
(1970) 10 AHC CK 0013
In the Allahabad High Court

Kanal Chandra Ganguli

APPELLANT

Vs

Central Government Industrial Tribunal No. 2

RESPONDENT

Date of Decision : 26-10-1970

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 16, 36

Citation : (1971) 2 LLJ 25

Hon'ble Judges : S. Sarwar Ali, J;G.N. Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. In this case, the petitioner has obtained a rule from this Court calling upon the respondent to show cause why the award of the Central Government Industrial Tribunal (No. 2), Dhanbad, a copy of which is annexure "4" to the application, be not called up and quashed by issue of an appropriate writ. Cause has been shown before us by Mr. Balbhadra Prasad Singh, appearing on behalf of the employers who are respondent No. 2.

2. It appears that the petitioner was employed as a typist in the Office of the Assistant Chief Mining Engineer of the Jamadoba Collieries of Messrs. Tata Iron and Steel Co., Ltd. On account of some incident which is said to have taken place on the 21st December, 1965, a proceeding was taken against the petitioner which ended with an order of his dismissal which was passed on the 17th January, 1966. Thereafter, an industrial dispute was raised in that context by the Tata Collieries Workers' Union, of which the Secretary is respondent No. 3 in this Court. Ultimately, a reference was made u/s 10 of the Industrial Disputes Act being Reference No. 147 of 1967 on the 16th of May, 1966. The parties to the reference were mentioned as:

Employers in relation to the Tata Iron and Steel Co. Ltd., and Their Workmen.

The question referred to the Tribunal for adjudication was whether the dismissal of the petitioner was justified and, if not, to what relief was he entitled.

3. Before the Tribunal, a written statement was filed on behalf of the Tata Collieries Workers' Union on the 15th June, 1968. Thereafter, the next date fixed before the Tribunal was the 16th of July, 1968, for the purpose of filing documents, if any. On the 6th July, 1968, however, a petition was filed before the Tribunal, a copy of which is annexure "2" to the writ application, wherein it was prayed that the matter should be disposed of on the same day so that the parties might not be required to attend the Tribunal on the 16th of July, 1968, on the ground that the union representing the affected workman, namely, the present petitioner, "is no more interested to press his demand and the affected workman has also dropped the matter." The Presiding Officer of the Tribunal took up the case and heard the parties and recorded an order in the order-sheet, a copy of which is annexure "3", reserving his award. Ultimately, on the 9th July, 1968, the Tribunal gave the impugned award, a copy of which is annexure "4" to the writ application. After stating the fact that the case was taken up for hearing on the 6th July, 1968, the award ended as follows:--

On behalf of the workman a memo was submitted stating that the affected workman had dropped the dispute and as such the Tata Collieries Workers' Union, representing the affected workman, was also no more interested to press the demand. The memo was duly verified. As there is no more dispute left for enquiry the award is made accordingly. The memo submitted on behalf of the workman is annexed herewith and is made part of the award. The award is submitted u/s 16 of the Industrial Disputes Act, 1947.

4. Mr. T.K. Das, appearing on behalf of the petitioner, has drawn our attention to certain facts in support of his contention that the award was made by the Tribunal under misconception and on the basis of mis-statement of certain facts. Learned Counsel laid stress on the fact that the 6th of July, 1968, the date on which the Tribunal took up the case, was not a date fixed in the case and that the memo which had been filed before the Tribunal on behalf of the union or the workman was not duly verified. It was also urged that no material was placed before the Tribunal to indicate that the petitioner, who was the real person affected, had addressed any communication to the union that he did not wish to proceed with the matter.

5. The main difficulty in the way of the petitioner, however, is that he has no locus standi to assail the award at this stage. As already stated, the dispute was not raised by the petitioner in his individual capacity, but was raised by the union as a collective dispute. Therefore, the petitioner was really no party before the Tribunal in his individual capacity. Until the adjudication was completed and the award given by the Tribunal on the 9th July, 1968, the petitioner had not asked to be made a party before the Tribunal in his individual capacity which he could have very well done, particularly after the amendment by Act 35 of 1965 whereby Section 3-A was inserted in the Industrial Disputes Act. In *Ram Prasad Vishwakarma v. Industrial Tribunal, Patna* [1961] 19 F.J.R. 380, it was laid down that where a collective dispute is taken to the Tribunal for adjudication, the

individual workman is not a party independently of the union which has espoused his cause. After referring to Section 36 of the Industrial Disputes Act, their Lordships made the following observation (at page 384):

While it will be unwise and indeed impossible to try to lay down a general rule in the matter, the ordinary rule should in our opinion be that such representation by an officer of the trade union should continue throughout the proceedings in the absence of exceptional circumstances which may justify the Tribunal to permit other representation of the workman concerned.

We have quoted this passage from their Lordships' judgment, because Mr. Das placed reliance upon it in support of his contention that after the union had ceased to take interest in the petitioner's case, it was open to the petitioner to have applied before the Tribunal for being made a party and to have the dispute decided on merits. But, merely on the basis of a contemplated application which the petitioner had in mind, it would not be right to permit him to assail the award made by the Tribunal before the petitioner became or applied to become a party to the reference. Assuming that prior to the 16th of July, 1968, the petitioner was unaware that the union had decided not to press the dispute, it was expected that on the date fixed, namely, the 16th of July, 1968, or soon thereafter the petitioner should have intimated to the Tribunal that he intended to be made a party and to proceed with the reference. It is here in this Court for the first time that the petitioner has expressed his contemplated intention for being made a party in his individual capacity in the dispute which was disposed of by the Tribunal at the instance of the sponsoring union. In our opinion, the writ jurisdiction of this Court is not designed to be utilised in aid of a person who had merely contemplated to take a certain course before the Tribunal.

6. In our opinion, therefore, on this short ground alone, the petitioner, (sic) unnecessary to refer to any other fact for the decision of this case. The application, therefore, fails and is dismissed, but in the circumstances without costs. This order, however, will not stand in the way of the petitioner in seeking any other remedy which may be open to him under the law.