
(1967) 01 BOM CK 0003

In the Bombay High Court

Case No : Special Civil Application No. 20 of 1966

Central India Agencies, Calcutta

APPELLANT

Vs

Laxminath Brijkishore and Another

RESPONDENT

Date of Decision : 12-01-1967

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 123A
Central Provinces and Berar Industrial Disputes Settlement Act, 1947 — Section 16
Constitution of India, 1950 — Article 226
Patents, Designs, and Trade Marks Act, 1883 — Section 1(3)

Citation : AIR 1968 Bom 222 : (1968) 1 LLJ 616 : (1967) MhLj 937

Hon'ble Judges : L.M. Paranjpe, J;B.D. Bal, J

Bench : Division Bench

Judgement

Per Paranjpe, J.—This petition under Art. 227 of the Constitution is directed against an order of the Assistant Commissioner of Labour, Nagpur, dated 3 January, 1966, whereby the preliminary objections raised by the petitioner were overruled.

2. The petitioner is a partnership firm, with its head office at Calcutta and a branch at Nagpur. On 1 June, 1964, the petitioner firm appointed respondent 1 as a salesman on probation, at a consolidated salary of Rs. 400 per month. Finding that the service of the respondent was not to its satisfaction, the firm gave repeated warnings to the respondent to show some improvement. Being of the view that he had not shown any improvement despite warnings given to him the petitioner did not confirm him and by the letter, dated 10 February, 1965, informed him that his services were no longer required. He was called upon to clear his accounts and to receive payment of all his dues from the petitioner. Respondent 1 did not accept that his work was unsatisfactory and filed his application under S. 16 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, for reinstatement and backwages before the Labour Commissioner on 6 August, 1965.

3. The petitioner filed its preliminary objections to the maintainability of this application on the ground that the central Provinces and Berar Industrial Disputes Settlement Act, 1947, was repealed with effect from 1 May, 1965 by the Bombay Industrial Relations (Extension and Amendment) Act, 1964 (Maharashtra Act 22 of 1965). On being called upon to furnish better particulars with regard to these preliminary objections, the petitioner filed its better particulars on 20 December, 1965. The objection of the petitioner was that the right of the respondent to claim reinstatement and back-wages was not saved by the saving clause in S. 123A as added to the Bombay Industrial Relations Act, 1946, by the Maharashtra Act 22 of 1965, and, therefore, the application was liable to be dismissed. The Assistant Commissioner of Labour overruled these objections and held that the application by the respondent under S. 16 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, was maintainable. The correctness and legality of that order are the subject-matter of challenge in the petition.

4. Sri Mor, advocate for the petitioner-firm, submitted that, though the respondent could have rightfully filed his application for reinstatement and back-wage, if the old Central Provinces Act was in force, that right came to an end with the repeal of that Act and was not saved by any of the clauses in S. 123A of the Bombay Industrial Relations Act, 1946. His argument, briefly stated, was as follows. The right of reinstatement and back-wages, which the respondent was claiming, had not accrued and was not acquired under the old repealed Act and was, therefore, not saved by any of the clauses in S. 123A. Such a right, arising under the old Act, could have been postulated, only if the respondent had done some activity by way of filing an application under S. 16 of the old Act, while that Act was still on the statute book. Even if such a right existed, it would not accrue or be acquired, except by some step-in-aid, for enforcement of that right, and no such step was taken by the respondent while that Act was in force. As soon as, by the Maharashtra Act 22 of 1965 the Bombay Industrial Relations Act, 1946, was made applicable to this area, the matter would be governed only by that Act and, therefore, the application of the respondent under the old Central Provinces Act could not be entertained.

5. Sri Pendharkar, advocate for the respondent-employee, countered these contentions. According to him, the right of reinstatement and back-wage had accrued to, and was acquired by, the respondent under the old Act, even if such a right did not arise under S. 16 of the old Act itself. Section 16 of the old Act only provided the mode of enforcement of that right which arose under that Act. The definition of "an industrial dispute," coupled with the provisions of Ss. 30 and 31 of, and Schs. I and II to, the old Act, as also the power given to the Labour Commissioner by S. 16 to grant reinstatement and back-wages, left no manner of doubt that the rights claimed by the respondent had arisen under the old Act and they were, therefore, saved by Clause (c) of S. 123A of the Bombay Industrial Relations Act, 1946.

6. In order to appreciate the submissions of the learned advocates, it would be necessary to examine the provisions of the relevant sections. Section 123A, which was added to the Bombay Industrial Relations Act, 1946, by the Maharashtra Act 22 of 1965, is in the following words :

"123A. The Central Provinces and Berar Industrial Disputes Settlement Act, 1947, is hereby repealed :

Provided that -

* * * (c) any right, privilege or obligation or liability acquired, accrued or incurred under the Act so repealed shall not be effected and any investigation, legal proceedings, or remedy in respect of any such right, privilege, obligation or liability shall, so far as it is not inconsistent with the provisions of this Act, be made, instituted, continued and availed of as if the said Act had no been repealed and continues in operation :

(b) any proceedings pending before the State Industrial Court, a District Industrial Court, the Labour Commissioner, the Registrar or the Wage Board, conciliation proceedings, or any proceedings relating to the trial of offences punishable under the provisions of the Act so repealed shall be continued and completed as if the said Act has not been repealed said continued in operation, and any penalty imposed in such proceedings shall be recorded under the Act so repealed."

* * * 7. A close perusal of these clauses would show that there was nothing therein to warrant the submission on behalf of the petitioner that the right, privilege, obligation or liability mentioned in Clause (c) could arise, accrue or incur only on an employee or employer doing "some kind of activity" in the shape of an application under S. 16 (of the Central Provinces Act) or otherwise. Nothing was shown in these clauses which would permit the addition of that further ingredient of doing "some kind of activity" which alone would result in the creation or completion of the right, privilege, obligation or liability referred to in Clause (c) of S. 123A of the Bombay Industrial Relations Act, 1946.

8. Though there was nothing in the wording of Clause (c) of S. 123A of the Bombay Industrial Relations Act, 1946, to show that some further activity must be resorted to by the claimant before a right can be said to be accrued, Sri Mor was relying on a decision in Gayaprasad Vs. Burhanpur Tapti Mills Ltd., to support that contention. In that case, the petitioner workman was dismissed from service on 4 November, 1960 when the Central Provinces and Berar Industrial Dispute Settlement Act, 1947, was in force. The Madhya Pradesh Industrial Relations Act, 1960, which repealed the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, Came into force from 31 December, 1960. The Petitioner-workman applied under S. 31 of the subsequent Act of 1960 for reinstatement on the ground that his dismissal was not legal The labour court and the industrial court dismissed the petition on the ground that the application for reinstatement should have been filed, not under the new Act of 1960, but under S. 16 of the

Central Provinces and Berar Industrial Dispute Settlement Act, 1947, which was in force on the date the cause of action accrued. The Madhya Pradesh High Court was then moved by a writ petition to question the correctness of those orders. While not disputing that the workman had a right under S. 16 of the repealed Act to make an application to the Labour Commissioner for reinstatement and for compensation for loss of wages, the Division Bench of the Madhya Pradesh High Court held that the right was available only during the subsistence of that Act and since no application was made under S. 16 during the subsistence of that Act, the right to apply under S. 16 was lost. The Division Bench proceeded to interpret Clause (b) of S. 112 of the Madhya Pradesh Industrial Relations Act, 1960, and held that the right of the petitioner-workman was not an accrued right within the meaning of the saving provision in Clause (b) of the proviso of S. 112 to the new Act of 1960 and, therefore, the workman could only have applied under the new Act. The Division Bench had relied on *Abbott v. Minister for Lands* 1895 A.C. 425 and an observation at p. 324 of "Craies on Statute Law," 5th Edn, in support of their view.

9. In the case of *Abbott* 1895 A.C. 425 (vide supra) relied on by the Madhya Pradesh High Court, the appellant had effected a conditional purchase under S. 22 of the Crown Lands Alienation Act, 1861, of land adjoining to Crown lands which had been previously granted to him in fee simple under S. 25. The question raised was whether he had thereby become a holder of an original conditional purchase within the meaning of S. 42 of an earlier Act so as to obtain the right to make additional conditional purchases under that section. The matter depended on the interpretation of a proviso to a section in the later Act whereby the earlier Act of 1861 was repealed. That proviso was in the following words :

"Provided always that notwithstanding such repeal -

(b) all rights accrued and obligation incurred or imposed under or by virtue of any of the said repealed enactments shall, subject to any express provisions of this Act in relation thereto, remain unaffected by such repeal."

10. The Lord Chancellor, who decided the case, made the following observations at p. 431 :

"It has been very common in the case of repealing statutes to save all rights accrued. If it were held that the effect of this was to leave it open to anyone who could have taken advantage of any of the repealed enactments still to take advantage of them, the result would be very far-reaching.

It may be, as Windeyer, J., observes, that the power to take advantage of an enactment may without impropriety be termed a "right." But the question is whether it is a "right accrued" within the meaning of the enactment which has to be construed.

Their lordships think not, and they are confirmed in this opinion by the fact that the words relied on are found in conjunction with the words "obligations incurred

or imposed." They think that the mere right (assuming it to be properly so called) existing in the members of the community or any class of them to take advantage of an enactment, without any act done by an individual towards availing himself of that right, cannot properly be deemed a "right accrued" within the meaning of the enactment."

11. With respect, we do not agree with the view of the Division Bench of the Madhya Pradesh High Court that these observations, which were also quoted on p. 324 in the Edn. of "Craies on Statute Law," would cover the facts similar to those of the present case. Reference to p. 427 of the decision in Abbott case 1895 A.C. 425 (vide supra) shows that, under the provisions of the Act concerned, conditional purchases of portions of Crown lands not exceeding 280 acres might make additional selections of lands adjoining the first selection of each other, not exceeding in the whole 320 acres, subject to all the conditions applicable to the original purchase, except residence, and provided that nothing therein contained should prevent the sale of the adjoining lands to any other person before such further conditional purchase should have been made. That mean that there was a permissive provision in the Act which would enable any conditional purchaser of portions of Crown lands to acquire further lands on similar conditions, and this permissive provision would result in an accrued right only if and when the person chose to take advantage of that provision. It is for that reason that the Lord Chancellor has used the expression

"mere right (assuming it to be properly so called) existing in the members of the community or any class of them."

12. The right of reinstatement and back-wages which is being claimed by the respondent is obviously not a "mere right" of that kind which was or could be available to any member of the community provided he fulfilled certain conditions. The observations were limited to the facts of that case and it would not be permissible or proper to extend them to other cases where the claimant was seeking to enforce, not a mere right, but as accrued right.

13. The Division Bench of the Madhya Pradesh High Court went on to say that this had not become an accrued right because the petitioner-workman had made no application under S. 16 of the repealed Act before the new Act came into force. That argument assumed that the right would become an accrued right only by making an application under the old Act. If an application had already been made while the old Act was in force, there was no question of an accrued right being saved under Clause (b) of S. 112 of the Madhya Pradesh Industrial Relations Act, 1960 which is *pari materia* with Clause (c) of S. 123A of the Bombay Industrial Relations Act, 1946. If such an application had already been made when the old Act was in force, it would have been saved by Clause (c) of S. 112, irrespective of whether it was or was not an accrued right, within the meaning of Clause (c) of that section. With respect, we cannot see our way to accept the view of the Madhya Pradesh High Court that the workman had not acquired an accrued right because he had not filed an application under S. 16 of

the Central Provinces Act before it was repealed by the subsequent Act.

14. The principal question is whether the right claimed by the respondent workman was "an accrued right" or not. This question of what is an accrued right has been dealt with in *Starey v. Graham* (1899) 1 Q.B. 406. The appellant, Starey, in that case, was bona fide in practice as a patent agent prior to the passing of the Patents, Designs and Trade marks Act, 1888. He was, therefore, entitled to be registered as a patent agent [under S. 1(3) of the Trade Marks Act, 1888]. The question was whether he could do it without paying the prescribed fees on the basis that he had acquired the right of practicing as a patent agent because he was doing it before the Act came into force.

15. Channell. J., made the following observations at p. 411 :

"It is suggested that the phrase "right acquired" nullifies altogether the whole Act so far as regards person who have been in practice as patent agents down to the commencement of the Act. The answer to that seems to me to be that "right acquired" means some specific right which in one way or another has been acquired by an individual, and which some persons have got and others have not got. It does not mean "right" in the sense in which it is often popularly used. In one sense, no doubt, every one has a right to do that which the law does not forbid. Every one has a right to wear spectacles, for instance, but he does not acquire a right to wear them by the fact that he does wear them. He is only doing something which the law does not forbid; and if a law were passed forbidding people to wear spectacles, everybody would stand in precisely the same position whether they had in fact been wearing them before the Act or not. If a person has been wearing them he has done so, not because he had acquired a right to wear them, but merely because the law had not forbidden him to do so, In the same way, before the passing of this Act anybody had a right to call himself a patent agent - that is to say, the law did not forbid him to do so. A right enjoyed in that way is not, within the meaning of this saving clause, a right acquired." Otherwise it is obvious that such a clause would nullify the operation of any Act in which the clause was inserted ..."

16. The test to be applied would, therefore, have to be whether the rights claimed by the petitioner were acquired by an individual, and which rights some persons have got and some other have not got, within the meaning of the expression used by Channell, J. Prior to the Industrial Disputes Settlement Act, a dismissed workman had no right of reinstatement in the ordinary relationship of master and servant, but the provisions of the Industrial Disputes Settlement Act gave him a right to raise an industrial dispute and therein, to claim reinstatement, if his services were wrongfully terminated. Consequently, this was a right acquired by him, and it must be deemed to have been saved by Clause (c) of S. 123A of the Bombay Industrial Relations Act, as now made applicable to this area.

17. Sri Mor was submitting that this right cannot be said to have been acquired

under the Industrial Disputes Settlement Act, and therefore, the respondent could not claim to come within Clause (c) of S. 123A of the Bombay Industrial Relations Act. He was seeking to rely on the observations of the Supreme Court in p. 436 their decision in *Jahiruddin Vs. K.D. Rathi, Factory Manager, The Model Mills Nagpur Ltd.*, Their lordships, no doubt, observed that the right of an employee to claim reinstatement on a wrongful dismissal exists de hors S. 16 of the State Act and S. 16 provides a forum for a dismissed employee to claim reinstatement but does not create a right. That observation, however, would not lead to the conclusion sought to be drawn by Sri Mor that the right to reinstatement does not arise under the Industrial Disputes Settlement Act at all. Saying that such a right does not arise under S. 16 or that S. 16 does not create that right is not the same thing as saying that the right of reinstatement does not arise under the Industrial Disputes Settlement Act at all. Section 16, no doubt, provides a forum for a dismissed employee to claim reinstatement and also prescribes the method of enforcement of the right, but that right arises as soon as an industrial dispute arises within the meaning of Cls. (12) and (13) of S. 2 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947. It has been held by the Federal Court in *Western India Automobile Association v. Industrial Tribunal, Bombay, and others* 1949 L.L.J. 245 that the question of reinstatement of a dismissed employee constitutes an industrial dispute. That has been affirmed by their lordships of the Supreme Court in *Jahiruddin Vs. K.D. Rathi, Factory Manager, The Model Mills Nagpur Ltd.*, . Sri Mor was trying to contend, in this connexion, that the observations in p. 436 of the decision in *Jahiruddin Vs. K.D. Rathi, Factory Manager, The Model Mills Nagpur Ltd.*, should be held to mean that the right to reinstatement arises under the common law of England. But there was no warrant for drawing that inference. A perusal of p. 436 of that decision does not support this contention. On the contrary, it would appear from the decision of the Federal Court cited above and the observation, in p. 434 of *Jahiruddin Vs. K.D. Rathi, Factory Manager, The Model Mills Nagpur Ltd.*, itself, that the rights claimed by the respondent for reinstatement and payment of back-wages arise under the provisions of the Industrial Disputes Settlement Act and, therefore, they are rights accrued to the workmen under that Act and must be deemed to have been saved by Clause (c) of S. 123A of the new Act.

18. Sri Mor was then wanting to rely on Paras. 296 and 300 on pp. 599 and 612, respectively, in "Statutory Construction (Inter-pretation of Laws)" by Crawford. In Para. 296, it has been observed that a repeal will divest all inchoate rights. But Sri Mor did not show how the right of a dismissed employee to claim reinstatement or back-wages can be said to be inchoate within the meaning of that expression. In Para. 300, Crawford has observed that the position or verbal form of a saving clause is unimportant, but if it is in irreconcilable conflict with the body of the statute of which it is a part, it is ineffective or void. The submission of Sri Mor was that the provisions of S. 16 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, are in irreconcilable conflict

with the body of the Bombay Industrial Relations Act, 1946, particularly with S. 78(1) D and therefore, this saving clause, even if it saves the right of the workman, should be deemed to be ineffective or void. He pointed out the following differences, which he called as being "in irreconcilable conflict" :

(a) Section 78(1) D of the Bombay Act referred to reinstatement and termination, while S. 16 of the Central Provinces Act did not refer to it;

(b) the limit of compensation was up to Rs. 2,500 under S. 16 of the Central Provinces Act, while it was Rs. 4,000 under S. 78(1) D of the Bombay Act;

(c) there was no mention of a strike, lockout or illegal change in S. 16, whereas there were included in S. 78;

(d) there was a limitation of six months in S. 16, while the original S. 78 purported to fix a period of six months for approach and a subsequent period of three months for applying to the Court; and

(e) the authorities prescribed by these two sections were different.

We have carefully gone through these two sections, and also through other relevant sections of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, but we cannot accept the submission of Sri Mor that the provisions are either inconsistent or "in irreconcilable conflict." It would be seen that S. 16 of the Central Provinces Act deals with only one aspect of the matter, whereas S. 78 of the Bombay Act is more comprehensive, because it deals with subjects covered by Ss. 16, 40, 41 and 42 of the Central Provinces Act. The fact that one section is more comprehensive than the other, would not make the two sections inconsistent with each other or in irreconcilable conflict with each other. The maximum limits of compensation vary in the two Acts, but that would not mean that they are inconsistent with each other. Giving slightly wider powers to a forum under the Bombay Act than what the tribunal under the Central Provinces Act had, would only make some variation, but that is not a matter in inconsistency or irreconcilability. The limitations in the two Acts and the forums prescribed therein are somewhat different, but the proper way to distinguish the two sections would be by saying that certain provisions therein are variant. We are not, however, prepared to agree that a variance or difference must necessarily amount to an inconsistency so as to make the two provisions "in irreconcilable conflict."

19. It was being contended on behalf of the petitioner that, if our interpretation of these two sections, as given above, were to be accepted, there would be no inconsistency whatsoever and, therefore, the clause "so far as it is not inconsistent with the provisions of this Act" in proviso (c) to S. 123A, would be otiose or superfluous. We do not think that this is a correct way of looking at the matter. Certain variations may not amount to inconsistencies while some others may amount to inconsistencies. For instance, if the Bombay Act were to say that there shall be no reinstatement when the central Provinces Act permitted

reinstatement, or if the Bombay Act were to say that no back-wages or compensation were payable when the old Central Provinces Act had provided for them, that kind of variance would amount to an inconsistency. Sri Mor was then submitting that all the provisions of the two Acts were to be considered to see whether there are inconsistencies or not but we do not think that it is necessary for the purpose of the present case. We are only concerned with seeing whether the rights, accruing under the old Act, which have been preserved by Clause (c) of S. 123A of the Bombay Act, are inconsistent with the provisions of the Bombay Act, so as to make that preservation ineffective. We find that the provisions with regard to reinstatement and back-wages, though somewhat variant in the two Acts, are not inconsistent and, therefore, this Clause (c) of the proviso to S. 123A cannot be said to be otiose or meaningless as was being urged on behalf of the petitioner.

20. It was then being submitted that the Maharashtra Act 22 of 1985, which had made the Bombay Industrial Relations Act, 1946 applicable to this area, should be deemed to be retrospective in operation, so as to require the respondent to file his application for reinstatement and back-wages under the new Act. It is a settled rule of construction that there must be a necessary intendment or actual expressions creating retrospectivity in a legislation and such retrospectivity cannot be inferred in the absence of such necessary intendment or express words. Sri Mor did not show any express words for anything in the Act leading to a necessary intendment of giving retrospectivity to the provisions of this Act. He was wanting to rely on a quotation from the judgment of Chief Justice Harries in *Birla Brothers, Ltd. v. Modak* ILR (1948) 2 Cal. 209 as quoted in pp. 435-436 judgment in *Jahiruddin Vs. K.D. Rathi, Factory Manager, The Model Mills Nagpur Ltd.*, . A perusal of the quotation given in pp. 435-436 of the Supreme Court's judgment or of the original judgment in the Calcutta report, does not support the contention of Sri Mor that the Central Act of 1947 had a retrospective operation. On the contrary, the quotation given in the Supreme Court decision itself mentions the view of the learned Chief Justice Harries that the Central Act of 1947 applied to the dispute "without any question arising of giving the Act any retrospective effect." The reasoning in that case would, therefore, not be of any help to the petitioner for supporting his claim that the Bombay Act which is made applicable to this area, should be deemed to have been retrospective in operation. We would further like to point out that the Calcutta case was decided on its own facts. It was clear from the statement of facts at the commencement of the decision, that services of certain employees were at first terminated and then the labourers went on a strike and this strike was continuing even after the Central Act of 1947 came into force. It was under these circumstances that the Calcutta High Court applied the Central Act to a cause of action, which was in existence and was continuing on the date the Act to a cause of action, which case the cause of action had arisen under the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, and that Act was applicable to it at least till it was repealed.

21. The question now is what Act should be applicable after the Central Provinces Act has been repealed and replaced by the Bombay Act. The petitioner was not contending that remedies under both the Act were available to the respondent. The saving clause in proviso (c) to S. 123A of the Bombay Act leaves no choice and lays down that when the rights accrue under the old Act, a proceeding therefore "shall be made, instituted or continued as if that Act had not been repealed." Therefore, the workman had no option but to apply under S. 16 of the Central Provinces Act, because the rights which had accrued to him had been saved by this clause.

22. There would also be another way of looking at the matter. When an industrial employer wrongfully determines the services of his employee, a right would arise in favour of the employee to claim reinstatement and back-wages or compensation, and a liability also is incurred by the employer in regard to those matters. A right in favour of the employee necessarily assumes a liability as against employer. Unlike the provisions of the English Act which were considered in Abbott case cited supra 1895 A.C. 425, Clause (c) of S. 123A of the Bombay Act preserves privileges, obligations or liabilities, acquired, accrued or incurred under the old Act in addition to rights accrued under that Act. This liability of the employer for payment of back-wages and for reinstatement was also preserved by the saving clause and could be enforced by the employee only under S. 16 of the Central Provinces and Berar Act. In that view, the claim of the respondent before the Labour Commissioner could be maintainable by way of enforcement of a liability against the employer even if it were to be assumed that no right accrued in his favour.

23. We are, therefore, of the opinion that the view taken by the Assistant Commissioner of Labour in overruling the preliminary objections of the petitioner is correct, and there is no reason or ground to interfere with it. The petition is, therefore, dismissed with costs and the rule is discharged. The Assistant Commissioner for Labour will proceed with the enquiry into the application of respondent 1.