

(1966) 03 PAT CK 0011

In the Patna High Court

Case No : Misc. Judicial Case No. 665 of 1963

Bihar Working Journalists" Union

APPELLANT

Vs

H.K. Chaudhuri and Another

RESPONDENT

Date of Decision : 03-03-1966

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 11, 18(3), 2, 36

Citation : AIR 1968 Patna 135

Hon'ble Judges : R.L. Narasimham, C.J;G.N. Prasad, J

Bench : Division Bench

Advocate : Basudeva Prasad and K.N. Keshava, for the Appellant; Lalnarain Sinha, General and Padmanand Jha, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Prasad. J.

1. The short question which arises for our decision in this case is whether the Jurisdiction of an Industrial Tribunal to proceed with the adjudication of an industrial dispute referred to it u/s 10 of the Industrial Disputes Act cease with the death of the workmen concerned.

2. The reference made to the Industrial Tribunal was in the following terms:

"Whether the claims of the following aubeditors of Indian Nation and Aryavarta that they are entitled to pay and emoluments of Chief Sub-Editors in terms of Order No. S/O/1257 dated the 29th May, 1959 or the Government of India, Ministry of Labour and Employment, are justified. If, so, from what date and with what relief?

(1) Shri Gouri Shankar Prasad,

(2) Sri Surendra Mishra

(3) Sri Abhiram Jha.

The Tribunal dealt with the cases of Sri Gouri Shankar Prasad and Sri Surendra Mishra on merits and gave its award accordingly. But with regard to Sri Abhiram Jha, the Tribunal took the view that it had no jurisdiction to adjudicate upon the claim put forward on his behalf on the ground that he had died while the adjudication proceedings were still, pending

3. The present application has been filed by the Bihar Working Journalists' Union, Patna, through its General Secretary, since Sri Abhiram Jha (deceased) was at the relevant time, a member of the petitioner Union, and the dispute which arose between him and the Management of the Newspaper (the Aryavarta) with regard to his status, pay and emoluments as a member of the editorial staff of the said newspaper had been sponsored and supported by the petitioner Union.

4. The main contention of the learned counsel appearing on behalf of the petitioner is that the Tribunal was in error in holding that it had ceased to have jurisdiction to adjudicate upon the industrial dispute merely because Sri Abhiram Jha had died. It is urged that the death of Sri Abhiram Jha during the pendency of the adjudication proceedings could not divest the Tribunal of its jurisdiction to adjudicate upon the industrial dispute since the real contesting party before it was the petitioner Union. According to the learned counsel, once an industrial dispute has been validly referred for adjudication to a Labour Court or Tribunal, the Labour Court or the Tribunal cannot refuse to give its award on merits of the dispute as the industrial dispute does not come to an end with the death of the workman concerned. Alternatively, it is contended by the learned counsel that the Tribunal ought to have proceeded with the adjudication of the dispute after bringing the heirs or legal representatives of the deceased workman on the record

5. It is, no doubt, true that u/s 36 of the Industrial Disputes Act, a workman who is a party to a dispute is entitled to be represented in any proceeding under the Act by an officer of a registered trade union of which he is a member, but it is manifest that the right of the union to represent the case of its member lasts only so long as he continues to be its member. No such right of representation can possibly exist after the death of the member workman. Such a view was taken in two decisions of the Labour Appellate Tribunal (Calcutta Bench) constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950; one in *Mazdoor Union Sugar Factory, Biswan v. Sakseria Biswan Sugar Factory Ltd.*, 1952 Lab AC 294 (LATI-Cal) and the other in *Rahat Hossain v. Lipton Ltd.*, Calcutta, 1954 Lab AC 90 (LATI-Cal).

Following the first case, it was held in the latter case that "the cause of a workman can be taken up by other workmen but the latter can continue to represent the former only so long as he is alive. The dispute centering round him ceases to be an industrial dispute after his death so the heirs of Gholam Mohiuddin (the deceased workman) drop out of the picture". The question whether a dispute ceases to be an industrial dispute upon the death of the workman concerned will be dealt with hereafter. But there can be no room for doubt that the authority of a person or a body of persons to represent another

person cannot continue beyond the latter's lifetime. The principle of representation is based upon the relationship of principal and agent. Where the principal is dead, the authority of the agent to act for him automatically ceases. Therefore, it must follow that the petitioner Union was not competent to represent the case of Sri Abhiram Jha before the Tribunal after his death

6. It is also manifest that the petitioner Union could not have acted before the Tribunal on behalf of the heirs of Sri Abhiram Jha. The Union could act on behalf of its members, but not on behalf of their heirs or legal representatives. The dispute which was referred for adjudication to the Tribunal was with respect to the pay and emoluments to which Sri Abhiram Jha was entitled. To decide this question, the Tribunal would naturally have had to consider whether the duties and functions which Sri Abhiram Jha was discharging were those of a Sub-Editor, as maintained by the Management, or those of a Chief Sub-Editor, as claimed on behalf of the deceased. But in the ultimate analysis, the decision which the Tribunal would have had to give would have been about the correct pay and emoluments to which Sri Abhiram Jha was entitled for the duties and functions which he had been discharging. What extra pay and emoluments Sri Abhiram Jha would have been entitled to, in case the Tribunal decided that he was working as a Chief Sub-Editor of the Aryavarta, might be of interest to his heirs or legal representatives, but that was certainly not a question which the petitioner was or is concerned with

It is impossible to imagine that the petitioner Union was interested in securing to the heirs of Sri Abhiram Jha any extra money by way of emoluments which, according to it, Sri Abhiram Jha was entitled to. In other words, the Union had or has no concern with the monetary claim of the heirs or legal representatives of the deceased. The latter could pursue their own remedy before a competent Court according to law. But the petitioner Union could not insist upon adjudication of the dispute centering round Sri Abhiram Jha before the Industrial Tribunal. In this view, I am inclined to think that the petitioner Union has also no locus standi to maintain the present application under Article 226 of the Constitution.

7. Learned counsel for the petitioner suggests that the Tribunal ought to have proceeded with the adjudication of the dispute after bringing the heirs of legal representatives of the deceased workman on the record. In support of this contention, learned counsel relies upon the general power of the Tribunal in the matter of addition of parties for effective adjudication of the dispute referred to it. To examine the validity of this contention, it is necessary to refer to the provisions of Section 18 of the Industrial Disputes Act. Sub-s. (3) of that section provides:

"A settlement arrived at in the course of conciliation proceedings under this Act or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on--

- (a) all parties to the industrial dispute;
- (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, Labour Court, Tribunal, or National Tribunal as the case may be, records the opinion that they were so summoned without proper cause;
- (c) where a party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
- (d) where a party referred to in Clause (a) or Clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part,"

It will be observed that there is a significant difference between the provisions of Clauses (c) and (d) referred to above. Clause (c) contemplates that an award of an Industrial Tribunal shall be binding not only upon the employer, but also upon his heirs, successors or assigns in respect of the establishment to which the dispute relates. But no reference to the heirs, successors or assigns of a workman is to be found in Clause (d). Evidently therefore, it was not the intention of the legislature to provide for adjudication of an industrial dispute at the instance of the heirs or legal representatives of a deceased workman.

The monetary aspect of such a dispute has evidently been left out of the purview of adjudication by the Industrial Tribunal because that can be agitated at the instance of the heirs or legal representatives of the deceased workman in a competent Civil Court. Looking at the scheme of Clauses (c), and (d) of Sub-section (3) of Section 18 of the Act, I have come to the conclusion that no duty lay upon the Tribunal to bring on record the heirs or legal representatives of Shri Abhiram Jha and to continue the adjudication proceeding in their place (sic). As a matter of fact, there is nothing to show that any application was made before the Tribunal to bring them on the record.

8. That takes us to the next contention of the learned counsel which is that once an industrial dispute has been validly referred to a Labour Court or a Tribunal, it continues to exist until it is resolved by an award on the merits of the dispute. In other words it is not correct to say that the industrial dispute ceases automatically with the death of the workman whose case gave rise to the dispute. In support of his contention learned counsel has relied upon a Bench decision of the Madras High Court in *Working Journalists of the Working Journalists of the "Hindu" Madras Vs. Management of the "Hindu", Madras and Another*, There it was held that:

"the jurisdiction of the Labour Court to proceed with an adjudication upon an industrial dispute stems from and is sustained, until it makes an award and the same becomes enforceable, by this reference itself which has been made on the

basis of an industrial dispute existing or apprehended on the date of the reference and that the jurisdiction of the labour court to proceed in the matter has not in any way affected by the fact that subsequent to the date of the reference, the workers or a substantial section of them, who had originally sponsored the cause had later resiled and withdrawn from it."

It will, however, be noticed that the Madras case was not one of death of the workman whose cause had been sponsored by a Union or majority of workmen. The Madras case was one of withdrawal of the support which the majority of workmen had originally given to the cause of the individual workman such withdrawal having taken place during the pendency of the adjudication proceeding. The observations of their Lordships quoted above deal with a situation arising from a change of front on the part of the majority of workmen. Evidently an industrial dispute does not come to an end on account of the fact that subsequent to the date of the reference the Union or majority of workmen who had originally sponsored the cause have subsequently resiled and withdrawn from it. Their Lordships were not dealing with a situation arising from the death of the workman whose case gave rise to the industrial dispute. The Madras decision is therefore, of no assistance in the present case.

9. Our attention was also drawn to the *The Bombay Union of Journalists and Others Vs. The "Hindu", Bombay and Another*, where their Lordships approved of the view taken by the Madras High Court referred to above. But this ruling also is of no assistance in the present case. Their Lordships of the Supreme Court were dealing with the circumstances under which a dispute which at the inception is an individual dispute between the workman and the employer, assumes the character of an industrial dispute, and in that context their Lordships cited with approval observations of the Madras High Court, referred to above, and added:

"In our view these observations correctly set out the effect of a subsequent withdrawal of support by the workmen of a cause previously espoused by them. In each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute, the test is whether at the date of the reference the dispute was taken up as supported by the Union of the workman and the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen."

It may incidentally be mentioned that in the case which went up to the Supreme Court, the dispute had continued to remain an individual dispute and had not acquired the character of an industrial dispute. The question as to whether an industrial dispute continues even after the death of the workman round whom the industrial dispute centred, did not fall for consideration of their Lordships in the Supreme Court case.

10. We have, therefore, to fall back upon the definition of "industrial dispute" which occurs in Clause (k) of Section 2 of the Industrial Disputes Act, "Industrial

dispute" has been defined as "any dispute or difference between employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person". The use of the present tense "is" in the above definition is significant, and indicates the continuing character of an industrial dispute. It follows that a dispute which in the past was an industrial dispute cannot be a dispute "which is connected with" so as to fall within the ambit of an industrial dispute as defined in the Act. Keeping in view the continuing character of an industrial dispute, we have to see whether it survives the death of the workman concerned. It is manifest that in certain cases it cannot so survive.

For example, where a workman has been wrongfully dismissed and his claim for reinstatement has given rise to an industrial dispute which has been referred to for adjudication to a Labour Court or Tribunal. There can be no doubt that the death of the workman during the pendency of the adjudication proceeding puts an end to the industrial dispute for the simple reason that he can no longer be reinstated. There may, however, be cases where the death of the workman concerned may not wholly put an end to the industrial dispute. For example, where a dispute arises with regard to the status of a workman, and such a workman dies, the other workmen or their Union may still be interested in adjudication of the status of the deceased workman because that may affect the status of his successor-in-office. In the instant case the status of Sri Abhiram Jha was undoubtedly a question in which he was personally interested. But it was also a question in which his successors-in-office would be interested. Whoever is or has been appointed to discharge the identical duties and functions of Sri Abhiram Jha, is obviously interested in the adjudication of the question whether Sri Abhiram Jha was a Sub-Editor or a Chief Sub-Editor of the newspaper. Therefore, it cannot be laid down as a universal proposition that a dispute ceases to be an industrial dispute upon the death of the workman concerned. The question in each case depends upon the nature or the character of the dispute.

11. The broad proposition laid down by the Tribunal in the present case that it has no further jurisdiction to adjudicate upon the claim put forward on behalf of Sri Abhiram Jha is not quite correct. The Tribunal has assumed that the dispute involved in the claim put forward on behalf of Sri Abhiram Jha was entirely his personal dispute. But as I have pointed out, the successor-in-office of Sri Abhiram Jha is or would be no less interested in the adjudication of that dispute.

12. The question still remains whether that would justify our interference with the decision of the Tribunal. The answer to this question would have been in the affirmative if there were materials on the record to show that the successor-in-office of Sri Abhiram Jha could be represented before the Tribunal by the petitioner Union. But there is no such material on the record, and we cannot assume that the successor-in-office of Sri Abhiram Jha must have been a member of the petitioner Union, and not of any rival union. No claim appears to

have been made before the Tribunal on behalf of the petitioner Union that it was competent to represent the successor-in-office of Sri Abhiram Jha before the Tribunal. In these circumstances the Tribunal was amply justified in declining to adjudicate upon the claim put forward before it on behalf of Sri Abhiram Jha.

13. For the reasons which I have given above, I am of the opinion that the decision of the Tribunal cannot be interfered with. The application fails and is, accordingly, dismissed; but there will be no order as to costs

Narasimham, C.J.

14. I agree. The absence of any express provision either in Sub-section (3) of Section 11 of the Industrial Disputes Act or in the Industrial Disputes (Central) Rules, 1957, regarding substitution of the heirs of the parties to the industrial dispute on the lines of Order 22, Civil Procedure Code, is understandable. There is really no necessity for such a provision in view of Sub-section (3) of Section 18 of the Industrial Disputes Act. Clause (b) of that Sub-section empowers the Tribunal to summon parties other than the original parties to the dispute to appear in the proceeding. The Tribunal is expected to exercise its discretion reasonably so that parties who are likely to be bound by the award get an opportunity to be impleaded in the proceeding and to fight out their case. Clauses (c) and (d) of that sub-section describe the various classes of persons who will be bound by the award. Thus under Clause (c) the heirs, successors and assigns of the employer will be bound by the same. Hence, if they apply to be made parties under Clause (b) of that sub-section, after the death of the original employer during the pendency of the dispute, the Tribunal would, in the absence of any special reason, allow the application and make them parties and adjudicate the dispute in their presence.

As regards workmen, however, Clause (d) of that sub-section does not expressly say that the heirs of the workmen would be bound by the award. This seems to be due mainly to the fact that the heir of the workman may not be a labourer but might have another avocation in life, and consequently any dispute between him and the employer of the deceased workman will relate to a mere money claim which will have to be agitated in the ordinary civil courts. But other labourers who are employed in the establishment on the date of the dispute and all other persons who may subsequently become employed will be bound by the award. Hence, when the labourer dies during the pendency of the industrial dispute, it will be open to these classes of employees (whether they are heirs of the deceased labourer or not) to apply under Clause (b) of that sub-section to be made parties and to have the adjudication made in their presence. Hence the necessity for an express statutory provision for substitution of the heirs of the parties to the original dispute, either in the Act or in the rules, seem to be unnecessary.

15. I, therefore, agree with my learned Brother that the Tribunal should not have stated that on the death of Sri Abhiram Jha he had no jurisdiction to decide the

dispute. The employee in the same establishment who was asked to perform the same duties which Sri Abhiram Jha performed prior to his death could have applied for being made a party under Clause (b) of Sub-section (3) of Section 18 and asked for a decision by the Tribunal But no such application was made. Hence, for the reasons given by my learned Brother, this is not a fit case for interfering with the decision of the Tribunal.