
(1993) 01 PAT CK 0002
In the Patna High Court
Case No : C.W. No. 37/1982

Kalyanpur Lime and Cement Works Ltd. APPELLANT
Vs
Labour Court and Others RESPONDENT

Date of Decision : 13-01-1993

Acts Referred:

Citation : (1993) 01 PAT CK 0002

Final Decision : Dismissed

Judgement

Aftab Alam, J.—This application under Articles 226 and 227 of the Constitution of India has been filed challenging an order dated November 7, 1981, passed by the Presiding Officer, Labour Court, Patna, in Reference No. 18 of 1977. By the impugned order, the Labour Court refused to accept a settlement, said to have been arrived at between the union (respondent No. 2) and the management (the petitioner) and directed that he would proceed to adjudicate on the dispute under reference on its merits. It is to be noted at the outset that the reference relates to the removal from service of an individual workman, respondent No. 3.

2. The facts of this case are brief and not in dispute; it is another matter that those facts are being interpreted differently by the contending parties.

3. Respondent No.3 (hereinafter referred to as "the concerned workman") was a workman of the petitioner-company. He was removed from employment by notice dated November 24, 1975, a copy of which has been enclosed as Annexure 2. The notice did not assign any reason for his removal from service, but simply stated that his services were being terminated with immediate effect under the provisions of the Standing Orders of the Company. On receipt of the notice the concerned workman wrote a letter to the management on November 26, 1975. A true copy of this letter is enclosed as Annexure "A" to the counter affidavit filed on his behalf. In this letter the concerned workman asked the management the reason for his removal from service and went on to add that on account of certain incidents involving another workman, he apprehended that the action of the management was inspired by mala fides. Failing to get any reply to

his aforesaid letter, the concerned workman appears to have approached the union which took up his case. The union sent a letter dated January 6, 1976, to the General Manager of the company wherein a demand was made for the reinstatement of the concerned workman. A copy of the demand letter is on the record as Annexure 3 to the writ petition. It is significant to note that the demand letter was also signed by the concerned workman, in addition to the General Secretary of the union.

4. The industrial dispute relating to the removal from service of the concerned workman was first sought to be resolved in a conciliation proceeding. On the failure of the conciliation proceeding, the State Government in exercise of its powers u/s 10(1)(c) of the Industrial Disputes Act, 1947 ("the Act", for short), made a reference of the dispute to the Labour Court for adjudication. A true copy of the reference notification dated July 23, 1977, has been enclosed as Annexure 4 to the writ petition. The reference notification stated that the appropriate Government was of the opinion that a dispute existed between the petitioner and their workman represented by Kalyanpur Mazdoor Panchayat regarding the matter specified in Annexure "A" thereto; Annexure "A" to the reference notification reads as follows:

"Whether termination of service of Shri Ram Khalasi (Ticket No.420), Mechanical Engineering Department, Kalyanpur Lime and Cement Works Limited, Banjari, is proper and justified? If not, what relief he is entitled to?"

5. The a fore-mentioned dispute referred to the Labour Court under notification dated July 23, 1977, was registered as Reference No. 18 of 1977.

6. It is to be noted at this stage that at the material time another reference being Reference No.20 of 1977 was also pending before the Labour Court involving the petitioner-management and the union. This reference was in respect of an industrial dispute relating to removal from service of a number of other workmen. It appears that the union entered into a settlement with the management in relation to both the disputes under references (18 and 20 of 1977) and a common compromise petition was filed in both these references. Concerning Reference No. 18 of 1977 relating to the concerned workman, the compromise petition merely stated:

"that in case of Reference No, 18 of 1977, the parties agreed to drop the issue."

7. The compromise petition was filed in Court on June 30, 1978. On the same date, the General Secretary of the union appears to have filed a petition before the Labour Court disowning the compromise in so far it related to Reference No. 18 of 1977. On November 21, 1978, the concerned workman also appeared and filed a petition objecting to the alleged compromise and praying that it may not be accepted by the Labour Court. The management pressed for the acceptance of the compromise and prayed that an award may be given in terms of the compromise as had already been given in Reference No. 20 of 1977. After hearing the parties, the Labour Court passed the impugned order refusing to

accept the compromise and directing that it would hear the reference on its merits.

8. Mr. Ranjeet Kumar Das, learned counsel appearing on behalf of the petitioner, submitted that the action of the Labour Court in not accepting the compromise was wholly untenable in law and the Labour Court was bound to accept the compromise and make an award in terms thereof. Mr. Das contended that in case of industrial disputes the union which represented the collective will of the workmen was fully competent to enter into a settlement with the management even adversely affecting the interests of an individual workman and in matters of industrial dispute an individual workman had no right to pursue or to carry on his dispute with the management in the face of a settlement arrived at between the management and the union. Mr. Das vehemently argued that an individual workman's claim pursuing an industrial dispute individually and independently of the union, would be quite contrary to the very idea of collective bargaining which was one of the cardinal principles of industrial adjudication. In support of his contentions, learned counsel relied upon a Supreme Court decision in *Ram Prasad Vishwakarma Vs. The Chairman, Industrial Tribunal*, and the two Division Bench decisions of this Court in *Eastern Manganese and Mineral, Ltd. Vs. Industrial Tribunal (Central) and Others*, and *Rohtas Industries Ltd. Vs. Ghanshyam Das Premi and Others*,

9. Before considering how far the precedents relied upon by Mr. Das provide guidelines for deciding this case, it will be apposite to take a look at the relevant provisions of the Act.

10. The Act defines "industrial dispute" in Section 2(k) which is reproduced below:

"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 person."

11. In other words, though the subject of dispute may be the employment or non-employment or the terms of employment or the conditions of labour of a single individual, the dispute would qualify as an "industrial dispute" (between employers and workmen) only if it is raised by a body or a group of workmen; that is to say a dispute or difference involving a single workman will not give rise to an industrial dispute within the meaning of Section 2(k) of the Act.

12. The aforesaid concept of industrial dispute was given an extended meaning by insertion of Section 2A which provides that on subjects specified in that section an industrial dispute could be raised even at the instance of an individual workman and without the involvement of a body or group of workmen to espouse the dispute. Section 2A of the Act is as follows:

"Where any employer discharges, dismisses retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that

workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination, shall be deemed to be an industrial dispute notwithstanding that no other workman or any union of workmen is a party to the dispute."

13. It is plain that any dispute on the subjects specified in Section 2A, i.e., discharge, dismissal, retrenchment or termination of an individual workman is not likely to directly affect a body or group of workmen, but would affect only the workman concerned and in such cases, by virtue of Section 2A, a dispute or difference raised by the concerned workman also constitutes an industrial dispute notwithstanding that no other workman or any union of workmen came forward in support of that dispute.

14. Section 10 of the Act, which empowers the appropriate Government to make reference of an industrial dispute, is in the following terms:

" 10. Where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any-time, by order in writing."-...

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or...".

15. It is significant to note that what is to be referred u/s 10 of the Act is an industrial dispute irrespective of whether it is an industrial dispute within the meaning of Section 2(k) or Section 2A. As soon as a difference or dispute qualifies as an industrial dispute either u/s 2(k) or u/s 2A, it is within the authority of the appropriate Government to make reference for its adjudication u/s 10 which does not make any distinction between an industrial dispute within the meaning of Section 2(k) or one u/s 2A of the Act.

16. This being the legal position, it is very easy to envisage a situation where a dispute relating to discharge, dismissal, retrenchment or termination of service of an individual workman which at its inception was an industrial dispute within the meaning of Section 2A also assumes the character of an industrial dispute within the meaning of Section 2(k), if at a later stage the dispute, though concerning an individual workman is also taken up by a union or a group of workmen. It is also possible that a union or a group of workmen having at one stage given its support to the dispute may at a subsequent stage withdraw its support and drop out of the dispute. But, the withdrawal of support by the union would by no means extinguish the difference between the employer and concerned individual workman and hence an industrial dispute within the meaning of Section 2A of the Act would still continue to persist, notwithstanding the union ceasing to support the dispute. To my mind, there is no question of an industrial dispute within the meaning of Section 2A getting sub-mged or losing its identity or existence in case a union or a group of workmen decide to support the dispute. Whether or not an industrial dispute would be taken up by the union is not in the hands of the concerned workman. The union may or may not take

up a dispute concerning an individual workman. And hence the view that once a union espouses the dispute, it is the union alone which becomes the sponsor in relation to the industrial dispute, to the exclusion of the concerned workman, appears to be contrary to the very object and purpose of Section 2A of the Act.

17. Though it is quite unlikely but not impossible that in a given case concerning removal from service of an individual workman an industrial dispute within the meaning of Section 2A does not come into existence at all and what comes into existence is only an industrial dispute within the meaning of Section 2(k) of the Act, that situation may arise when there is no overt act on the part of the concerned workman raising any difference, demand or dispute with the management and the only demand, difference or dispute which is raised with the management relating to his removal from service comes from the union. In such a situation if the union backs out of the dispute or settles the dispute with the management, the position may be somewhat different but the facts and circumstances of this case do not require me to make any conclusive pronouncement in that regard.

18. Now, coming to the decision relied upon by Mr.Das, it is to be noted that the Supreme Court decision in the case of Ram Prasad Vishwakarma v. Chairman Industrial Tribunal (supra) was rendered when there was no Section 2A in the Act and, thus, it is of no help to the petitioner. The position in the Division Bench decision of the Patna High Court in the case of Eastern Manganese and Minerals Ltd. v. Industrial Tribunal, (supra) was the same, that is to say, the decision was rendered when there was no Section 2A. This decision also, therefore, has no application to this case.

19. The position is, however, different in the second Division Bench decision of this Court in the case of Rohtas Industries Ltd. v. Ghanshyam Das Premi, (supra) as this decision does not fail to take into consideration Section 2A of the Act. Mr. Das places considerable reliance on this decision and at the first glance it indeed appears to support him. On a deeper examination, however, it is to be noted that while taking into consideration the introduction of Section 2A of the Act their Lordships did make a qualification in relation to an industrial dispute falling within the meaning of Section 2A and made the following observations:

"Section 2A (inserted by Act 35 of 1965) of the Industrial Disputes Act, however, has introduced a fiction. It envisages that a dispute and difference between individual workman and his employer may also give rise to industrial dispute without intervention of the union, if it relates to the workman's discharge, dismissal, retrenchment and termination. Therefore, where the grievance is u/s 2A, or Section 33A or for that matter u/s 33C, the worker is a party to the proceeding in his own capacity and, therefore, has a right to be heard or represented by a person of his choice u/s 36 of the Act.

20. Where an industrial dispute of collective nature is raised by the union with the employer, resulting in a reference, the workers as individual do not come into

the picture. It is an adjudication between the management and the union. The question might be little different if the industrial dispute would have been raised both by the union and individual members as envisaged u/s 2A of the Act."

21. From the above observations, it is clear that in a case where the controversy referred for adjudication before a Labour Court/Industrial Tribunal qualifies as an industrial dispute within the meaning of Section 2A, the concerned workman has a right to be a party to the proceeding in his own capacity and has a right to be heard and, therefore, a settlement of such a dispute between the union and the management will not deprive him of his right and will not bring the industrial dispute to an end.

22. I find my view fully supported by a decision of the Delhi High Court reported in (1975) LIC 702 The Delhi High Court decision, after considering at some length this aspect of the matter, held as follows:

"After the incorporation of Sec. 2A, the necessary balance between the importance of collective bargaining and the right of a party concerned to have a fair hearing could only be established if in a case in which an individual dispute has been raised without it having to be sponsored by the union the right of the individual concerned to change his representative any time he likes was accepted. The workman himself can now raise an industrial dispute, the dispute relating to discharge, termination of service. The workman now is not dependent on the union or on a number of workmen for converting his dispute into industrial dispute. Statute gives him the right to raise such a dispute himself. In such circumstances, it would not be appropriate to seek to apply the rule laid down in *Ram Prasad Vishwakarma v. Industrial Tribunal* (supra) and *Eastern Manganese and Minerals Ltd. v. Industrial Tribunal* (supra) and to suggest that even in the case of dispute regarding termination of services of the concerned workman, the union continued to be supreme even to the extent of entering into a settlement with the management concerning the workman against his consent and in opposition to his wishes. To read such untrammelled power in the union would be directly in conflict with the object of Section 2A."

23. Upto now, I had been examining as an abstract proposition the question whether a reference must necessarily come to an end with the union entering into a settlement with the management though the dispute under adjudication also qualifies as an "industrial dispute" within the meaning of Section 2A; and I have given my answer in the negative.

24. The next question that remains to be considered is as to whether in the given facts and circumstances an industrial dispute within the meaning of Section 2A came into existence or not.

25. Mr. Das, learned counsel appearing on behalf of the petitioner, strenuously argued that the concerned workman never raised an industrial dispute with the management in regard to his removal from service and the only dispute that came into being was by means of the demand letter sent by the union as

contained in Annexure 3.

26. Mr. K.N. Gupta, learned counsel appearing on behalf of the concerned workman, on the other hand, has relied upon a decision reported in (1978) LIC 1531 In this decision, a Division Bench of Madhya Pradesh High Court held that though no formal demand was raised by the dismissed workmen, the circumstance that the workmen were dismissed in face of the opposition in the domestic enquiry would give rise to an industrial dispute within the meaning of Section 2A of the Act.

27. I am not required to go to such length for in the facts and circumstances of this case, I have no hesitation in finding that an industrial dispute within the meaning of Section 2A had definitely come into being at the instance of the concerned workman. It is to be noted that Section 2A says:

"... any dispute or difference connected with or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute..."

28. Now, in his letter addressed to the Personnel Officer of the company, the workman had asked for reasons of his removal from service and had characterized the action of the management as inspired by mala fides. It has been also noted that the demand letter sent by the union was also jointly signed by the concerned workman. These two documents leave no room for doubt that there had been a dispute between the concerned workman and his employer on a matter connected with and arising out of his removal from service. This was more than adequate to constitute an industrial dispute within the meaning of Section 2A of the Act and this dispute remains very much in existence notwithstanding the settlement entered into between the union and the management.

29. Mr. Das, learned counsel for the petitioner pointed out that the reference notification was in respect of an industrial dispute between the management and their workmen represented by Kalyanpur Mazdoor Panchayat and this indicated that the industrial dispute under reference was not u/s 2A of the Act. To my mind, nothing hangs on this description. The description might have been correct when the reference was made as at that time there was indeed a dispute within the meaning of Section 2(k) also. But, I have already held that if the dispute within the meaning of Section 2(k) ceases to exist, it will not also bring to an end the industrial dispute within the meaning of Section 2A. It is, thus, clear that an industrial dispute within the meaning of Section 2A remains very much in existence in respect of which there is reference before the Labour Court which has to be adjudicated on its merits.

30. I, therefore, find no merit in this application and the same is hereby dismissed.

31. Before parting with the records of this case, I must take note that the

removal of the concerned workman took place in the year 1975. The reference was made on July 23, 1977, and the impugned order was passed on November 7, 1981. It is unfortunate that this case as remained pending before this Court now for more than 11 years greatly delaying the adjudication of the reference before the Labour Court. I accordingly direct the Labour Court to take up this reference on a priority basis. The hearing of the reference shall proceed on a day-to-day basis so that the award is made within three months from the date of production/receipt of a copy of this order.