
(2004) 04 KAR CK 0015
In the Karnataka High Court
Case No : W.A. No. 4503 of 2001

Forbes Gokak Limited

APPELLANT

Vs

J.H. Jadhav

RESPONDENT

Date of Decision : 16-04-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 2 (k)

Citation : (2004) 102 FLR 916 : (2004) ILR (Kar) 2841 : (2004) 7 KarLJ 264 : (2004) 3 LLJ 1050

Hon'ble Judges : Ajit J. Gunjal, J;A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : S.N. Murthy and Somashekar, for the Appellant; S.V. Shastri, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : J.H. Jadhav Vs. Forbes Gokak Ltd., AIR 2005 SC 998 : (2005) 104 FLR 1005 : (2005) 2 JT 378 : (2005) 1 LLJ 1089 : (2005) 3 SCC 202 : (2005) SCC(L&S) 377 : (2005) 2 SCR 88 : (2005) 2 SLJ 236 : (2005) 2 UJ 1083

A.V. Srinivasa Reddy, J.—The appellant - Company is aggrieved by the order dated 4.6.2001 passed by the learned Single Judge in W.P. 1276/2000 and prays for setting aside the same.

2. The respondent-workman raised an industrial dispute before Government which referred the same to the Tribunal for adjudication. The question referred by the State to the Tribunal is:

"Whether the employee Sri J.H. Jadhav, Dispensary semi-clerk, Gokak Mills Hospital, Gokak falls, is justified in asking the management, Gokak Mills (Divisions of Gokak Patel Volkat Ltd.) Gokak Falls, Belgaum to give him promotional benefits from the date promotions were given to the juniors to him as Clerk"?

3. The reference was answered in the affirmative and the appellant was directed by the Tribunal to promote the respondent as Clerk since from the date of promotion of his juniors as Clerks and to give him all the consequential benefits. This award was challenged by the appellant herein before the learned Single Judge. The learned Single Judge by his impugned order has dismissed the Writ Petition upholding the award passed by the Tribunal. Being aggrieved by these orders the appellant has come up in this- appeal. We have heard the learned Counsel on both sides.

4. Mr. S.N. Murthy, learned Counsel for the appellant, submitted that the dispute raised by the respondent in his individual capacity cannot become an "industrial dispute" within the meaning of Section 2(k) of Industrial Disputes Act ("the Act" for short) and the dispute therefore was not maintainable before the Industrial Tribunal. It is his further submission that there is nothing on record to show that the cause of the respondent has been espoused by the union thereby making it an industrial dispute.

5. Mr. S.V. Shastry, on the other hand, submitted that when the respondent is a member of the union and his cause against the department was supported by the union, it amounts to the union espousing the cause of the union itself thereby making it an industrial dispute within the meaning of Section 2(k) of the Act. Viewed in this light, the award and the impugned order passed by the learned Single Judge upholding it does not call for any interference in this appeal.

6. Therefore, the question that arises for our consideration in this appeal is:

"Whether the dispute raised by the respondent is an industrial dispute within the meaning of Section 2(k) of the Act"?

7. Section 2(k) defines "industrial dispute" as:

""Industrial dispute" means any dispute or difference between employers and 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 persons"

The reference to workmen in the above definition excludes in its application an individual dispute, as distinguished - from a dispute involving a group of workmen unless the individual dispute is made a common cause by a body or a considerable section of workmen. There is no dispute about the fact that the dispute herein is a dispute between an individual and the employers and the dispute is regarding his promotion. It is difficult to comprehend that such a dispute directly and substantially affects the interest of the other workmen so as to be regarded as projecting their common cause. The individual dispute to be converted into an industrial dispute it should be taken up by the Union or by an appreciable number of employees which is not the case herein. The dispute herein is not raised by the union or the workmen. The dispute is raised by an employee in his individual capacity. Even assuming for the sake of argument that

the individual cause was espoused by the union, though there is nothing on record to either show that the respondent is a member of the union or that the dispute was espoused by passing any resolution in that regard, the support of the cause by other workmen would not convert the dispute into an industrial dispute. But these principles were diluted by the Apex Court in *Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi)*, when after reviewing the previous decisions in this regard, the Apex Court held that a dispute raised by an individual workman can become an industrial - dispute if it is supported by his union or in the absence of the union by a number of workmen. Mr. Shastry relies upon the oral evidence adduced by the Gen.Secretary of the Staff Union of Gokak Mills to contend that the individual dispute has the support of the union and the cause was espoused by it and, therefore, it becomes an industrial dispute. The evidence of the Gen. Secretary of the Union is that the respondent is a member of their union and his grievance was discussed in the union and they moved for conciliation. As the conciliation failed, the workman had sent a demand to the management a copy of which was given to him as per Ex.W-1. It is based on this evidence Mr. Shastry submits that there was espousal of the cause of the workman by the union and therefore the individual dispute between the workman and the company has been converted into an industrial dispute. The documentary evidence produced in the case speaks otherwise. The Union has not been shown as a party in the reference order. ExW-1 the demand notice sent by the workman to the company does not have any endorsement to show that a copy was addressed to the union. The Gen.Secy. has admitted in the cross-examination that there is no document to show that the workman is the member of the union nor is there any document to show that they have passed a resolution to espouse the cause of the workman. The copy of the resolution was also not produced. Basically, as stated earlier, industrial dispute excludes its application to an individual dispute and in the absence of any documentary proof to show that the dispute, relating as it is to the promotion of the respondent which is purely an individual dispute, has had the support of the union, a dispute of this nature which does not involve directly and substantially the interest of the workmen in general, cannot be characterised as an industrial dispute which could be resolved by the Tribunal by applying the provisions of the Act. When a ratio decidendi laid down in a case is the sole source of an exception to a general rule with the statute being silent about any such exception, the essentials required to be established for bringing the case within the exception provided for by such legal precedent have to be established in a clear and positive way. In the absence of such clear and positive evidence on record to show that the cause of the workman was espoused by the union or it had the backing of the union which had representative character, the exception to the general rule cannot applied to a case on assumption that such essentials exist. The decision in *Workmen of Indian Express (P) Ltd. Vs. The Management*, cited by Mr. S.N. Murthy also highlights the necessity of proof of the representative character of the union or the individual as a pre-condition for treating an individual dispute into an industrial dispute. It is difficult to even

assume that the dispute raised by the Workman is of a representative character because it is a matter purely related to his personal promotion.

8. Learned Counsel for the appellant relied on the decision of the Apex Court in A.J. FERNANDIS v. DIVISIONAL MANAGER, SOUTH CENTRAL RAILWAY AND ORS. (2001)1 S.C.C 240 in order to drive home the point that a challenge to promotion if suffers from inordinate delay has to be rejected on the ground of delay and laches. As we have found that the dispute is not one governed under the Act, we do not find it necessary to go into the aspect of delay and laches.

9. In the view that we have taken, we allow the appeal and set aside the impugned order of the learned Single Judge. The reference to the Tribunal stands rejected.