpretation put forward by the learned counsel for the management would mean that during the pendency of the appeal the management could effect further retrenchment and that the only remedy of the workers affected by the retrenchment was to seek a fresh reference under S. 10(1)(c) of the Industrial Disputes Act. The learned Judge did not accept such an interpretation. With respect we agree with the principle of this decision of Rajagopalan J. No other decision of this Court was brought to our notice in which a contrary view was taken.

(6) Mr. R. M. Seshadri, learned counsel for the appellant, drew our attention to a recent judgment of the Bombay High Court in *New Jehangir*

Vakil Mills Ltd., Bhavnagar Vs. Industrial Tribunal, Rajkot and Others, , in support of his contention that a narrower interpretation should be

placed on the words "'workmen concerned in the appeal'". We may at once say that this decision does not bear directly on the case before us as it

was concerned with the interpretation of Ss. 33 and 33-A of the Industrial Disputes Act as amended in 1956. Section 33 of that Act inter alia

provides that during the pendency of any conciliation proceeding before conciliation officer or a board or of any proceeding before a labour court

or tribunal or National tribunal in respect of an industrial dispute no employer shall in regard to any matter connected with the dispute, alter to the

prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such

proceeding; or for any misconduct connected with the dispute, discharge or punish whether by dismissal or otherwise, any workmen concerned in

such dispute, save with the express permission in writing of the authority before which the proceeding is pending. Having regard to the language of

this section the learned Judges were called upon to construe the expression ""concerned in such dispute"". In that case the dispute specified in the schedule to the order of reference to the relative seniority of three workmen in the bleaching department of a textile mill. There was another order of reference in which the subject was the claim for compensation by the workers in the winding and warping department of the same mills. During the pendency of the proceedings consequent on these references three workmen who belonged to the ring frame department of the mills were dismissed. They filed an application under S. 33-A of the Industrial Disputes Act. A preliminary objection was raised on behalf of the management that the three workmen were not concerned in the disputes which were pending before the Tribunal and therefore, the provisions of S. 33 would not be attracted and the Tribunal would have no jurisdiction to entertain the workmen's complaint under S. 33-A of the Act. The learned Judges held that the petitioners were not workmen concerned in the dispute which was the subject matter of the pending references because they belonged to a different department. In coming to this conclusion they incidentally referred to S. 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950, and also to S. 12 of the same Act. It is not necessary to go into the question whether the learned Judges were right in their interpretation of the expression ""workmen concerned in the dispute"" which occurs in S. 33 of the Industrial Disputes Act. We may point out that the words used in S. 22 are not ""workmen concerned in the dispute"" which is the subject-matter of the appeal, but the ""workmen concerned in such appeal"". It is equally not necessary to decide whether the learned Judges were right in holding that the workmen concerned in the appeal under S. 22 of the Industrial Disputes (Appellate Tribunal) Act, 1950 would be only persons employed in the establishment or part of the establishment to which the dispute relates. No do we feel called upon to pronounce as to who would be entitled to file an appeal under S. 22 of the Industrial Disputes Act, 1950. It is sufficient to say that the decision has no direct bearing on the construction of the words ""workmen concerned in the appeal.

(7) After all, S. 22 of the 1950 Act does not prohibit the management from taking any disciplinary action against any workmen for misconduct or

other sufficient reason. All that it lays down is that the management should inflict the punishment or terminate the services of such workmen with the

express permission in writing of the Appellate Tribunal. If the management have good reasons for their proposed action, we do not except the

Appellate Tribunal to withhold arbitrarily such permission.

(8) As the dismissal of the respondent was in contravention of S. 22 of the Act of 1950, the dismissal was rightly set aside. In this view it was not

necessary for the Chairman of the Tribunal to go into the merits. Indeed, this would in a way preclude him from dealing with an application by the

management for permission to dismiss the respondent if they choose to file such an application. As a finding on the merits was unnecessary, we

make it clear that we should not be taken as having accepted the decision of the Chairman. The question is left open.

(9) In the result the appeal is dismissed. No costs.

(10) Appeal dismissed.