

(1971) 04 AHC CK 0012
In the Allahabad High Court

Cawnpore Sugar Works Ltd.	Vs	APPELLANT
Dr. B.P. Mohindra and Others		RESPONDENT

Date of Decision : 13-04-1971

Acts Referred:

Constitution of India, 1950 — Article 254
Industrial Disputes Act, 1947 — Section 10, 2A

Citation : (1971) 2 LLJ 169

Hon'ble Judges : V.G. Oak, C.J.; R.B. Misra, J

Bench : Division Bench

Judgement

V.G. Oak, C.J.—These two connected special appeals arise out of two references made by the State Government to the Industrial Tribunal, Lucknow. The Kanpur Sugar Works Limited carries on business of manufacture and sale of sugar. The Company employed Dr. Mohindra as a Medical Officer. He was dismissed from service on 12-1-1968. He complained that his dismissal from service was unjustified. Upon that complaint, the State Government made a reference to the Industrial Tribunal, Lucknow. This is reference No. 28 of 1969.

2. Since there was some doubt about the validity of the order of dismissal, the Company decided to regularise the position. On 25-11-1968 the Company served upon Dr. Mohindra a notice terminating the contract of service. This order of termination of service was also challenged by Dr. Mohindra and a union of workmen. The dispute was again referred by the State Government to the Industrial Tribunal, Lucknow. This is reference No. 48 of 1969.

3. In each of the two references the Company raised a contention that there was no industrial dispute as defined by the U.P. Industrial Disputes Act, and that the reference was incompetent. The Industrial Tribunal passed two separate orders in the two cases dealing with the preliminary objection raised by the Company. In each case the Tribunal held that there was an industrial dispute, and that the reference was competent.

4. The company filed two separate writ petitions challenging the two references

to the Industrial Tribunal, Lucknow. The two writ petitions were No. 780 of 1969 and No. 1395 of 1969. Both the writ petitions were dismissed by a single Judge of this Court. The Company has now filed the present Special Appeals. Special Appeal No. 747 of 1970 arises out of Writ Petition No. 780 of 1969. Special Appeal No. 748 of 1970 arises out of Writ Petition No. 1395 of 1969. Since most of the points raised in the Special Appeals are common, it will be convenient to dispose of the two appeals by a consolidated judgment.

5. Firstly, we take up Special Appeal No. 747 of 1970 arising out of Writ Petition No. 780 of 1969. In this writ petition the petitioner challenged the proceedings in reference No. 28 of 1969. The State Government made the two references u/s 4-K of the U.P. Industrial Disputes Act, 1947. It is settled law that an individual dispute does not amount to an industrial dispute as defined by Clause (1) of Section 2 of the U.P. Act. There must be a dispute between the employer and workmen as a class. In other words, if a person is dismissed from service, such dismissal will not by itself raise an industrial dispute, unless the person's cause is sponsored by a union of workmen.

6. It was urged for the respondents that Dr. Mohindra's cause was in fact espoused by the Rashtriya Chini Mill Mazdur Sangh, Padrauna, respondent No. 2 in the Special Appeal. This question was examined by the Tribunal in its order dated 11-5-1970. On page 11 of its order the Tribunal observed:--

The total impact of the evidence on record on this point is against the case of Sri Mohindra having been espoused by the Union.

Although the Tribunal concluded that Dr. Mohindra's cause was not espoused by the union, the Tribunal decided that an industrial dispute existed.

7. The respondents rely upon Section 2-A introduced in the Industrial Disputes Act, 1947 (Central Act XIV of 1947) by the Amending Act XXXV of 1965. Section 2-A thus introduced in the Central Act provides that any dispute between a workman and his employer connected with discharge, dismissal, re-placement or otherwise shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute. It was urged for the respondents that, in view of this provision, there was no necessity for Dr. Mohindra receiving any support from any union or other workmen.

8. We must remember that the present references have been made by the State Government u/s 4-K of the U.P. Act. The amendment under consideration has been made in the Central Act. The question, therefore, arises, whether the amendment made in the Central Act covers cases falling under the U.P. Act also.

9. In *Postal Seals Industrial Co-operative Society Ltd., Aligarh v. Labour Court II, Lucknow* [1971] Fac and LR 38, it was observed by a Division Bench of this Court on page 43 that it was open to the Government to refer the dispute in question to the Labour Court constituted under the Industrial Disputes Act (Central Act). The learned Judges examined the facts of the case, and found that the dispute of

the respondent was in fact espoused by the labour Union. On this finding it was found that the Labour Court had jurisdiction to deal with the case. Having reached that conclusion, the learned Judges went on to observe that it was permissible to refer the dispute to a Labour Court under the Central Act. The learned Judges did not expressly hold that the amendment made in the Central Act covers the definition of industrial dispute in the U.P. Act.

10. The learned Counsel for the respondents relied upon Article 254 of the Constitution. Article 254 deals with inconsistency between laws made by Parliament and laws made by the Legislatures of States. In order to attract Article 254, there must be inconsistency between the laws made by Parliament and the laws made by the Legislature of a State. In the present case we notice that Central Act XIV of 1947 is on the statute book in addition to the U.P. Act. Each statute has its own definition of the expression "industrial dispute". The effect of introducing Section 2-A in the Central Act is to amend the definition of the expression "industrial dispute" in the Central Act. It does not follow that the definition of "industrial dispute" in the U.P. Act stands automatically amended.

11. In *Zaverbhai Amaldas Vs. The State of Bombay*, , it was explained that the important thing to consider with reference to Clause (2) of Article 254 of the Constitution is whether the legislation is "in respect of the same matter." If the later legislation deals not with the matters which formed the subject-matter of the earlier legislation but with other and distinct matters though of a cognate and allied character, then Clause (2) of Article 254 will have no application.

12. In *Vijay Shanker Pandey v. Messrs Bhandania Brothers Private Ltd.*, Writ No. 2404 of 1967, decided on 8-5-1968 it was held by a single Judge of this Court that Section 2-A introduced in the Central Act covers references made under the U.P. Act also. We regret that we are unable to agree.

13. We have seen that there are at present two separate statutes dealing with industrial disputes. Each statute has its own definition of "industrial dispute". There is no reason why the definition given in one statute should not be confined to that statute. There is no difficulty in adopting different definitions of the expression "industrial dispute" for purposes of the two statutes. We are, therefore, of the opinion that the operation of Section 2A introduced in the Central Act must be confined to matters governed by the Central Act. The amendment in question does not modify the definition of "industrial dispute" contained in Clause (2) of Section 2 of the U.P. Act.

14. The result is that the case law relating to the meaning of "industrial dispute" still holds good as regards references u/s 4-K of the U.P. Act in spite of the introduction of Section 2-A in the Central Act. An individual dispute does not amount to an industrial dispute for purposes of the U.P. Act. We have seen that Dr. Mohindra's cause was not sponsored by respondent No. 2 at the material time. The appellant is, therefore, right in its contention that there was no industrial dispute so far as reference No. 28 of 1969 is concerned.

15. Now we take up Special Appeal No. 748 of 1970 arising out of Writ No. 1395 of 1969. In this case we have to consider the validity of reference No. 48 of 1969. In this case the Tribunal disposed of the preliminary objection by its order dated 9-6-1970. On page 17 of the order the Tribunal observed:--

There is room for doubting that Sri Mohindra was enrolled as a member of the union before the resolution dated December 21, 1968 was passed. In the absence of satisfactory proof that Sri Mohindra was enrolled as a member before the passing of the resolution of 21st December, 1968 or before the date of reference, the contention of the employers that the entries in the membership register are not wholly genuine, must carry weight.

On page 19 of its order the Tribunal observed:--

The position now is that while the fact of Sri Mohindra being a member of the union at time of passing of the resolution is doubtful, the passing of the resolution in his support has been fully established.

16. According to these findings of the Tribunal, the Union held a meeting on 21-12-1968 offering support to Dr. Mohindra. But it has not been proved that he had been enrolled as a member of the Union by the time of the passing of the resolution or by the time the State Government referred the dispute to the Industrial Tribunal.

17. In Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), their Lordships of the Supreme Court observed on page 184:--

The decisions of this Court have consistently taken the view that in order that a dispute between a single employee and its employer should be validly referred u/s 10 of the Act, it is necessary that it should have been taken up by the Union to which the employee belongs or by a number of employees.

The same principle applies to a reference made u/s 4-K of the U.P. Act.

18. According to the decision of the Supreme Court in Dharm Pal's case, there are two alternatives for converting an individual dispute into an Industrial dispute for purposes of the Act. A person's cause may be taken up by a union of workmen where the person is a member of the union, or the person's cause may be taken up by a number of employees. In the present case the union did support Dr. Mohindra's cause. But he had not become a member of the union by the time of the resolution or by the time of the reference to the Tribunal. It is not the case of the respondents that Dr. Mohindra's cause was taken up by other workmen. It is the definite case of the respondent that Dr. Mohindra's cause was espoused by the union of workmen, who is respondent No. 2 in the Special Appeal. The result is that the present case does not satisfy either of the two tests laid down by the Supreme Court in Dharm Pal's case for converting an individual dispute into an industrial dispute. Here again the appellant is right in its contention that there was no industrial dispute before the Tribunal. This

reference also is incompetent.

19. Although the present references are incompetent, it will be open to the authorities concerned to refer the dispute under consideration to an Industrial Tribunal in accordance with law.

20. Each of the two special appeals is allowed with costs against respondent No.

3. Each of the two writ petitions is allowed with costs against opposite party No.

3. In each case the proceedings pending before the Industrial Tribunal II, Lucknow, are quashed.