

(1981) 02 CAL CK 0032
In the Calcutta High Court
Case No : C.R. No. 1676 (W) of 1978

Indrason Singh

APPELLANT

Vs

Seventh Industrial Tribunal and Others

RESPONDENT

Date of Decision : 18-02-1981

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 33(1)(a), 33(1)(b), 33(2)(b)

Citation : 85 CWN 457

Hon'ble Judges : G.N. Roy, J

Bench : Single Bench

Advocate : Ananga Mohan Dhar, for the Appellant; Puspamoy Dasgupta, for the Respondent

Judgement

G.N. Roy, J.—In this Rule, Order No. 13 dated January 28, 1977 passed by the learned Judge, 7th Industrial Tribunal, West Bengal in Case No. 179 of 1976 u/s 33 (2) (b) of the Industrial Disputes Act is under challenge. The petitioner was an employee of Messrs. Paharpur Cooling Tower (Pvt.) Ltd. Over a dispute raised by the Paharpur Cooling Tower Mazdoor Sabha, a Registered Trade Union, a reference u/s 10 of the Industrial Disputes Act was made by the Government of West Bengal to the 7th Industrial Tribunal, West Bengal for adjudication of four issues. The said issues are as follows :-- 1. Whether the stoppage of work from 24-5-74 was a strike or lockout and whether such strike or lockout was illegal and justified ?

2. To what extent, if any, workmen are entitled to any wages, allowances and canteen subsidy for the period of stoppage of work from 25.4.74 ?

3. To what extent, if any, the Management is entitled to any relief for stoppage of work from 24-5-74 ?

4. Whether lay-off of 4 monthly rated workmen from 30.5.74 and 6 daily-rated workmen from 6. 6. 74 is justified and legal and what relief, if any, are they entitled to ?

During the pendency of the said adjudication proceeding before the 7th Industrial Tribunal, a departmental proceeding was initiated against the petitioner for an alleged misappropriation of company fund and in the said departmental proceeding, the petitioner was, held guilty and the Company dismissed the petitioner from service by letter dated August 8, 1976 accepting the report of the Enquiring Officer. It appears that thereafter the Company filed an application u/s 33(2) (b) of the Industrial Disputes Act before the 7th Industrial Tribunal for approval of the said order of dismissal but subsequently the said application was withdrawn. Later on, however, the Company again filed an application u/s 33 (1) (b) of the Industrial Disputes Act and the Company contended that although the petitioner is not a workman concerned in the dispute pending adjudication before the tribunal, but to avoid any difficulty in future, the said application was made u/s 33 (2) (b) so as to get an adjudication from the Industrial Tribunal as to whether or not the petitioner was a concerned workman so far as the Industrial Disputes pending before the said 7th Industrial Tribunal were concerned. The learned 7th Industrial Tribunal came to the finding that the petitioner did not take any part in the alleged strike or lock-out and had drawn his salaries and emoluments at the relevant period and as such he had no interest whatsoever on the adjudication to be made in the dispute pending before the, 7th Industrial Tribunal and in the aforesaid facts and circumstances of the case, the petitioner could not be called a "concerned employee" and as such there was no necessity of getting any approval by the Company u/s 33(2) (b) of the Industrial Disputes Act in the matter of dismissal of the service of the petitioner. Being aggrieved by the aforesaid adjudication of the 7th Industrial Tribunal the instant writ petition has been moved by the petitioner.

2. Mr. Dhar, the learned Counsel for the petitioner-employee contends that the expression "workmen concerned" is not limited to the workmen directly or actually concerned in the dispute pending before the Industrial Tribunal. He contends that if an Industrial dispute has been raised before a Tribunal and if an adjudication made in the said Tribunal binds all the workmen, then each of the employees must be held to be concerned employee within the meaning of Section 33(2) (b) of the Industrial Disputes Act. In this connection Mr. Dhar refers to a decision of the Supreme Court made in the case of New India Motors (P) Ltd. New Delhi Vs. K.T. Morris, . In the said case, the meaning of the expression "workmen concerned" in Section 33(1)(b) was considered by the Supreme Court and the Supreme Court held that the expression workmen concerned in section 33(1)(a) was not limited to the workmen directly or actually concerned in the dispute raised before the Industrial Tribunal but the said expression included all the workmen on whose behalf the dispute had been raised as well as the workmen who would be bound by the Award which would be made in the said dispute. Mr. Dhar in this connection submits that although in another case, namely in the case of Upper Ganges Valley Electricity Company Ltd. vs. G. S. Srivastava reported in 1962 (5) P.L.R. 377 S. C. the Supreme Court held that if a single employee was concerned in a reference, then other

employees were not concerned in the dispute, the said decision should not be followed but the decision of a larger Bench made in the said New India Motors (P) Ltd.'s case should be accepted. In support of this contention, Mr. Dhar also refers to the commentaries made by the learned Author Sri-D D. Seth in his Treatise "commentaries on Industrial Disputes Act, 1947" (Second Edition) at page 523 Note 21.

3. Mr. Dasgupta, the learned Counsel appearing for the respondent company, however, submits that the principle laid down by the Supreme Court in New India Motors (Pvt.) Ltd.'s case does not come in aid in the instant case. He submits that in the said decision the Supreme Court has laid down that to be a "concerned workman" u/s 33(1) (a) which is similar to Section 33(2) (b) of the Industrial Disputes Act, the workman must either be directly or actually concerned in the dispute or he should be interested or bound by the decision of the Industrial Tribunal in the dispute pending before such Tribunal Mr. Dasgupta contends that in the instant case, the petitioner did not take part in the strike or lockout during the period in question and as such the petitioner had no interest in any of the issues which were referred to u/s 10 of the Industrial Disputes Act before the 7th Industrial Tribunal. In such circumstances, the adjudication to be made in the said Industrial Dispute will not affect the petitioner in any way. Accordingly, the Tribunal below was quite justified in holding that in the facts of the case, the petitioner could not be held to be a concerned employee within the meaning of Section 33(2)(b) of the Industrial Disputes Act. Mr. Dasgupta submits that in the aforesaid circumstances no interference is called for by this court and the Rule must fail.

4. In reply to the aforesaid contention of Mr. Dasgupta, Mr. Dhar contends that it is immaterial as to whether or not a particular employee is interested in an adjudication in the dispute raised before the Industrial Tribunal. The test is whether he is bound by the award to be made in such industrial dispute. He contends that the disputes were raised by the Paharpur Cooling Towers Mazdoor Union, that the petitioner is a member of the said Trade Union and along with other employees, the petitioner will also be bound by the award to be made in the said disputes pending before the 7th Industrial Tribunal. In such circumstances, the petitioner must be held to be a concerned workman and the rejection of the said application u/s 33(2)(b) on the ground that approval under the said Section 33(2) (b) was not necessary is wholly illegal. After considering the submissions of the learned Counsels for the parties, it appears to me that the Tribunal below is justified in coming to the finding that the petitioner is not a concerned workman in the disputes pending before the said 7th Industrial Tribunal. Mr. Dasgupta is justified in his contention that in the facts and circumstances of the case, the petitioner is in no way concerned or interested in the said disputes and the Award to be passed in the said disputes, will not affect the petitioner in any way. In my view, the contentions of Mr. Dhar that it is immaterial as to whether or not a workman is in any way interested in the adjudication of the Industrial Tribunal and whether or not the said workman will

be affected in any manner by the Award but the sole test is that whether such workman will be bound by the award, will not be the correct reading of the provisions of Section 33(2) (b) and/or the decision of the Supreme Court made in the case of New India Motors (Pvt) Ltd. If the workman has no interest in the adjudication of the tribunal and if he cannot be affected by the award, the question of his being bound by the award does not arise in its real sense.

In the aforesaid circumstances, this Rule fails and discharged, but I make no order as to costs.